

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, JUNE 4, 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 of Spokane Guest Wireless access for Council Chambers for June 4, 2018:

User Name: **COS Guest**
Password: **3ZXy48Cp**

Please note the space in user name.
Both user name and password are case sensitive

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. Low Bid of Inland Asphalt Company (Spokane Valley, WA) for 2018 Grind & Overlay Projects - North—\$2,335,000. An administrative reserve of \$233,500, which is 10% of the contract price, will be set aside. (Various Neighborhoods.)
Dan Buller | Approve | OPR 2018-0346
ENG 2018044 |
| 2. Contract Amendment No. 8 to the Lease Agreement Dated July 15, 1988, between the Spokane Airport Board and the City for the Waste to Energy Facility—\$136,755.40.
Ed Lukas | Approve | OPR 1988-0495 |
| 3. Loan Agreement with Spokane Neighborhood Action Partners (Spokane, WA) for rehabilitation work at Resident Court Apartments at 1203 West 5th Avenue—\$250,000 HOME CHDO funds (Cliff-Cannon Neighborhood.)
Melora Sharts | Approve | OPR 2018-0347 |

- | | | | |
|-----|--|----------------|------------------------------|
| 4. | Multiple Family Housing Property Tax Exemption Agreements with: | Approve | |
| | a. The Second Scott, LLC. for two multi-family buildings with 15 units located at 743 South Scott Street. | | OPR 2018-0348 |
| | b. Namva Chan for 56 new multiple family permanent residential housing units located at 2020 West 7th Avenue. | | OPR 2018-0349 |
| | c. Brent & Susannah Stoltz for 21 residential housing units located at 174 South Howard Street. | | OPR 2018-0350 |
| | d. Nick Barnes, Brook Cunningham and Andrew Mills for one multi-family building with four units located at 1608 East Hartson Avenue. | | OPR 2018-0351 |
| | Ali Brast | | |
| 5. | Funding Board Project Agreement to obtain City approval of a grant from the Recreation and Conservation Office for the South Gorge Trail Completion project—\$981,901 Revenue. | Approve | OPR 2018-0352
ENG 2016059 |
| | Eric Lester | | |
| 6. | Contract with Arrow Concrete and Asphalt (Spokane Valley, WA) for various levels of preventative maintenance of paved parking lots at various locations owned by the City—\$200,000. | Approve | OPR 2018-0353 |
| | Dave Steele | | |
| 7. | Hire a full time Clerk to be mentored ahead of the retirement of the sole existing Clerk in January of 2019—Anticipated Cost including Overhead: \$75,846.60. | Approve | OPR 2018-0354 |
| | Dan Kegley | | |
| 8. | Contract Amendment No. 11 with Community Minded Enterprises for the Cable Channel Franchise Agreement for the operation of CMTV 14, the City's Community Access Channel—\$128,000. | Approve | OPR 2006-0976 |
| | John Delay | | |
| 9. | Contract Amendment No. 8 to Cable Access Agreement between Friends of KSPS and the City providing funding for 2018 for educational cable TV access—\$63,415. | Approve | OPR 2007-0767 |
| | John Delay | | |
| 10. | Addendum to Value Blanket Order with Linn Machine and Manufacturing, Inc., (Spokane Valley, WA) to refurbish additional metal refuse/recycling containers and roll off boxes—estimated expenditure \$150,000 (incl. tax). | Approve | OPR 2016-0649
BID 4254-16 |
| | Matt Lowmaster | | |

- | | | |
|---|------------------------|------------------------------|
| 11. Contract Extension with Occupational Medicine Associates (Spokane, WA) to provide professional medical services for the City through December 2018—\$120,000.
Chris Cavanaugh | Approve | OPR 2013-0295 |
| 12. Contract Amendment with Collette Leland and the firm Winston Cashatt (Spokane, WA) provide legal services and advice regarding a contract dispute with IMCO Construction—\$50,000.
Mike Ormsby | Approve | OPR 2018-0072
ENG 2014805 |
| 13. Purchase and Sale Agreement with Liquidation Holdings, Co., for Parcel No. 35181.0201 at West Mission Avenue, a.k.a the Normandie Site—\$2,700,000.
James Richman | Approve | OPR 2018-0357 |
| 14. Report of the Mayor of pending: | Approve &
Authorize | |
| a. 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 \$_____. | Payments | CPR 2018-0002 |
| b. Payroll claims of previously approved obligations through _____, 2018: \$_____. | | CPR 2018-0003 |
| 15. City Council Meeting Minutes: May 14, 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

West Quadrant TIF Neighborhood Project Advisory
Commission: One Appointment.

Confirm

CPR 2007-0039

Brandy Cote

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 C35626** **General Fund**
FROM: Unappropriated Reserves, \$101,000;
TO: Non-Departmental Professional Services, \$101,000.
- (This action helps budgeting for purchasing equipment for the Downtown Spokane Partnership BID contract changes.)
Gavin Cooley
- ORD C35627** **Channel Five Equipment Reserve Fund**
FROM: Unappropriated Reserves, \$40,000;
TO: Contractual Services, \$40,000.
- (This action adds additional funds for CMTV PEG Capital.)
John Delay
- ORD C35628** **General Fund**
FROM: Unappropriated Reserves, \$20,000;
TO: Administration/Overhead-Information Services, \$20,000.
- (This action shifts funds to the Office of Neighborhood Services for Community Assembly use in granting funds to neighborhoods for Community Engagement.)
Council President Stuckart

NO EMERGENCY ORDINANCES

(Require Five Affirmative, Recorded Roll Call Votes)

RESOLUTIONS & FINAL READING ORDINANCES

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2018-0037** Regarding City policy for approval of special events permits. (Deferred from May 7, 2018, Agenda.)
Council President Stuckart
- RES 2018-0040** Declaring the Mitchell Humphrey & Co. a sole source for the
OPR 2016-0396 maintenance of the City's Financial Management System (FMS) and authorizing a maintenance contract at an annual cost of \$93,856.32 (incl. tax).
Michael Sloon
- RES 2018-0041** Setting hearing before the City Council for July 9, 2018, for the vacation of the alley between Mallon Avenue and Broadway Avenue, from Cedar Street to Adams Street, as requested by Chris Batten.
Eldon Brown
- RES 2018-0042** Approving the Plan Commission's 2018 work program.
Council President Stuckart

- RES 2018-0043
OPR 2016-0395 Declaring Accela, Inc., provider of government enterprise software solutions for permitting and licensing, as a sole source for the maintenance of the City's permitting and licensing Software and authorizing a maintenance contract at an annual cost of \$178,453.79 (incl. tax), without public bidding. **Michael Sloon**
- ORD C35607 Vacating Sinto Avenue and Sharp Avenue from South Riverton Avenue to Helena Street and South Riverton Avenue from Sinto Avenue to Sharp Avenue. (First Reading held on March 26, 2018.)
Eldon Brown
- ORD C35622 Granting a non-exclusive franchise to use the public right of way to provide noncable telecommunications service to the public to New Cingular Wireless Inc., subject to certain conditions and duties as further provided.
Tim Szambelan

FIRST READING ORDINANCES

(No Public Testimony Will Be Taken)

- ORD C35629 Relating to automated traffic safety camera systems; amending section 16A.64.260 of the Spokane Municipal Code.
Council Member Beggs
- ORD C35630 Relating to future and renewed water intertie agreements; enacting a new Chapter 13.045 to the Spokane Municipal Code.
Council Member Beggs
- ORD C35631 Relating to the rates of public utilities and services, amending Section 13.03.1208 of the Spokane Municipal Code.
Council Member Beggs
- ORD C35632 Relating to Urban Utility Installation Program; amending SMC section 8.10.230.
Teri Stripes
- ORD C35633 Providing an option for public web posting as a response to public records requests for completed Internal Affairs reports, criminal investigations of officer involved deaths and shootings in their entirety, and related body camera footage; enacting a new chapter 03.10A of the Spokane Municipal Code.
Council Member Beggs
- ORD C35634 Relating to budget controls; amending section 3.07.230; enacting new sections 3.07.340, 3.07.350, 3.07.360, and 3.07.370 of the Spokane Municipal Code.
Council Member Stratton

FURTHER ACTION DEFERRED

SPECIAL CONSIDERATIONS

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

RECOMMENDATION

- S1. Intertie agreement with the City of Medical Lake to supply water in the event of shortages and emergency needs—\$100,000 Revenue. (Deferred from May 21, 2018, Agenda). **Approve** OPR 2017-0726
Dan Kegley
-

NO HEARINGS

Motion to Approve Advance Agenda for June 4, 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 June 4, 2018, Regular Legislative Session of the City Council is adjourned to June 11, 2018.

NOTES

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

06/04/2018

<u>Date Rec'd</u>	5/21/2018
<u>Clerk's File #</u>	OPR 2018-0346
<u>Renews #</u>	

<u>Submitting Dept</u>	ENGINEERING SERVICES	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	DAN BULLER 625-6391	<u>Project #</u>	2018044
<u>Contact E-Mail</u>	DBULLER@SPOKANECIT.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	BT
<u>Agenda Item Name</u>	0370 9 LOW BID AWARD - INLAND ASPHALT COMPANY		

Agenda Wording

Low Bid of Inland Asphalt Company (Spokane Valley, WA) for 2018 Grind & Overlay Projects - North - \$2,335,000.00. An administrative reserve of \$233,500.00, which is 10% of the contract price, will be set aside. (Various Neighborhood Councils)

Summary (Background)

On May 21, 2018 bids were opened for the above project. The low bid was from Inland Asphalt Company in the amount of \$2,335,000.00, which is \$92,996.00 or 4.5% over the Engineer's Estimate; two other bids were received as follows: Poe Asphalt Paving, Inc. - \$3,467,434.00; and Shamrock Paving, Inc. - \$2,556,104.00.

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

Expense	\$ 2,526,436.07	# 1990 49843 42800 54201 99999
Expense	\$ 42,063.93	# 4310 43117 94000 56501 99999
Select	\$	#
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>	UE 5/14/18
<u>Finance</u>	HUGHES, MICHELLE	<u>Distribution List</u>	
<u>Legal</u>	ODLE, MARI	eraea@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	publicworksaccounting@spokanecity.org	
<u>Additional Approvals</u>		kgoodman@spokanecity.org	
<u>Purchasing</u>		htrautman@spokanecity.org	
		mdoval@spokanecity.org	

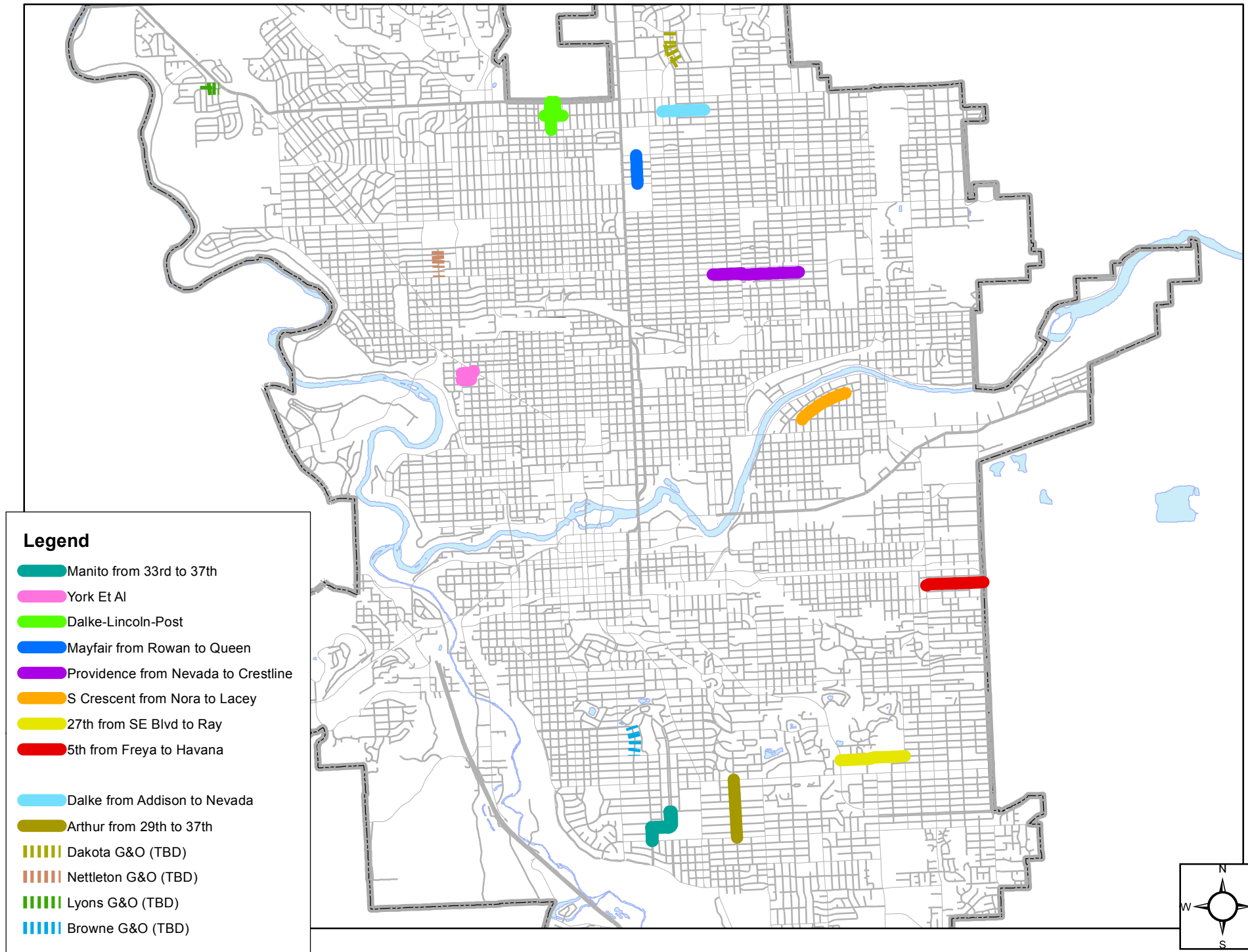
Briefing Paper

Urban Experience

Division & Department:	Public Works, Engineering
Subject:	2018 Residential Grind & Overlay Projects
Date:	5-14-18
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 street plan
Strategic Initiative:	Innovative Infrastructure
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of construction contract
Background/History:	
<ul style="list-style-type: none"> The project described herein is the annual grind and overlay project funded in part by the transportation benefit district. 	
Executive Summary:	
<ul style="list-style-type: none"> Because of the increased size of the project this year, the project has been split into two projects, one north and one south of the river. Curb ramps will also be upgraded. Public involvement consisted of sending a letter to the property owners fronting the streets indicated on the attached exhibits during the design phase. Also, a flyer will be handed to residents or placed on their front door just prior to construction. Residents will have access to their homes during construction which will occur this summer In addition to TBD funding, these projects are funded by street maintenance dollars and are part of the push for an increased volume of grind and overlay projects in residential neighborhoods. 	
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:	



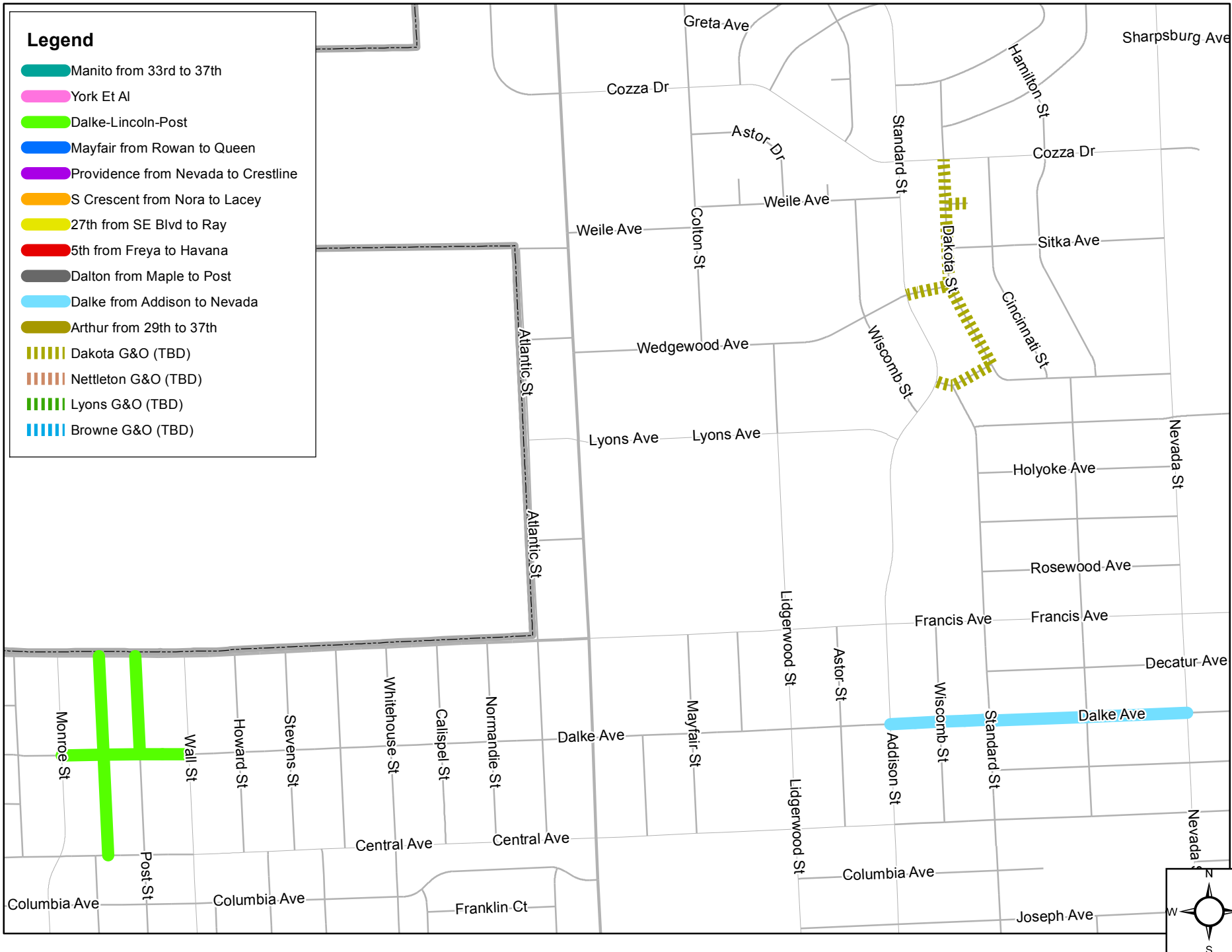
2018 Residential Grind & Overlay Project



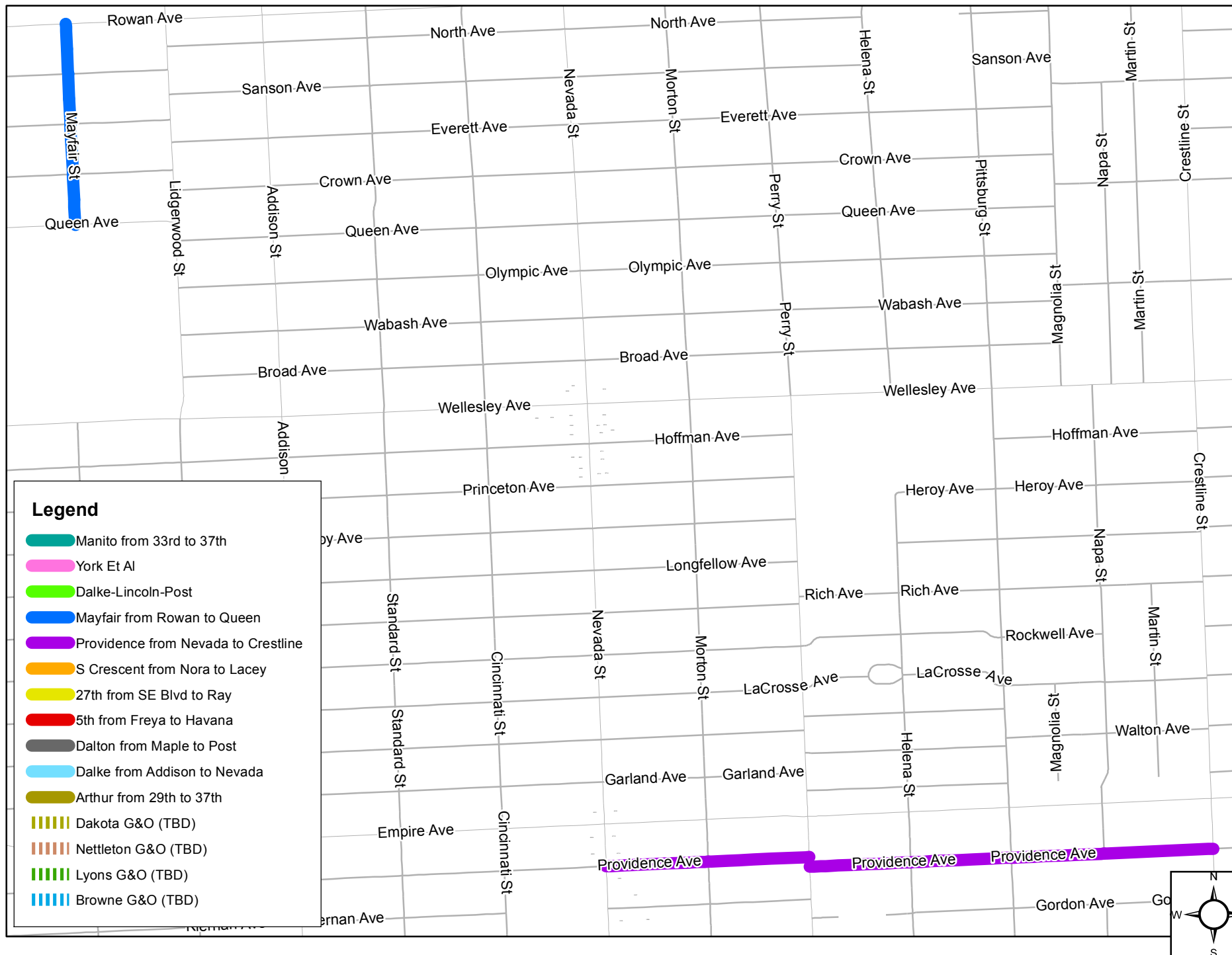
2018 Residential Grind & Overlay Project



2018 Residential Grind & Overlay Project



2018 Residential Grind & Overlay Project



2018 Residential Grind & Overlay Project



2018 Residential Grind & Overlay Project



2018 Residential Grind & Overlay Project



2018 Residential Grind & Overlay Project



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

Project Number: 2018044

Project Description 2018 Residential Grind & Overlay - North

Funding Source Local

Preparer Duane Studer

Original Date 4/26/2018

Update Date 5/21/2018 1:39:17 PM

Addendum Addendum 1

Project Number: 2018044			Engineer's Estimate		Inland Asphalt Company		Shamrock Paving Inc		Poe Asphalt Paving	
Item No	Bid Item Description	Estimated Quantity	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount

Schedule Description

Tax Classification

Schedule 01 Street Improvements

Sales tax shall be included in unit prices

101	REIMBURSEMENT FOR THIRD PARTY DAMAGE	1 EST	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
102	SPCC PLAN	1 LS	*****	1,000.00	*****	525.00	*****	1,000.00	*****	3,230.00
103	POTHOLING	10 EA	450.00	4,500.00	525.00	5,250.00	300.00	3,000.00	535.00	5,350.00
104	PUBLIC LIAISON REPRESENTATIVE	1 LS	*****	3,000.00	*****	9,300.00	*****	22,000.00	*****	74,600.00
105	REFERENCE AND REESTABLISH SURVEY MONUMENT	20 EA	490.00	9,800.00	510.00	10,200.00	550.00	11,000.00	615.00	12,300.00
106	CLASSIFICATION AND PROTECTION OF SURVEY MONUMENTS	1 LS	*****	3,350.00	*****	3,750.00	*****	5,000.00	*****	4,520.00
107	MOBILIZATION	1 LS	*****	170,000.00	*****	271,006.00	*****	250,000.00	*****	205,320.00
108	PROJECT TEMPORARY TRAFFIC CONTROL	1 LS	*****	100,000.00	*****	147,497.00	*****	225,000.00	*****	394,150.00
109	SEQUENTIAL ARROW SIGN	400 HR	5.00	2,000.00	4.00	1,600.00	3.00	1,200.00	5.20	2,080.00
110	TYPE III BARRICADE	46 EA	50.00	2,300.00	50.00	2,300.00	50.00	2,300.00	45.00	2,070.00
111	CLEARING AND GRUBBING	1 LS	*****	5,000.00	*****	14,330.00	*****	14,000.00	*****	14,200.00
112	MATERIAL ON HAND, TREE PROTECTION	1 LS	*****	7,400.00	*****	2,100.00	*****	5,500.00	*****	3,230.00
113	AIR OR HYDRO EVACUATION	14 EA	600.00	8,400.00	615.00	8,610.00	635.00	8,890.00	745.00	10,430.00
114	TREE PROTECTION ZONE	92 EA	350.00	32,200.00	188.00	17,296.00	195.00	17,940.00	225.00	20,700.00

<i>Project Number:</i> 2018044			<i>Engineer's Estimate</i>		Inland Asphalt Company		Shamrock Paving Inc		Poe Asphalt Paving	
<i>Item No</i>	<i>Bid Item Description</i>	<i>Estimated Quantity</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>
<i>Schedule Description</i>					<i>Tax Classification</i>					
<i>Schedule 01</i> Street Improvements					Sales tax shall be included in unit prices					
115	REMOVE TREE, CLASS I	4 EA	300.00	1,200.00	310.00	1,240.00	320.00	1,280.00	375.00	1,500.00
116	REMOVE TREE, CLASS II	2 EA	1,400.00	2,800.00	920.00	1,840.00	950.00	1,900.00	1,110.00	2,220.00
117	TREE PRUNING	111 EA	200.00	22,200.00	185.00	20,535.00	190.00	21,090.00	225.00	24,975.00
118	REMOVAL OF STRUCTURE AND OBSTRUCTION	1 LS	*****	3,900.00	*****	14,330.00	*****	7,000.00	*****	3,870.00
119	REMOVE EXISTING CURB	2250 LF	10.00	22,500.00	6.50	14,625.00	12.00	27,000.00	12.00	27,000.00
120	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	910 SY	12.00	10,920.00	9.85	8,963.50	30.00	27,300.00	41.50	37,765.00
121	REMOVE MANHOLE, CATCH BASIN OR DRYWELL	7 EA	550.00	3,850.00	1,123.00	7,861.00	650.00	4,550.00	550.00	3,850.00
122	REMOVE EXISTING <=12 IN. DIAM. PIPE	50 LF	9.00	450.00	14.00	700.00	15.00	750.00	34.00	1,700.00
123	SAWCUTTING CURB	220 EA	30.00	6,600.00	25.00	5,500.00	35.00	7,700.00	32.50	7,150.00
124	SAWCUTTING RIGID PAVEMENT	2110 LFI	1.00	2,110.00	0.75	1,582.50	1.50	3,165.00	0.95	2,004.50
125	SAWCUTTING FLEXIBLE PAVEMENT	24420 LFI	0.40	9,768.00	0.30	7,326.00	0.50	12,210.00	0.30	7,326.00
126	ABANDON EXISTING MANHOLE, CATCH BASIN OR DRYWELL	4 EA	350.00	1,400.00	720.00	2,880.00	750.00	3,000.00	725.00	2,900.00
127	REMOVE FLEXIBLE PAVEMENT INCL. HAUL	3600 SY	20.00	72,000.00	5.15	18,540.00	7.00	25,200.00	6.80	24,480.00
128	REMOVE UNSUITABLE FOUNDATION MATERIAL	200 CY	27.80	5,560.00	20.35	4,070.00	19.00	3,800.00	31.00	6,200.00
129	REPLACE UNSUITABLE FOUNDATION MATERIAL	200 CY	27.80	5,560.00	32.00	6,400.00	30.00	6,000.00	37.50	7,500.00
130	PREPARATION OF UNTREATED ROADWAY	3780 SY	2.50	9,450.00	2.80	10,584.00	2.50	9,450.00	2.50	9,450.00
131	CONTROLLED DENSITY FILL	50 CY	140.00	7,000.00	188.00	9,400.00	200.00	10,000.00	220.00	11,000.00
132	CRUSHED SURFACING TOP COURSE	44 CY	54.00	2,376.00	130.00	5,720.00	150.00	6,600.00	120.00	5,280.00
133	CSTC FOR SIDEWALK AND DRIVEWAYS	74 CY	120.00	8,880.00	138.00	10,212.00	160.00	11,840.00	170.00	12,580.00

<i>Project Number:</i> 2018044			<i>Engineer's Estimate</i>		Inland Asphalt Company		Shamrock Paving Inc		Poe Asphalt Paving	
<i>Item No</i>	<i>Bid Item Description</i>	<i>Estimated Quantity</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>
<i>Schedule Description</i>					<i>Tax Classification</i>					
<i>Schedule 01</i> Street Improvements					Sales tax shall be included in unit prices					
134	HMA CL. 1/2 IN. PG 64-28, 2 INCH THICK	58120 SY	11.00	639,320.00	9.75	566,670.00	10.50	610,260.00	9.90	575,388.00
135	HMA CL. 1/2 IN. PG 64-28, 4 INCH THICK	3780 SY	27.00	102,060.00	19.00	71,820.00	24.00	90,720.00	23.00	86,940.00
136	HMA FOR PRELEVELING CL. 3/8 IN. PG 64-28	750 TO	120.00	90,000.00	123.00	92,250.00	125.00	93,750.00	135.00	101,250.00
137	HMA FOR FEATHERING CL. 3/8 IN. PG 64-28	92 TO	140.00	12,880.00	172.00	15,824.00	100.00	9,200.00	225.00	20,700.00
138	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 64-28, 4 INCH THICK	1820 SY	28.00	50,960.00	40.00	72,800.00	33.00	60,060.00	81.00	147,420.00
139	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 64-28, 5 INCH THICK	500 SY	32.00	16,000.00	54.00	27,000.00	43.00	21,500.00	295.00	147,500.00
140	CRACK SEALING 1-INCH to 3-INCH	78000 LF	1.30	101,400.00	1.18	92,040.00	1.50	117,000.00	3.90	304,200.00
141	CRACK SEALING 3-INCH to 6-INCH	575 LF	10.00	5,750.00	4.00	2,300.00	11.00	6,325.00	19.50	11,212.50
142	PAVEMENT REPAIR EXCAVATION INCL. HAUL	1948 SY	28.00	54,544.00	15.50	30,194.00	28.00	54,544.00	27.50	53,570.00
143	PLANING BITUMINOUS PAVEMENT	29600 SY	5.50	162,800.00	4.90	145,040.00	5.00	148,000.00	8.90	263,440.00
144	JOB MIX COMPLIANCE PRICE ADJUSTMENT	1 CAL	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
145	COMPACTION PRICE ADJUSTMENT	1 CAL	14,828.00	14,828.00	14,828.00	14,828.00	14,828.00	14,828.00	14,828.00	14,828.00
146	DRYWELL TYPE 2	3 EA	5,500.00	16,500.00	4,545.00	13,635.00	4,500.00	13,500.00	7,100.00	21,300.00
147	ADJUST EXISTING VALVE BOX, MONUMENT OR CLEANOUT IN ASPHALT	1 EA	400.00	400.00	760.00	760.00	500.00	500.00	840.00	840.00
148	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN ASPHALT	5 EA	475.00	2,375.00	760.00	3,800.00	650.00	3,250.00	970.00	4,850.00
149	CATCH BASIN TYPE 1	6 EA	2,300.00	13,800.00	2,620.00	15,720.00	2,500.00	15,000.00	5,260.00	31,560.00
150	CATCH BASIN TYPE 3	10 EA	2,500.00	25,000.00	2,834.00	28,340.00	2,500.00	25,000.00	5,550.00	55,500.00
151	RETROFIT TYPE 2 CATCH BASIN WITH FRAME & DUAL VANED GRATE	1 EA	925.00	925.00	700.00	700.00	1,000.00	1,000.00	5,680.00	5,680.00

<i>Project Number:</i> 2018044			<i>Engineer's Estimate</i>		Inland Asphalt Company		Shamrock Paving Inc		Poe Asphalt Paving	
<i>Item No</i>	<i>Bid Item Description</i>	<i>Estimated Quantity</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>
<i>Schedule Description</i>					<i>Tax Classification</i>					
<i>Schedule 01</i> Street Improvements					Sales tax shall be included in unit prices					
152	RETROFIT SURFACE INLET CATCH BASIN WITH FRAME & DIRECTIONAL VANED GRATE	8 EA	925.00	7,400.00	700.00	5,600.00	1,000.00	8,000.00	1,060.00	8,480.00
153	RETROFIT SURFACE INLET CATCH BASIN WITH FRAME & BI-DIRECTIONAL VANED GRATE	15 EA	925.00	13,875.00	700.00	10,500.00	1,000.00	15,000.00	1,060.00	15,900.00
154	RETROFIT CURB & SURFACE INLET FRAME & GRATE WITH HOOD, FRAME AND BI-DIRECTIONAL VANED GRATE	5 EA	925.00	4,625.00	700.00	3,500.00	8,000.00	40,000.00	1,260.00	6,300.00
155	REPLACE EXISTING BRICK CONE WITH PRECAST CONCRETE CONE	10 EA	700.00	7,000.00	1,900.00	19,000.00	800.00	8,000.00	1,440.00	14,400.00
156	MANHOLE OR DRYWELL FRAME AND COVER (STANDARD)	55 EA	700.00	38,500.00	665.00	36,575.00	825.00	45,375.00	1,340.00	73,700.00
157	VALVE BOX AND COVER	55 EA	450.00	24,750.00	385.00	21,175.00	525.00	28,875.00	890.00	48,950.00
158	CONNECT 8 IN. DIAMETER PIPE TO EXISTING CATCH BASIN, DRYWELL, OR MANHOLE	11 EA	575.00	6,325.00	1,070.00	11,770.00	725.00	7,975.00	270.00	2,970.00
159	CONNECT 8 IN. DIAM. SEWER PIPE TO EXISTING SEWER PIPE	3 EA	350.00	1,050.00	802.00	2,406.00	725.00	2,175.00	310.00	930.00
160	CLEANING EXISTING DRAINAGE STRUCTURE	48 EA	350.00	16,800.00	625.00	30,000.00	300.00	14,400.00	870.00	41,760.00
161	TRENCH SAFETY SYSTEM	1 LS	*****	1,750.00	*****	1,000.00	*****	2,950.00	*****	645.00
162	CATCH BASIN DUCTILE IRON SEWER PIPE 8 IN. DIAM.	490 LF	65.00	31,850.00	65.00	31,850.00	54.00	26,460.00	71.50	35,035.00
163	PLUGGING EXISTING PIPE	4 EA	500.00	2,000.00	1,230.00	4,920.00	700.00	2,800.00	485.00	1,940.00
164	TEMPORARY ADJACENT UTILITY SUPPORT	1 LS	*****	2,000.00	*****	625.00	*****	3,600.00	*****	775.00
165	CLEANING EXISTING SANITARY SEWER	55 EA	450.00	24,750.00	375.00	20,625.00	300.00	16,500.00	1,190.00	65,450.00
166	ESC LEAD	1 LS	*****	2,000.00	*****	2,500.00	*****	1,200.00	*****	3,230.00
167	INLET PROTECTION	44 EA	115.00	5,060.00	100.00	4,400.00	100.00	4,400.00	105.00	4,620.00

<i>Project Number:</i> 2018044			<i>Engineer's Estimate</i>		Inland Asphalt Company		Shamrock Paving Inc		Poe Asphalt Paving	
<i>Item No</i>	<i>Bid Item Description</i>	<i>Estimated Quantity</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>	<i>Unit Price</i>	<i>Amount</i>
<i>Schedule Description</i>					<i>Tax Classification</i>					
<i>Schedule 01</i> Street Improvements					Sales tax shall be included in unit prices					
168	STABILIZED CONSTRUCTION ENTRANCE	140 SY	18.00	2,520.00	27.00	3,780.00	19.00	2,660.00	32.50	4,550.00
169	STREET CLEANING	60 HR	150.00	9,000.00	200.00	12,000.00	200.00	12,000.00	420.00	25,200.00
170	WATTLE	100 LF	6.00	600.00	8.00	800.00	12.00	1,200.00	6.70	670.00
171	HIGH VISIBILITY FENCE	100 LF	12.00	1,200.00	8.00	800.00	12.00	1,200.00	8.70	870.00
172	TOPSOIL TYPE A, 2 INCH THICK	360 SY	17.00	6,120.00	16.00	5,760.00	18.00	6,480.00	45.00	16,200.00
173	WEED AND PEST CONTROL	1 FA	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
174	SOD INSTALLATION	360 SY	32.00	11,520.00	34.25	12,330.00	35.00	12,600.00	19.50	7,020.00
175	REMOVE AND REPLACE EXISTING SPRINKLER HEADS AND LINES	1 LS	*****	10,000.00	*****	15,240.00	*****	16,000.00	*****	3,230.00
176	CEMENT CONCRETE CURB	3300 LF	25.00	82,500.00	36.90	121,770.00	36.25	119,625.00	44.50	146,850.00
177	CEMENT CONC. CURB AND GUTTER	100 LF	32.00	3,200.00	37.50	3,750.00	40.00	4,000.00	45.00	4,500.00
178	CEMENT CONC. SIDEWALK	1312 SY	50.00	65,600.00	70.00	91,840.00	69.00	90,528.00	85.00	111,520.00
179	RAMP DETECTABLE WARNING	504 SF	30.00	15,120.00	21.50	10,836.00	21.00	10,584.00	26.00	13,104.00
180	RAMP DETECTABLE WARNING RETROFIT	32 SF	40.00	1,280.00	27.00	864.00	30.00	960.00	32.50	1,040.00
181	SIGNING, PERMANENT, CITY MANUFACTURED SIGNS	1 LS	*****	8,000.00	*****	7,665.00	*****	8,000.00	*****	9,200.00
182	PAVEMENT MARKING - DURABLE HEAT APPLIED	13 SF	12.00	156.00	25.00	325.00	35.00	455.00	22.00	286.00
<i>Schedule Totals</i>				2,264,567.00		2,335,000.00		2,556,104.00		3,467,434.00

Project Number 2018044 2018 Residential Grind & Overlay - North

	SCHEDULE SUMMARY								
	Sched 1	Sched 2	Sched 3	Sched 4	Sched 5	Sched 6	Sched 7	Sched 8	Total
Engineer's Est	2,264,567.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,264,567.00
Inland Asphalt Compan	2,335,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,335,000.00
Shamrock Paving Inc	2,556,104.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,556,104.00
Poe Asphalt Paving	3,467,434.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3,467,434.00

Low Bid Contractor: Inland Asphalt Company

	Contractor's Bid	Engineer's Estimate	% Variance	
Schedule 01	\$2,335,000.00	\$2,264,567.00	3.11	% Over Estimate
Bid Totals	\$2,335,000.00	\$2,264,567.00	3.11	% Over Estimate

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

06/04/2018

<u>Date Rec'd</u>	5/22/2018
<u>Clerk's File #</u>	OPR 1988-0495
<u>Renews #</u>	

Submitting Dept	ASSET MANAGEMENT	Cross Ref #	
Contact Name/Phone	ED LUKAS 625-6286	Project #	
Contact E-Mail	RLUKAS@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	CR 19399
Agenda Item Name	5900 - 8TH AMENDMENT TO LEASE AGREEMENT WITH SIA		

Agenda Wording

8th Amendment to the Lease Agreement Dated July 15, 1988 between the Spokane Airport Board and the City of Spokane for the Waste to Energy Facility.

Summary (Background)

The City of Spokane entered into a lease with the Spokane Airport Board in July 1988 for an initial term of 23 years ending April 2011. The lease provided for the construction and operation of a Waste to Energy facility. Seven subsequent lease amendments modified the rent, parcel size, and lease expiration dates. The pending 8th lease amendment will extend the current lease expiration date of May 1, 2018 for 5 years to April 30, 2023. The lease has three 5-year renewal options.

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

Expense	\$ 136,755.40	# 4490 30210 37141 54501
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Select	\$	#
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Select	\$	#
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Select	\$	#
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Approvals	Council Notifications
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<u>Dept Head</u>	LUKAS, ED	<u>Study Session</u>	
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<u>Division Director</u>	DUNIVANT, TIMOTHY	<u>Other</u>	F&A 5/21/18
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<u>Finance</u>	HUGHES, MICHELLE	Distribution List
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<u>Legal</u>	RICHMAN, JAMES	eraea@spokanecity.org
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<u>For the Mayor</u>	DUNIVANT, TIMOTHY	rlukas@spokanecity.org
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Additional Approvals	jrichman@spokanecity.org
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<u>Purchasing</u>	publicworksaccounting@spokanecity.org
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	cbrazington@spokanecity.org
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	mdoval@spokanecity.org
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Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The annual rent during the ensuing lease renewal period is \$136,755.40 (\$.085 /sf of land) which the City will pay quarterly at \$34,188.85. This rent is the same amount the City has been paying since 2011.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

Briefing Paper

Finance & Administration Committee

Division & Department:	Asset Management / Finance
Subject:	8 th Amendment to WTE Lease
Date:	May 21, 2018
Author (email & phone):	Ed Lukas / elukas@spokanecity.org / x6286
City Council Sponsor:	Candace Mumm
Executive Sponsor:	Tim Dunivant
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)	Strategic Plan <ul style="list-style-type: none"> Long term lease supporting Waste to Energy facility
Strategic Initiative:	
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Renew lease for additional 5 years.
<p>Background/History: The City of Spokane entered into a lease with the Spokane Airport Board in July 1988 for an initial term of 23 years ending April 2011. The lease provided for the construction and operation of a Waste to Energy facility. Seven subsequent lease amendments modified the rent, parcel size, and lease expiration dates.</p> <p>The pending 8th lease amendment will extend the current lease expiration date of May 1, 2018 for 5 years to April 30, 2023. The lease has three 5-year renewal options.</p> <p>The annual rent during the ensuing lease renewal period is \$136,755.40 (\$.085 /sf of land) which the City will pay quarterly at \$34,188.85. This rent is the same amount the City has been paying since 2011.</p>	
<p>Executive Summary:</p> <ul style="list-style-type: none"> 8th Lease amendment extends expiration date from 5/1/18 to 4/30/23. No change in annual rent to Spokane Airport Board. Annual rent \$136,755.40. Lease extension reviewed and recommended by WTE Plant Manager, Chuck Conklin. Lease reviewed and approved as to form by City Assistant Attorney, James Richman. 	
<p>Budget Impact:</p> <p>Approved in current year budget? X Yes <input type="checkbox"/> No</p> <p>Annual/Reoccurring expenditure? X Yes <input type="checkbox"/> No</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p>Operations Impact:</p> <p>Consistent with current operations/policy? X Yes <input type="checkbox"/> No</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes X No</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	

EIGHTH AMENDMENT
TO THE LEASE AGREEMENT DATED JULY 14, 1988

THIS EIGHTH AMENDMENT OF LEASE, made and entered into, by and between SPOKANE AIRPORT, by and through its AIRPORT BOARD, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, as a joint operation of the City and County of Spokane, municipal corporations of the State of Washington, hereinafter referred to as "Airport," and THE CITY OF SPOKANE, hereinafter referred to as "LESSEE".

WITNESSETH THAT:

WHEREAS, the Airport is the administrator and operator of SPOKANE INTERNATIONAL AIRPORT BUSINESS PARK, hereinafter referred to as "Airport Business Park", located in the City and County of Spokane, State of Washington, and operates the same for the promotion, accommodation and development of commercial and industrial purposes, air commerce and transportation; and

WHEREAS, the parties hereto did enter into a Lease Agreement, hereinafter referred to as "Agreement," dated July 14, 1988 and amended November 7, 1988, December 18, 1996, April 18, 2001, August 16, 2006, May 18, 2011, August 17, 2011 and January 26, 2012, whereby Lessee was granted the right to lease certain premises at the Airport Business Park for the purpose of constructing and operating a Waste To Energy Facility "Facility"; and

WHEREAS, the Lessee properly provided notice to exercise its first five (5) year option and Article I –Term; Article II – Options to Renew; Article IV – Rent and Article V – Rental Adjustments, shall be amended; and

NOW, THEREFORE, in consideration of the Premises provided herein, the rights and privileges and the mutual covenants and conditions herein contained and other valuable considerations, the parties hereto agree, for themselves, their successors and assigns, that the Agreement shall be amended as follows, effective May 1, 2018:

1. ARTICLE I - TERM, shall be amended in its entirety, so that as amended, it now reads:

"The term of this Agreement shall be five (5) years commencing May 1, 2018 and expiring April 30, 2023, unless sooner cancelled or terminated as hereinafter provided."

2. ARTICLE II - OPTIONS TO RENEW, shall be amended in its entirety, so that as amended, it now reads:

Lessee shall have the option to renew this Agreement for three (3) consecutive five (5) year periods. Should Lessee desire to exercise its renewal option, written notice of such intent must be given to the Airport not less than one (1) year prior to the expiration of the current term for successive renewals. The right of Lessee to extend the lease term shall be conditioned upon its not being in default under any of the terms, covenants or conditions of this Agreement or any

amendments thereto and with the full approval by all applicable government authorities, including but not limited to the Federal Aviation Administration or its successor agency and is in full compliance with all laws, rules, and regulations applicable to the activities, operations and maintenance of the Facility by Lessee at the time of renewal. Upon exercise of its option(s) to renew, the insurance requirements set forth herein shall be subject to adjustment by the Airport.”

3. ARTICLE IV – RENT, shall be amended in its entirety so that as amended it now reads:

“In consideration of the Premises herein demised, and the rights granted herein, Lessee agrees to pay the following rent:

A. For the first five (5) year option period, commencing May 1, 2018 and expiring April 30, 2023, Lessee shall pay \$0.085 per square foot per annum for One Million Six Hundred Eight Thousand Eight Hundred Eighty Seven (1,608,887) square feet.

B. The rent shall be paid in four quarterly installments of Thirty Four Thousand One Hundred Eighty Eight and 85/100 Dollars (\$34,188.85), payable in advance on the first day of each quarter during the term of the Agreement. The first quarterly installment is due July 1, 2018.

C. This amount does not include Washington State Leasehold Tax which Lessee is exempt from paying. Lessee agrees and accepts it is leasing approximately 36.93 acres of land or One Million Six Hundred Eight Thousand Eight Hundred Eighty Seven (1,608,887) square feet.”

4. ARTICLE V – RENTAL ADJUSTMENTS shall be amended in its entirety so that, as amended, it now reads:

A. In the event the option(s) to extend the term commencing May 1, 2023, as set forth in Article II – OPTIONS TO RENEW of this Agreement are exercised, the rental rate shall be adjusted effective on May 1st upon commencement of each five (5) year option period.

B. All such rental adjustments shall be made as follows:

Not later than June 1 of each calendar year prior to the effective date of the rental adjustment(s), either party desiring to renegotiate the current rent shall notify the other of its intent. The rental adjustment shall be based on the current fair market value of the land excluding improvements. In no event shall the rent be less than that for the previous adjustment period. In the event the parties hereto cannot agree on the rent to be charged for the ensuing five (5) year period, the parties shall retain either one appraiser chosen by mutual agreement or two independent appraisers. If the parties agree to select only one appraiser, the value determined by that appraiser shall be the rent charged for the affected period. In the event two appraisers are utilized, the rent for the five (5) year period shall be the average of the figures provided by the two appraisers, unless the difference between the two is greater than ten percent (10%). In such event, a third appraiser selected mutually by the parties, shall be retained. The two closest appraisals of the three shall be averaged and that value shall be the rent for the affected period. All costs incurred for the appraisals shall be shared equally by the parties hereto.”

5. All other terms and conditions, except those specified herein, shall remain in full force and effect and the provisions of this Amendment shall become a part of said Agreement upon execution as if fully written herein.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto, the day and year first written below.

CITY OF SPOKANE

ATTEST:

Title: _____
Date: _____

City Clerk
Date: _____

APPROVED AS TO FORM:

_____

Assistant City Attorney
Date: 4/19/18

SPOKANE AIRPORT BOARD:

APPROVED AS TO FORM:

By: Lawrence J. Krauter
Chief Executive Officer
Date: _____

Brian M. Werst
General Counsel
Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Lawrence J. Krauter is the person who appeared before me, and said person acknowledged that he signed this instrument and stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer for the Spokane Airport Board to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument and stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My commission expires _____

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

06/04/2018

<u>Date Rec'd</u>	10/24/2016
<u>Clerk's File #</u>	OPR 2018-0347
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	CR 19375000

<u>Submitting Dept</u>	HOUSING & HUMAN SERVICES
<u>Contact Name/Phone</u>	M SHARTS X6840
<u>Contact E-Mail</u>	MSHARTS@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	1680 SNAP - RESIDENT COURT REHAB

Agenda Wording

Loan Agreement & other documents with Spokane Neighborhood Action Partners (SNAP)(Spokane)for rehabilitation work at Resident Court Apts at 1203 W 5th Ave - \$250,000 HOME CHDO funds (Cliff-Cannon neighborhood)

Summary (Background)

The City receives HOME grants from HUD for rental housing projects affordable to low-income households. The loan agreement requires that 30 of 43 units (including 17 studios, 8 1-bdrm, and 5 2-bedrm units) benefit households at or below 50% of area median income for 10 years from completion. The loan is potentially forgivable. SNAP is a Community Housing Development Organization(CHDO) under the HOME regs. Other financing is from CDBG and owner funds.

<u>Fiscal Impact</u>	Grant related?	<u>Budget Account</u>
	Public Works? NO	
Expense	\$ 34,301.03	# 1710 95846 51010 54201 99999 HOME CHDO
Expense	\$ 215,698.97	# 1710 95847 51010 54201 99999 HOME CHDO
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	KEENAN, KELLY	<u>Study Session</u>	UE 2/12/18, CHE 6/5/17
<u>Division Director</u>	KINDER, DAWN	<u>Other</u>	
<u>Finance</u>	HUGHES, MICHELLE	<u>Distribution List</u>	
<u>Legal</u>	ODLE, MARI	mdoval, CHHSaccounting@spokanecity.org;	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	cbrown, kkeenán, msharts	
<u>Additional Approvals</u>		honekamp@snapwa.org, amberj@snapwa.org	
<u>Purchasing</u>			

PROPOSED BUDGET
SPOKANE NEIGHBORHOOD ACTION PARTNERS
RESIDENT COURT

1203 W. 5th Avenue

Rehabilitation work	272,700	Replacement reserves	15,450
Contingency (15%)	41,000	City CDBG funds	100,000
Permits and taxes	26,000		
Project management/dev fee	20,000	City HOME funds	250,000
Accounting/audit	5,500		
Closing costs	250		
TOTAL	\$365,450	TOTAL	\$365,450

Anticipated work list for the rehabilitation of the 43-unit Resident Court Apartments includes elevator work (hydraulic pump, door and cab), parking lot replacement and striping, accessible trash enclosure, exterior painting, gutters and flashing, exterior lighting, replacements and upgrades of baseboard heaters and thermostats, work in bathrooms (replacements of some shower surrounds, bathroom fans), and kitchen GFCI replacements. If there are excess funds, rebates, or other funding not listed above, the Borrower may use the funds to make accessibility improvements to the units or consult with the City to identify other appropriate and eligible uses. CDBG funds are from the City's Community Development Block Grant funds.

Briefing Paper

Urban Experience Committee

Division & Department:	Neighborhood & Business Services Division Community, Housing, & Human Services Dept.
Subject:	Review of HOME-funded housing projects
Date:	February 12, 2018
Author (email & phone):	Melora Sharts (msharts@spokanecity.org , x6840)
City Council Sponsor:	
Executive Sponsor:	
Committee(s) Impacted:	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)	HUD Consolidated Plan
Strategic Initiative:	Urban Experience – available housing
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	If all new allocations move forward, 3 housing projects with 54 new units would be developed and one housing project with 43 existing units would be updated.
<p>Background/History: The City receives federal funds from the U. S. Department of Housing and Urban Development (HUD) through its HOME Investment Partnerships Program (HOME), which is administered by the CHHS Dept. Eligible uses include the construction, rehabilitation, and acquisition of rental properties, which are affordable to low-income tenants. Eligible recipients include for-profit and non-profit housing providers and housing authorities. Some funding is restricted to non-profits designated as Community Housing Development Organizations (CHDO).</p> <p>Following an RFP process and review by its Affordable Housing (AH) subcommittee, the CHHS Board recommends projects for allocation of HOME funds. The most recent allocations are listed in the attachment. As plans and funding sources solidify, loan documents will be brought to Council for approval.</p>	
<p>Executive Summary:</p> <ul style="list-style-type: none"> • In October 2017, 3 projects involving new construction were recommended for funding by the AH Committee meeting and affirmed by the CHHS Board on 11/1/17. • Two projects will be developed by Basalt Rock, LLC (owned by the Vasilenkos). The City-owned lots at 2418 E First Ave and 2413 E 7th Ave will be transferred to Basalt Rock, LLC and it will develop a 4-plex and a duplex. The six units will be 2- and 3-bedroom units and be affordable to households with incomes at or below 30% and 50% of area median income (AMI) for at least 20 years. (For a 4-person household, 30% of AMI is \$19,700 and 50% of AMI is \$32,850.) These projects should come before Council this Spring. • Spokane Housing Ventures (SHV) will develop a 48-unit apartment complex with 24 2-bedroom units, 23 3-bedroom units, and a manager's unit. The 4 designated HOME units will be affordable to households \leq 30% AMI and others target households with incomes \leq 60% AMI. SHV applied for other funds, including low-income housing tax credits, bonds, and funds from the WA State Housing Trust Fund. Project timing project depends upon other funds. • Information on these and other projects is in the attached table. 	

Budget Impact:

Approved in current year budget? ☒ Yes ☐ No
Annual/Reoccurring expenditure? ☐ Yes ☒ No

If new, specify funding source:

Other budget impacts: (revenue generating, match requirements, etc.) HOME match requirements have already been met.

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No
Requires change in current operations/policy? ☐ Yes ☒ No

Specify changes required:

Known challenges/barriers:

HOME-FUNDED RENTAL PROJECTS
PROPOSED AND UNDERWAY

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

Project name	Owner/Sponsor	Ownership type	City HOME funds	Total cost	Leverage 1 to X	Total no. of units	Unit type & approx sq ft	Cost/ unit	Cost/ sq ft	Tenant income level	AH Committee Allocation	CHHS Board approval
Resident Court 1203 W 5th (Downtown) Bus: 42 (0 ft.)	Spokane Neighborhood Action Partners	Non-profit CHDO	\$250,000	\$250,000	0.0	43	25 stu/273-421 sf 11 1bd/480 sf 5 2bd/804-818 sf 1 2bd mngr/818sf	\$5,814	\$9	ELI, VLI-50	n.a	CHE 6/5/17
East First Ave Fourplex 2418 E 1st Ave (East Central) Bus: 90 (2 blocks)	Basalt Rock, LLC/Vasilenko	For-profit	\$245,000	\$294,313	0.2	4	2 2bd/1120 sf 2 3bd/1380 sf	\$73,578	\$59	ELI, VLI-50	10/31/17	11/1/17
East 7th Avenue Duplex 2413 E 7th Ave (East Central) Bus: 94 (.3 mi)	Basalt Rock, LLC/Vasilenko	For-profit	\$175,000	\$237,420	0.4	2	2 3bd/1380 sf	\$118,710	\$86	ELI, VLI-50	10/31/17	11/1/17
Jayne Auld Manor 2830 E Francis, 6205-11 N Regal (Hillyard) Bus: 27 (.5 mi)	J Auld Apts LLC/Spokane Housing Ventures	For-profit owner/Non-profit sponsor, LIHTC, bonds	\$320,000	\$10,040,250	30.4	48	2 bd/846 sf 3bd/1086-1231 sf	\$209,172	\$204	ELI, LI-60	10/31/17	11/1/17
	Total		\$990,000	\$10,821,983	9.9	97						

Previously Approved by City Council (Underway)

Project name	Owner/Sponsor	Ownership type	City HOME funds	Total cost	Leverage 1 to X	Total no. of units	Unit type/ approx sq ft	Cost/ unit	Cost/ sq ft	Tenant income level	Allocation date	Council approval
1 South Madelia 1 & 51 S Madelia (East Central) Buses: 90	1 South Madelia LLC/Community Frameworks	For-profit owner/Non-profit sponsor, LIHTC	\$300,000	\$9,054,665	29.2	36	6 1bd/552 sf 11 2bd/768-1028 18 3bd/1209-1219 1 2 bd mngr	\$251,796	\$301	ELI, VLI-40, VLI-50, LI-60	10/13/15	2016-0487 6/20/16
Special Skills Duplex 2418 E 4th (East Central) Buses: 94 (blocks), 90 (5 blocks)	Inland Empire Residential Resources	Non-profit CHDO	\$280,000	\$281,500	0.0	2	1 2bd/1248 sf 1 3bd/1248 sf	\$140,750	\$113	ELI	5/3/16	2016-0488 6/20/16
1808 E 1st 1808 E First (East Central) Bus: 90	Basalt Rock, LLC/Vasilenko	For profit	\$180,000	\$320,215	0.8	4	3 2bd/1000 sf 1 3bd/1824 sf	\$80,054	\$66	ELI, VLI-50	5/3/16	2016-0821 11/7/16
Hifumi En Apartments 926 E 8th Ave (East Central) Bus: 45 (2 blocks)	Spokane Housing Authority	Public housing authority	\$330,000	\$422,419	0.3	41	11 HOME units 41 1bd/550sf	\$38,402	\$70	ELI, VLI-50	10/11/16	2017-0352 5/22/17
Transitions Permanent Supportive Housing N Hemlock (Auburn-Downriver) Buses: 33 (.2 mi), 23 (.3 mi)	Transitions LIHTC LLC/ Transitional Programs for Women	For-profit owner/Non-profit sponsor, LIHTC	\$650,000	\$6,702,068	9.3	24	5 stu/416 sf 4 1bd/540 sf 12 2bd/650 sf 3 3bd/950 sf	\$279,253	\$376	ELI, VLI-50	10/13/15	2017-0492 7/24/17
	Total		\$1,740,000	\$16,790,867	8.6	107						

Income levels relate to Spokane area median income (AMI):

Extremely low-income (ELI)
Very low-income (VLI-45)
Very low-income (VLI-50)
Low-income (LI-60)
Market (MKT)

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

BRIEFING PAPER
City of Spokane – City Council CHE
Community, Housing, & Human Services Department
Multifamily Housing Program Update
June 5, 2017

Subject

Review of affordable rental housing projects, which have been allocated federal HOME funds through the Community, Housing, and Human Services (CHHS) Dept. and will come before City Council in 2017. The attached table includes projects awaiting Council approval and projects that are underway.

Background

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

Following an RFP process and review by its Affordable Housing subcommittee, the CHHS Board recommends projects for allocations of HOME funds. The documents for the Transitions' cottage homes project are underway. It is expected to close on financing in August 2017. SNAP's Resident Court project uses funds received from the repayment of HOME funds for a SNAP-owned project that did not meet its minimum affordability period. The prior project was in the path of the North/South Freeway and WA DOT purchased it before the HOME period was met. The funds need to be reinvested with a CHDO and Resident Court has needs. Five other projects have been documented and are underway or will be underway soon. IERR recently requested an increase of \$45,500 to its \$280,000 allocation for the Special Skills duplex. This is to cover increased project costs due to the removal of a previously undetected foundation and costs have increased since its application over a year ago. The increase is not included in the attached table.

Impact

The two pending projects include a total of 66 units and will come before the Council this summer. Transitions is developing twenty-four of the 66 units as new cottage homes for previously homeless households. A unique funding source for this project is targeted funds from the State Legislature to significantly improve the energy efficiency of some units. Ten of the 24 units will be HOME units targeting households at or below 30% of area median income (AMI). SNAP's investment in Resident Court will extend the life and affordability of this

43-unit, occupied project, which was built in 1974. The City invested \$307,500 in HOME funds when SNAP acquired Resident Court in 2000. These funds will be used for major systems and some unit updates. The project still has restrictions under prior state and City funding. This will extend the City period of affordability for all units.

Projects previously approved by Council have 89 units, of which 48 will be new or returning to the rental market and 41 are existing, occupied units. The Madelia and Scott projects are well underway. Scott project will be done before summer's end and Madelia is expected to be complete in December 2017. The Special Skills duplex and 1st Avenue fourplex are in the early stages. Hifumi En is in the bidding process and the rehabilitation work should start within a month.

Action

Loan documents for the Transitions and Resident Court projects will be before Council this summer.

Funding

The HUD program began in 1992 and the City's annual allocation of HOME funds ranged from \$1.4 to \$1.8 million from 1995 to 2011, and was reduced to under \$1 million in 2012-2017. HOME's eligible uses include: rental housing (acquisition, rehabilitation, or construction), single family housing rehabilitation, tenant-based rental assistance, and homebuyer assistance.

HOME is subject to a number of federal requirements and regulations. The catalogue of Federal Domestic Assistance Number (CFDA) is 14.239. More information is at: <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/>.

Most uses of HOME funds require a 25% match from non-federal sources. The match requirement is evaluated at the program level, not the level of each project. The City has sufficient accumulated match to meet current and many years of future required match.

HOME-FUNDED RENTAL PROJECTS
PROPOSED AND UNDERWAY

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

Project name	Owner/Sponsor	Ownership type	City HOME funds	Total cost	Leverage 1 to X	Total no. of units	Unit type & approx sq ft	Cost/ unit	Cost/ sq ft	Tenant income level	AH Committee Allocation	CHHS Board approval
Resident Court 1203 W 5th (Downtown) Buses: 42 (0 ft.)	Spokane Neighborhood Action Partners	Non-profit CHDO	\$250,000	\$250,000	0.0	43	25 stu/273-421 sf 11 1bd/480 sf 6 2bd/804-818 sf 1 2bd mnggr/818sf	\$5,814	\$9	ELI, VLI-50	n.a.	n.a.
Transitions Permanent Supportive Housing N Hemlock (Audubon-Downriver) Buses: 33 (.2 mi), 23 (.3 mi)	Transitions	Non-profit	\$650,000	\$6,837,712	9.5	24	5 stu/416 sf 4 1bd/540 sf 12 2bd/650 sf 3 3bd/950 sf	\$284,905	\$384	ELI, VLI-50	10/13/15	11/4/15
	Total		\$900,000	\$7,087,712	6.9	67						

Previously Approved by City Council (Underway)

Project name	Owner/Sponsor	Ownership type	City HOME funds	Total cost	Leverage 1 to X	Total no. of units	Unit type/ approx sq ft	Cost/ unit	Cost/ sq ft	Tenant income level	Allocation date	Council approval
1 South Madelia 1 & 51 S Madelia (East Central) Buses: 90	1 South Madelia LLC/ Community Frameworks	For-profit owner/Non-profit sponsor, LIHTC	\$300,000	\$9,084,665	29.2	36	6 1bd/552 sf 11 2bd/768-1028 18 3bd/1209-1219 1 2 bd mnggr	\$251,796	\$301	ELI, VLI-40, VLI-50, LI-60	10/13/15	2016-0487 6/20/16
611 S Scott 611 S Scott (East Central) Buses: 2 & 45	Vasilenko	For profit	\$395,000	\$528,358	0.3	6	2 2bd/820 sf 3 3bd/1100 sf 1 3bd/1900 sf	\$88,060	\$77	ELI, VLI-50	5/3/16	2016-0489 6/20/16
Special Skills Duplex 2418 E 4th (East Central) Buses: 94 (blocks), 90 (5 blocks)	Inland Empire Residential Resources	Non-profit CHDO	\$280,000	\$281,500	0.0	2	1 2bd/1248 sf 1 3bd/1248 sf	\$140,750	\$113	ELI	5/3/16	2016-0488 6/20/16
1808 E 1st 1808 E First (East Central) Bus: 90	Basalt Rock, LLC/Vasilenko	For profit	\$180,000	\$320,215	0.8	4	3 2bd/1000 sf 1 3bd/1824 sf	\$80,054	\$66	ELI, VLI-50	5/3/16	2016-0821 11/7/16
Hifumi En Apartments 926 E 8th Ave (East Central) 45 (2 blocks)	Spokane Housing Authority	Public housing authority	\$330,000	\$422,419	0.3	41	11 HOME units 41 1bd/550sf	\$38,402	\$70	ELI, VLI-50	10/11/16	2017-352 5/22/17
	Total		\$1,485,000	\$10,617,157	6.1	89						

Income levels relate to Spokane area median income (AMI):

- Extremely low-income (ELI)
- Very low-income (VLI-45)
- Very low-income (VLI-50)
- Low-income (LI-60)
- Market (MKT)
- Household income at or below 30% AMI.
- Household income at or below 45% AMI.
- Household income at or below 50% AMI.
- Household income at or below 60% AMI.
- Unrestricted income.

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OPR #2018-_____

**CITY OF SPOKANE
SPOKANE NEIGHBORHOOD ACTION PARTNERS**

RESIDENT COURT

HOME PROGRAM LOAN AGREEMENT

This HOME Program Loan Agreement (the "Loan Agreement") is made effective this ____ day of _____ 2018 ("Effective Date"), by and between the City of Spokane, Washington, a Washington municipal corporation (the "City"), whose address is **City of Spokane**, c/o Community, Housing, and Human Services Department (the "Department"), 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201, and **Spokane Neighborhood Action Partners**, a Washington nonprofit corporation (the "Borrower"), whose address is 3102 W Fort Wright Drive, Spokane, WA 99224. Borrower and City are together referenced as the "Parties". This Loan Agreement is part of a transaction further reflected in a Promissory Note (the "Note") and a HOME Program Loan Covenant Agreement ("Covenant Agreement"). The City's disbursements under the Loan Agreement are further secured by a Deed of Trust of even date herewith ("Deed of Trust"). The terms of said documents are incorporated herein as if fully set forth herein, and together shall be referenced as the "Related Documents." The capitalized terms in said documents shall have the same meaning in this Loan Agreement unless the context clearly suggests otherwise. In the event of conflict in the terms of any of these documents, the terms most favorable to the City shall apply.

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

I. PURPOSE

- A. The purpose of this Loan Agreement is to expand the supply of decent, safe, sanitary, and affordable housing for very low-income households pursuant to the HOME Investment Partnerships Program (24 CFR part 92 et seq., CFDA #14.239) ("HOME"). The City has designated Borrower as a Community Housing Development Organization ("CHDO"), and the Borrower is owner of the Project, pursuant to 24 CFR §92.300(a).
- B. To accomplish the purpose of this Loan Agreement, the City shall use HOME funds to provide a portion of the financing for the Borrower's rehabilitation of the Resident Court Apartments, a 43-unit apartment building located at 1203 West 5th Avenue in Spokane, WA (the "Project"). The legal description of the Project is:

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PTN LTS 1 & 2 BLK 54 AND PTN LTS 4 & ALL LTS 5 & 6 BLK 53,
2ND ADD TO RAILROAD ADD AND VAC STS

Assessor's Parcel Number: 35192.4211.
Property Address: 1203 W 5th Avenue Spokane, WA 99204

See Attachment 1 for the full legal description.

The Project includes thirty (30) HOME-assisted units, as follows: 17 studio units, 8 one-bedroom units, and 5 two-bedroom units. Borrower shall provide the City with the apartment number of each HOME-assisted unit no later than the time of initial occupancy. The units will be "floating" units, which means that the units originally designated as HOME-assisted may change over time, but the number of HOME-assisted units, for purposes of this Loan Agreement and Related Documents, shall never be less than the number designated in this section, and any replacement units must be comparable in size, features, and number of bedrooms to those units originally identified as HOME-assisted in this section.

- C. The Project is expected to conform to the estimates noted in the Project Budget, attached hereto as "Attachment 2" and incorporated herein. All additional costs over and above the sum noted as compensation for this Loan Agreement shall be borne by the Borrower.

II. DURATION OF THE LOAN AGREEMENT

This Loan Agreement shall commence and be effective on the Effective Date and shall terminate on the later of the end of the HOME Affordability Period or full repayment and/or forgiveness of sums due under the Note. The City and Borrower, upon mutual agreement, shall have the power to extend the term of this Loan Agreement. Any extension shall not increase the overall dollar amount loaned by the City pursuant to this Loan Agreement.

III. AMOUNT OF LOAN

The City shall loan the Borrower a sum not to exceed TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) from HOME funds, to be disbursed as provided herein, subject to the terms and conditions of this Loan Agreement and Related Documents.

IV. PRICING

This loan is subject to interest on the outstanding principal balance loaned at the rate of three percent (3%) per annum, such interest commencing on the time of disbursement(s) and compounding monthly. Payments shall be made pursuant to the Note and Section XV herein below. If rents for any HOME-assisted in the Project are increased above the level of the Affordability Requirements defined in this Loan Agreement or any other provisions, covenants, terms, conditions or restrictions of this

Loan Agreement - 2 of 32

Commented [jar1]: ARE WE SAYING TH AT INTEREST ACCRUES AND COMPOUNDS DURING THE AFFORDABILITY PERIOD? DOES IT CONTINUE TO ACCRUE AND COMPOUND EVEN WHILE IT IS BEING FORGIVEN?

Commented [mls2]: It will accrue and compound during the deferral and while it's being forgiven. Since we forgive interest first, when the accrued interest is all forgiven, the current interest and part of the principal will be forgiven, so none will be compounding.

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Loan Agreement are not adhered to, then the rate on the outstanding balance shall be increased to the prevailing prime lending rate as published in The Wall Street Journal, plus three percent (3%) for the remaining term of the loan, compounded monthly, and may be subject to accelerated repayment pursuant to XV.B. herein below.

V. SECURITY/SUPPORT

- A. Borrower shall assure and maintain the City's security position on the underlying real estate as evidenced by the Deed of Trust, which will be subordinate only to the following (or the housing covenant agreements or regulatory agreements and/or deeds of trust from the Washington State Commerce Department, and the City. The sum of amortizing loans with liens against the Project cannot exceed the assessed value.
- B. The Affordability Requirement outlined in this Loan Agreement shall be recorded as a **covenant running with the Project**, and shall apply without regard to the term of any loan or mortgage or transfer of ownership.
- C. Borrower shall keep in force, continuously, insurance covering the Project and property legally described above, listing the City of Spokane as policy beneficiary, pursuant to Section IX of this Loan Agreement.

VI. FUNDING DISBURSEMENTS

- A. The timing and disbursement of HOME funds shall be determined by the City in its sole discretion, consistent with the provisions of this Loan Agreement. Without limiting the forgoing, funding disbursements are subject to the following conditions:
 - 1. City HOME funds shall be disbursed only after completion of all requirements imposed by the United States Department of Housing and Urban Development ("HUD"), as determined by the City in its sole discretion, and upon completion of an environmental review by the City.
 - 2. All funds lent under this Agreement must be utilized by June 30, 2019.
 - 3. Borrower may not request disbursement of funds until needed for payment of eligible project costs, as defined by 24 CFR §92.206 and as further defined in the Program Description of the City's Multifamily Housing Program, and the amount of each request must be limited to the amount needed. Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups may be reimbursed if they were incurred not more than 24 months before the date of this Loan Agreement. In case of a dispute between the Parties regarding when the funds shall be disbursed, the determination of the Director of the Department of Community, Housing, and Human Services of the City of Spokane ("Director") shall govern.

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- B. Notwithstanding any other provision of this Loan Agreement, except as approved by the City, prior to the drawdown or disbursement of any City HOME funds hereunder, the Borrower shall provide documentation, in a form reasonably acceptable to the City, that the following actions have been taken to the City's satisfaction:
1. Recording of the Covenant Agreement and Deed of Trust.
 2. The Borrower has in place all applicable construction, land use, environmental, zoning permits and/or other federal, state and local governmental approvals as necessary for undertaking the activity for which the specific draw request is to be used.
 3. For projects including acquisition of land and/or buildings, an appropriate assessment of fair market value must be reviewed and approved by the City.
 4. Notwithstanding any provision in this Loan Agreement, the Borrower and the City hereto agree and acknowledge that Borrower shall not be entitled to any drawdown or disbursement of funds until satisfactory completion of environmental review and receipt by the City of a release of funds from the U.S. Department of Housing and Urban Development ("HUD") under 24 CFR Part 58. The Borrower and the City further agree that the provision of any funds to the Project shall be conditioned upon the City's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review. The Borrower shall not spend any funds on physical or choice-limiting actions, including property acquisitions, demolition, movement, rehabilitation, conversion, repair, or construction prior to the environmental clearance as described herein. Violation of this provision may result in the denial of any funds under this Loan Agreement. The Borrower shall perform all the required mitigation measures referenced in the environmental review record completed by the City.
 5. As applicable, the Borrower shall demonstrate, to the City's satisfaction, full compliance with the minimum wage requirements set forth in Section XVIII herein below.
- C. Notwithstanding the foregoing, a retainage of ten percent (10%) of the total amount allocated under this Loan Agreement shall be held by the City until all permits have been received, final inspections are complete, the Borrower accepts the work, federal requirements are fully satisfied, and all other obligations under this Loan Agreement or related agreements are carried out to the satisfaction of the Director.

VII. INCOME DETERMINATIONS

- A. For purposes of this Loan Agreement, tenant "annual income" is defined pursuant to 24 CFR §92.203, and includes income from all persons in the household, less income adjustments pursuant to 24 CFR §5.611. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR § 5.612.

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- B. Initial tenant annual income determinations shall be made by the Borrower pursuant to 24 CFR §92.203. Subsequent tenant income determinations shall be made by the Borrower pursuant to 24 CFR §92.203 and 24 CFR §92.252(h).
- C. Rent increases and annual income recertifications shall be governed by the terms outlined in the Affordability Requirements below.

VIII. AFFORDABILITY REQUIREMENTS

- A. HOME Affordability Period. The HOME Affordability Period, established pursuant to 24 CFR §92.252, is five (5) years, beginning after Project Completion, as determined by the Director. "Project Completion" means that all necessary title transfer requirements and construction work have been performed; the Project complies with the requirements of 24 CFR §92, including the property standards under 24 CFR §92.251; the final drawdown of HOME funds has been disbursed for the Project; and the project completion information has been entered in the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of §92.502(d), Project Completion occurs upon completion of construction and before occupancy. Repayment of the loan during the HOME Affordability Period will not extinguish the requirements of the Related Documents.
- B. City Affordability Period. The City Affordability Period is ten (10) years, beginning after Project Completion, as determined by the Director. The HOME Affordability Period and City Affordability Period shall run concurrently. Collectively, the two periods are hereinafter referred to as the "Affordability Period." Upon expiration of the HOME Affordability Period, the City Affordability Period shall continue, but HUD will no longer monitor compliance with Affordability Requirements. The requirements of the Affordability Period and other conditions of the Related Documents shall apply, as long as there are funds owing under the Note.
- C. Rent Limit. During the Affordability Period, rents on the thirty (30) HOME-assisted units shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%) of Spokane area median income ("AMI"), as defined by HUD and adjusted for family size, unit size by number of bedrooms, tenant-paid utilities and tenant-supplied appliances. These units shall include seventeen (17) studio units, eight (8) one-bedroom units, and five (5) two-bedroom units. Should the HUD rents decline below the initial project rents, the Borrower's rents do not need to be reduced below the initial rents. A table of initial HOME rents for the Project as established by HUD is attached to this Loan Agreement as Attachment 3. The adjustment for tenant-paid utilities and tenant-supplied appliances is subject to 24 CFR §92.252. New HUD requirements include that the adjustment for tenant-paid utilities and tenant-supplied appliances be based on the HUD Utility Schedule Model, twelve (12) months of documented actual utility costs as

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acceptable to the City's Community, Housing, & Human Services Department, or other methods as determined by HUD. Currently, the HUD Utility Schedule Model can be found at: <http://huduser.org/portal/resources/utimodel.html>. HUD may clarify the new requirements to allow the use (in some circumstances) of the prior requirement, which used the Section 8 existing housing allowance for tenant-furnished utilities and other services as published annually by HUD and issued by the Spokane Housing Authority.

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

The City will provide Borrower with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits exclusive of rent paid through project-based subsidies) in accordance with this Loan Agreement and 24 CFR §92.252(f)(2). The Borrower must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance with the Affordability Requirements of this Loan Agreement. The City will review rents for compliance and approve or disapprove them every year. The Borrower must provide tenants of HOME-assisted units written notification of rent increases no less than 30 days prior to the beginning of the month in which the increase is intended to be implemented, subject to the provisions of a tenant's lease agreement, pursuant to 24 CFR §92.252(f)(3).

- D. LIHTC Rent Clause. For tenants of low-income tax credit assisted units (if low-income housing tax credits are awarded to the Project or portions of the Project), any increases in rent associated with tenant income shall be governed solely by section 42 of the Internal Revenue Code of 1986, as amended from time to time.
- E. Upon completion of the HOME Affordability Period, if the maximum rent and income limits are exceeded, the loan will be subject to repayment at the higher interest rate as provided for in Paragraph 2 of the Promissory Note.
- F. Income Limit. At initial occupancy, tenants of the thirty (30) HOME-assisted units shall have incomes not greater than fifty percent (50%) of the Spokane area median income ("AMI") as defined by HUD. If the income of a tenant of a HOME-assisted unit increases and exceeds eighty percent (80%) of AMI, then the tenant's rent shall increase to the lesser of thirty percent (30%) of the tenant's adjusted monthly income or Fair Market Rent, subject to paragraph VIII.D hereof.
- G. Income Certifications. All tenants' incomes shall be recertified annually by the Borrower. Any applicable rent increases will be effective upon the next lease renewal, and are subject to thirty (30) days' written notice.

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Commented [m1s3]: Change from Paul: Effective 8/23/2013: HUD revised 92.252(i)(2) states tenants who are no longer low-income families must pay 30% of income or fair market rent. Also, 92.253(c) states good cause for terminating tenancy excludes increase in tenant income. HUD's Section-by-Section guide for 92.253 expressly states increased tenant income does not constitute good cause for termination or refusal to renew a lease. Termination of tenancy is a disincentive for tenants to increase their income

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

IX. INSURANCE

The Borrower shall keep the Project and all improvements now existing or hereafter erected thereon continuously insured as required in the Deed of Trust, the Note and the Covenant Agreement and this Loan Agreement, naming the City as mortgagee and/or loss payee. The insurance requirements apply during the Affordability Period, or during any such time as there are outstanding sums due under the Note, whichever is longer.

X. PROPERTY STANDARDS

- A. All HOME-assisted housing under this Loan Agreement shall meet the requirements of 24 CFR §92.251, which includes all applicable Federal, State and local code requirements and housing quality standards, rehabilitation standards, ordinances and zoning ordinances at the time of Project completion and for the duration of the Affordability Period. Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with applicable State and local codes, ordinances, or other State and local requirements, or

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such other requirements as HUD may establish. The standards under 24 CFR §92.251 were modified in 2013 and implementation awaits further clarification from HUD, at this time.

- B. Any accessible HOME-assisted housing units under this Loan Agreement shall, for the duration of the Affordability Period, meet the accessibility requirements at 24 CFR part 8 and the design and construction requirements at 24 CFR part 100.205.
- C. The Borrower shall comply with the provisions of 24 CFR §92.251.

Commented [SM4]: The rehab doesn't trigger full accessibility changes. This 1974 building doesn't meet current standards. We try to improve accessibility for things that are worked on, but aren't making it fully accessible.

XI. ADDITIONAL MISCELLANEOUS COVENANTS

Borrower shall:

- A. Comply with the Affordability Requirements described in this Loan Agreement and related documents.
- B. Maintain all required insurance, including without limitation the insurance required by the Deed of Trust.
- C. Maintain Project financial reports, Project financial records, and provide all other information and documentation that the City may reasonably request.
- D. Make prompt payment of all taxes and financial liabilities.
- E. Not hypothecate or encumber Project assets in any way, except to the extent provided for under this Loan Agreement or as approved of by the Director in writing. The Director may withhold such approval at his/her reasonable discretion.
- F. Promptly provide (i) rent and tenant income information at initial tenant occupancy and (ii) rent, occupancy, and tenant income information annually throughout the term of this Loan Agreement, or as otherwise requested by the City. If the Project has floating HOME units, the Borrower must provide the City with information regarding the unit substitution and filling vacancies so that the Project remains in compliance with HOME rental occupancy requirements.
- G. Promptly provide, upon request by the City, such documentation as is necessary (including financial statements) to enable the City to determine the financial condition and continued financial viability of the Project.
- H. During the Affordability Period, prohibit occupancy of any HOME-assisted unit by Borrower (or officer, employee, agent, elected or appointed official, or consultant of the Borrower, or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of Borrower) whether private, for-profit or nonprofit, including a

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

- I. Comply with all applicable federal, state, and local regulations and requirements, including, but not limited to Uniform Administrative Requirements, Federal Labor Standards, Davis-Bacon and Related Acts, Uniform Relocation Act requirements applicable as of the date of the execution of this Loan Agreement, and the provisions of the Lead-Based Paint Poisoning Prevention Act. The City's costs to administer Davis-Bacon Federal Labor Standards, and Related Acts shall be borne by the Borrower. When Washington State prevailing wages apply, the Borrower shall comply with all State requirements under RCW 39.12 to the satisfaction of the State of Washington. When applicable, the higher of Washington State prevailing wages or Davis-Bacon wages shall apply.
- J. Comply with all HOME program project requirements pursuant to 24 CFR part 92 et seq.
- K. Maintain housing in compliance with the property standards of 24 CFR §92.251 and local code requirements throughout the term of this Loan Agreement.
- L. Upon Project completion, the Project shall complete the final inspections and obtain final approvals on all construction permits, meet all licensing requirements needed to operate the facility as proposed by Borrower in its various funding applications, and meet the property standards of 24 CFR §92.251, minimum rehabilitation standards, and all applicable federal, state and local codes and ordinances. New construction projects must also meet HUD, state, and local requirements relating to accessibility and disaster mitigation.
- M. Cause each of the thirty (30) HOME-assisted units to be occupied by income-eligible households within eighteen (18) months after the Project is completed. If any HOME-assisted units have not been occupied by eligible tenants within 6 months following the date of Project Completion, Borrower shall submit to the City current marketing information and, if the City requests it, an enhanced marketing plan for leasing the unoccupied units as quickly as possible, which information the City will provide to HUD as required by 24 CFR §92.252. If any HOME-assisted unit has not been rented to eligible tenants within eighteen (18) months after the date of Project Completion, Borrower shall repay the City \$8,333.33/unit for each such unit within thirty (30) days of the City's written request for repayment. This reflects the proportionate per unit share of HOME funds, i.e., \$250,000 HOME dollars/thirty (30) HOME units.

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

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

XII. PROJECT TIMETABLE

- A. The Borrower agrees to complete work required in accordance with the timetable set forth in Attachment 5. Timely completion of the work is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and failure to meet deadlines could result in the loss of the Federal funds. By the acceptance and execution of this Loan Agreement, the Borrower agrees that the Project will be completed as expeditiously as possible and make every effort to ensure the project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and revocation of HOME funds. Since it is mutually agreed that time is of the essence, the Borrower shall cause appropriate provisions to be included in all contracts or subcontracts relative to the work tasks in Attachment 5. It is intended that such provisions included in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of the City and enforceable by the City against the Borrower and its successors and assigns to the project or any part thereof or any interest therein.
- B. In the event the Borrower is unable to meet the above schedule or complete the above services due to delays resulting from Acts of God, untimely review and approval by the City and other governmental authorities having jurisdiction over the Project, or other delays that are not caused by the Borrower, the City shall grant a reasonable extension of time for completion of the work. It shall be the responsibility of the Borrower to notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and delays related to the delay.

XIII. DEFAULT

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

1. Failure of Borrower to make any principal and interest payment within fifteen (15) days after such payment is due.
2. Failure to perform, observe or comply with the Affordability Requirements, Income Determinations, or any other provisions, related covenants, terms, conditions or restrictions of this Loan Agreement or any agreement relating to the Project (i.e., the occurrence of an event of default under other indebtedness secured by the Project property) or any part thereof, and failure to fully cure the same within the period of time, if any, permitted for cure and, if no period for cure is otherwise provided for, within sixty (60) days of written notice from the City of such failure,

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requesting the same to be remedied; provided, after a second non-compliance of any provision in a five- (5-) year period, only fourteen (14) days written notice is needed.

3. Failure to perform required maintenance or performance of any act by Borrower which would, in the City's reasonable opinion, adversely affect the value of the Project.
4. Sale, transfer, lease, or other conveyance of the Project or any portion thereof, including assumptions and subordinations, without obtaining the prior written consent of the Director.
5. Filing a voluntary or involuntary petition not dismissed within ninety (90) days after filing under the United States Bankruptcy Code by or against the Borrower.
6. Any representation, warranty, or disclosure made to the City or any other Project lender which proves to be materially false or misleading as of the date made, whether or not such representation, warranty, or disclosure appears in this Loan Agreement.
7. Failure to maintain and keep in force adequate amounts of insurance as is usual in the business carried on by the Borrower, or as required herein.
8. Without limiting any of the foregoing, Borrower's failure to comply with the minimum wage requirements set forth in Section XVIII of this Loan Agreement.

XIV. REMEDIES

- A. Upon the occurrence of an event of default not timely cured after notice, the City may, in addition to any other remedies which the City may have hereunder or under this Loan Agreement or by law or equity, at its option and upon written notice to the Borrower, take any or all of the following actions:
 1. Immediately terminate any further advance of loan funds.
 2. Declare the debt incurred hereunder and under the Related Documents immediately due and payable and commence collection proceedings against the Borrower.
 3. Seek judicial appointment of a receiver.
 4. Foreclose under the security documents or instruments, judicially or non-judicially.
 5. File suit against the Borrower.

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6. Seek specific performance or injunctive relief to enforce performance of the undertakings, duties, and agreements provided in this Loan Agreement or any related security document or instrument, whether or not a remedy at law exists or is adequate.
- B. All remedies of the City provided for herein are cumulative and shall be in addition to all other rights and remedies provided by law or in equity or by this Loan Agreement. The exercise of any right or remedy by the City shall not in any way constitute a cure or waiver of default under this Loan Agreement or any other related Project agreement, or invalidate any act done pursuant to any notice of default, or prejudice the City in the exercise of any of its rights unless, in the exercise of such rights, the City realizes all amounts owed to it by the Borrower.
- C. A failure to declare or a delay in declaring a default shall not constitute a waiver of any rights or remedies or excuse any failure by the Borrower to strictly comply with its obligations under this Loan Agreement or any other related Project agreement or document.

XV. REPAYMENT

- A. Payment of principal and interest shall be deferred during the HOME Affordability Period.
- B. Following the HOME Affordability Period, and during the remaining City Affordability Period, this loan may be eligible for debt forgiveness. In exchange for complying with the Affordability Requirements during that period of the City Affordability that extends beyond the HOME Affordability Period (the "Forgiveness Period"), the principal and interest may be forgiven for each year of the Forgiveness Period, until it is fully forgiven or paid at the end of the Affordability Period. If, at the end of each year during Forgiveness Period, the Borrower has complied, for that year, with the Affordability Requirements of this Loan Agreement and the Covenant Agreement and is in compliance with all other provisions of this Loan Agreement and Related Documents, then the loan payments shall be forgiven for that year; provided, no payments shall be forgiven for affordability periods of less than one (1) year. The amount of the annual loan forgiveness shall be the sum of twelve monthly payments; the monthly payments will be in an amount sufficient to amortize the principal and interest over the remaining term of the Affordability Period. During the Affordability Period, Borrower shall notify the City in writing if, for any reason, the Project will not comply with the Affordability Requirements, at which time any and all outstanding balance would become immediately due and payable in full.
- C. If Borrower elects not to comply with the Affordability Requirements beyond the end of the HOME Affordability Period, repayment of principal and interest shall

Commented [m1s5]: We need to rework this paragraph to go along with the revised affordability period definition.

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be made monthly in an amount sufficient to amortize the loan over the remaining term of the Affordability Period.

- D. Repayment during the HOME Affordability Period described in Paragraph VIII.A of this Loan Agreement shall not extinguish the Affordability Requirements.
- E. Payment of principal, interest, and fees shall be made in lawful money of the United States of America in immediately available funds to the City of Spokane, at the Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201, or at such other place as the City may designate to Borrower in writing.

XVI. NONDISCRIMINATION/RENT SUBSIDY

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

XVII. FAITH-BASED ACTIVITIES AND ORGANIZATIONS

- A. Borrower, in providing services supported in whole or in part with HOME program funds, shall not discriminate against current or prospective program beneficiaries (i.e., tenants) on the basis of religion, a religious belief, or a refusal to attend or participate in a religious practice.
- B. If Borrower engages in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, Borrower must perform such activities and offer such services outside of and separately in time or location, from the activities or programs financed under this Loan Agreement, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services (i.e., tenants).
- C. Whether or not Borrower is a faith-based organization, it may use the loan proceeds provided under this Loan Agreement as provided under relevant regulations and this Loan Agreement without impairing its independence, autonomy, expression of religious beliefs, or religious character. Borrower will retain its independence from Federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Borrower may use space in its facilities to provide program-funded services,

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without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, Borrower retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

- D. The loan proceeds provided to Borrower pursuant to this Loan Agreement may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are or will be used for explicitly religious activities. Subject to other limitations in this Loan Agreement, loan proceeds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under HOME regulations. When a structure is or will be used for both eligible and explicitly religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HOME program. Sanctuaries, chapels, or other rooms that Borrower uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property after the term of the loan or grant, or any change in use of the property during the term of the loan or grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).
- E. This limitations in this Section XVII shall apply regardless whether the loan proceeds under this Loan Agreement includes local funds that the City has voluntarily contributed to supplement federally funded activities.

XVIII. COMPLIANCE WITH LAWS

- A. The Borrower shall comply with all HOME Program requirements as outlined in 24 CFR part 92 et seq., as may be amended from time to time.
- B. The Borrower shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq.), E.O. 11063 (3 CFR, 1959-1963 Comp., p. 652), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD regulations issued pursuant thereto.
- C. The Borrower shall comply with the nondiscrimination and equal opportunity, disclosure requirements, debarred, suspended or ineligible contractors, and drug-free workplace, per 24 CFR §92.350.
- D. The Borrower shall comply with the affirmative marketing and minority outreach program of 24 CFR §92.351, and shall further comply with the tenant selection requirements set forth in 24 CFR 92.253(d).
- E. The Borrower shall comply with the National Environmental Policy Act of 1969, as outlined in 24 CFR 92.352 and Borrower agrees to implement City-identified

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conditions on safeguards to protect and enhance environmental quality or minimize adverse environmental impacts.

F. Minimum Wages.

1. Federal Labor Standards/Davis-Bacon Act [XX] Applicable [] Not Applicable. If the "Applicable" box is checked, the following provisions apply:

- a. The Borrower shall pay prevailing wages, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of the Project; provided, in the event the Project is subject to state minimum wage requirements, and if the state minimum wage rate exceeds the Department of Labor rate, the conflict will be resolved by applying the higher rate
- b. All contracts relating to the Project shall contain a provision requiring the payment of such wages, as predetermined by the Secretary of Labor under the Davis-Bacon Act, 40 USC 276(a) under wage decision [DECISION #], modification [MODIFICATION #], dated _____.
- c. The Borrower shall pay overtime, as applicable, pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
- d. The Borrower shall comply with all regulations issued under the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act, all Federal laws and regulations pertaining to labor standards, Federal Labor Standards, HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), and 24 CFR §92.354, as applicable.
- e. The Borrower shall provide contracts with the prime contractor and major subcontractors as soon as these contracts are available and the contracts shall evidence compliance with Federal Labor Standards.
- f. These prevailing wage requirements do not apply to volunteers or sweat equity pursuant to 24 CFR §92.354(a) and (b).
- g. Borrower shall reimburse the City for all costs incurred by the City in administering Borrower's compliance with applicable Davis-Bacon, Federal Labor Standards, and Related Acts.

2. Labor Standards. If applicable, the Federal Labor Standards Provisions (HUD 4010) are attached as Attachment 4.

3. State Minimum Wage. When Washington State prevailing wages apply, the Borrower shall comply with all State requirements under RCW 39.12 to the satisfaction of the State of Washington. When applicable, the higher of Washington State prevailing wages or Davis-Bacon wages shall apply. When Washington State prevailing wages apply, the contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the State Department of Labor and Industries, prior to any payments. The "Statement of Intent to Pay

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

- G. Conflict of Interest. The Borrower shall comply with the conflict of interest provisions prescribed in 24 CFR §92.356(f). During the Affordability Period, Borrower shall prohibit occupancy of any HOME-assisted unit by Borrower (or officer, employee, agent, elected or appointed official, or consultant of the Borrower, or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the Borrower), whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor).
- H. The Borrower shall comply with the equal employment opportunities for low- and very low-income persons pursuant to 24 CFR part 135.
- I. The Borrower shall comply with the Fair Housing Act as implemented by 24 CFR parts 100-115, as applicable.

XIX. TENANT AND PARTICIPANT PROTECTIONS

- A. There must be a written lease between the tenant and the Borrower that complies with 24 CFR 92.253 (Tenant Protections and Selection) and that is for a period of not less than one year, unless by mutual agreement between the tenant and the Borrower a shorter period is specified.
- B. Leases between the Borrower and a tenant shall not contain any of the following provisions:
 - 1. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Borrower in a lawsuit brought in connection with the lease.
 - 2. Agreement by the tenant that Borrower may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the Borrower and tenant. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Borrower may dispose of this personal property in accordance with Washington state law.

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3. Agreement by the tenant not to hold the Borrower or the Borrower's agents legally responsible for any action or failure to act, whether intentional or negligent.
 4. Agreement by the tenant that the Borrower may institute a lawsuit against a tenant or affecting a tenant's interests without notice to tenant.
 5. Agreement by the tenant that the Borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the Borrower and tenant.
 6. Agreement by the tenant to waive any right to a trial by jury.
 7. Agreement by the tenant to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease.
 8. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Borrower against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
 9. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.
- C. Borrower may not terminate the tenancy or refuse to renew the lease of a tenant occupying a HOME-assisted unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse to renew tenancy, Borrower must serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy.
- D. Borrower shall adopt and follow written tenant selection policies and criteria that:
1. Limit the HOME-assisted units to very low-income and low-income families;
 2. Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing, not to interfere with the rights and quiet enjoyment of other tenants);
 3. Limit eligibility or give a preference to a particular segment of the population if otherwise permitted in this Loan Agreement (and only if the limitation or preference is described in the City's consolidated plan).

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- E. Borrower shall select tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and give prompt written notification to any rejected applicant of the grounds for any rejection.
- F. Borrower shall not charge fees that are not customarily charged in rental housing (e.g., laundry room access fees), except that Borrower may charge: (i) reasonable application fees to prospective tenants; (ii) parking fees to tenants only if such fees are customary for rental projects in the neighborhood; and (iii) fees for services such as bus transportation or meals, as long as such services are voluntary and fees are charged for services provided.

XX. TENANT PARTICIPATION PLAN

If the Borrower is a Community Housing Development Organization ("CHDO") as defined by 24 CFR 92.2, the Borrower shall adhere to a fair lease and grievance procedure approved by the City and shall provide a plan for and follow a program of tenant participation in management decisions pursuant to 24 CFR §92.303.

XXI. UNIFORM ADMINISTRATIVE REQUIREMENTS/PROJECT REQUIREMENTS

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

XXII. TRANSFER/ASSIGNMENT

The Borrower shall not assign, transfer, subordinate or sublet any obligation of this Loan Agreement nor shall it sell or otherwise transfer any property subject to this Loan Agreement without prior written consent of the Director, who may withhold consent at his/her discretion. The provisions of this Loan Agreement shall apply to all persons or entities performing obligations set forth by this Loan Agreement, including

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approved persons or entities to whom or to which the Borrower assigns, transfers, or sublets services as above. Such approved persons or entities shall be subject to the provisions for faith-based activities and organizations as outlined in this Loan Agreement, as applicable.

XXIII. HAZARDOUS SUBSTANCES/REPRESENTATIONS AND WARRANTIES

- A. The Borrower shall not cause or permit the presence, use, disposal, storage, or release of any "Hazardous Substances" (as defined below) on or in the Property. The Borrower shall not perform any act, nor allow, cause or permit the performance of any act, affecting the Property when such act constitutes a violation of any federal, state or local Environmental Law, ordinance or rule. As used in this provision, "Environmental Law" means federal laws, state laws and local codes, laws, and/or ordinances of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.
- B. The Borrower shall promptly give the City written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property, and any hazardous substance or Environmental Law of which the Borrower has actual knowledge. If the Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any hazardous substance affecting the Property is necessary, the Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law and shall bear all costs and expenses thereof.
- C. The Borrower hereby represents and warrants that, to the best of the Borrower's knowledge and belief, and after reasonable investigation and inquiry, the Project has never been and is not being used to make, store, handle, treat, dispose of, generate, or transport Hazardous Substances in violation of any applicable law, which Hazardous Substances have not been or will not be abated according to all applicable law and regulations related thereto prior to tenant occupancy of the project. To the best of Borrower's knowledge and belief, and after reasonable investigation and inquiry, there has not been a release of Hazardous Substances on, from, or near the Project, which release has not been or will not be abated to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy of the project. The Borrower has never received any notification, citation, complaint, violation, or notice of any kind from any person relating or pertaining to the making, storing, handling, treating, disposing, generating, transporting, or release of Hazardous Substances, for which there has not been or will not be abatement to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy. Borrower represents and warrants that any asbestos and lead-based paint found within the Project will be abated to levels acceptable under applicable law prior to tenant occupancy of the project. "Hazardous Substances" means (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous

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substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) “oil, petroleum products and their by-products” as defined under Washington law as amended from time to time, and regulations promulgated thereunder; (iv) any “hazardous substance” as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (v) any “asbestos material” as defined under Washington law, as amended from time to time, and regulations promulgated thereunder and/or as defined by 40 C.F.R. Section 61.141, as amended from time to time; (vi) any “radon gas” in excess of levels recommended in U. S. Environmental Protection Agency Guidance Documents, as modified from time to time, or lower levels as provided by any applicable law or regulation now or hereafter in effect; (vii) any “infectious waste” as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (viii) any substance the presence of which on any property attributable to the operations of the Borrower is prohibited, restricted or regulated by any law or regulation similar to those laws, regulations and/or documents set forth above, including without limitation, polychlorinated biphenyls (“PCBs”) and lead-based paints; and (ix) any other substance which by law or regulation requires special handling in its collection, generation, storage, transportation, treatment or disposal.

XXIV. DEBARMENT AND SUSPENSION

The Borrower shall comply with the provisions of 24 CFR Part 24 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency. Additionally, the Borrower shall not use, directly or indirectly, any of the funds provided by this contract to employ, award contracts to, or otherwise engage the services of, or fund any contractor/ subcontractor during any period that the contractor/subcontractor is debarred, suspended or ineligible under the provisions of 24 CFR Part 24. Using the System for Award Management (<https://www.sam.gov>), the City has determined, as of the date of this contract that the Borrower is not excluded from federal procurement and non-procurement programs. The Borrower has provided in Attachment 6 its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and “Debarment and Suspension”, codified at 29 CFR part 98.

XXV. ANTI-LOBBYING

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

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of

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Congress, or an employee of a Member of Congress in connection with the awarding of this loan;

- B. That if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employees of Congress, or an employee of a Member of Congress in connection with this loan, Borrower shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instruction; and
- C. Borrower shall require that the language of paragraphs A and B of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such subrecipients shall certify and disclose accordingly.

XXVI. SEVERABILITY

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

XXVII. NOTICES

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

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

Spokane Neighborhood Action Partners
3102 W Fort Wright Drive
Spokane, WA 99224
Attn: Chief Executive Officer

XXVIII. INDEMNIFICATION

The Borrower shall protect, defend, indemnify, and hold harmless the City, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Borrower, its officers, employees or agents, in its performance and/or non-performance of its obligations under this Loan Agreement. The Borrower agrees that its obligations under this indemnification shall extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents.

This agreement to indemnify is a separate agreement, shall survive any foreclosure action, attempted transfer or the like, is a legal obligation of the

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Borrower and action may be brought thereon independently of any other remedy at law or provided for herein.

XXIX. TERMINATION

In accordance with 24 CFR §85.43, this Loan Agreement may be suspended or terminated if the Borrower materially fails to comply with any term of this Loan Agreement. This Loan Agreement may be terminated for convenience in accordance with 24 CFR §85.44.

XXX. EXECUTION IN COUNTERPARTS

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

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

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

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.)

SPOKANE NEIGHBORHOOD ACTION PARTNERS,
a Washington nonprofit corporation

STATE OF WASHINGTON)
) ss.
County of Spokane)

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

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

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CITY OF SPOKANE

By: _____
David A. Condon, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

By: Terri L. Pfister, City Clerk

By: _____
Assistant City Attorney

Date: _____

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this ____ day of _____, 2018, personally appeared before me **David A. Condon** and **Terri L. Pfister**, to me known to be the Mayor and City Clerk, respectively, of and for the City of Spokane, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

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

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

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ATTACHMENT 1

LEGAL DESCRIPTION

LOTS 1 AND 2, EXCEPT THE SOUTH 17 FEET THEREOF, CONVEYED TO THE CITY OF SPOKANE FOR STREET PURPOSES BY DEED DATED JUNE 5, 1985 RECORDED IN VOLUME "J" OF DEEDS, PAGE 290, BLOCK 54, SECOND ADDITION TO THE RAILROAD ADDITION, AS PER PLAT RECORDED IN VOLUME "A" OF PLATS, PAGE 8, INCLUDING THE EAST HALF OF VACATED JEFFERSON STREET LYING WESTERLY OF AND ADJACENT TO SAID LOT 1, RECORDS OF SPOKANE COUNTY;

ALSO, THE EAST 8 FEET OF LOT 4 AND ALL OF LOTS 5 AND 6, BLOCK 53, SECOND ADDITION TO THE RAILROAD ADDITION, AS PER PLAT RECORDED IN VOLUME "A" OF PLATS, PAGE 8, INCLUDING THE WEST HALF OF VACATED JEFFERSON STREET LYING ADJACENT TO THE NORTH 125 FEET OF LOT 6, RECORDS OF SPOKANE COUNTY;

INCLUDING THE NORTH 17 FEET OF VACATED BISHOP COURT FROM THE EAST LINE OF LOT 6, BLOCK 53 TO THE EAST LINE OF LOT 1, BLOCK 54, EXTENDED SOUTH, ALL IN SAID SECOND ADDITION TO THE RAILROAD ADDITION, RECORDS OF SPOKANE COUNTY;

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

Tax Parcel Number: 35192.4211

Situs Address: 1203 W 5th Avenue Spokane, WA 99204

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ATTACHMENT 2
PROPOSED BUDGET

SPOKANE NEIGHBORHOOD ACTION PARTNERS
RESIDENT COURT

1203 W. 5th Avenue

Rehabilitation work	272,700	Replacement reserves	15,450
Contingency (15%)	41,000	City CDBG funds	100,000
Permits and taxes	26,000		
Project management/dev fee	20,000	City HOME funds	250,000
Accounting/audit	5,500		
Closing costs	250		
TOTAL	\$365,450	TOTAL	\$365,450

Anticipated work list for the rehabilitation of the 43-unit Resident Court Apartments includes elevator work (hydraulic pump, door and cab), parking lot replacement and striping, accessible trash enclosure, exterior painting, gutters and flashing, exterior lighting, replacements and upgrades of baseboard heaters and thermostats, work in bathrooms (replacements of some shower surrounds, bathroom fans), and kitchen GFCI replacements. If there are excess funds, rebates, or other funding not listed above, the Borrower may use the funds to make accessibility improvements to the units or consult with the City to identify other appropriate and eligible uses. CDBG funds are from the City's Community Development Block Grant funds.

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Attachment 3
Initial Project Rents

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ATTACHMENT 4

Insert Labor Standards

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ATTACHMENT 5

TIMETABLE

Category	Milestone/Task	Deadline Month Yr/Status
Financing	CDBG and HOME funding documented.	August 2018
Design/Permits	Building permits issued, as needed.	December 2018.
Construction	Begin construction.	August 2018.
	Complete construction.	March 2019.
Occupancy	Units occupied.	N/A. Units are currently occupied and no relocation is anticipated.

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ATTACHMENT 6

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

1. The undersigned (i.e., signatory for the Borrower) certifies, to the best of its knowledge and belief, that it and its principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
 - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the City.
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

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

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

Spokane Neighborhood Action Partners Name of Borrower (Type or Print)	Resident Court Program Title (Type or Print)
Julie Honekamp Name of Certifying Official (Type or Print)	
Chief Executive Officer Title of Certifying Official (Type or Print)	Signature
	Date (Type or Print)

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CHDO ADDENDUM
Additional Requirements for Community Housing Development Organizations

Expanded CHDO Conflict of Interest Provisions

If the Project is owned, sponsored, or developed by a nonprofit organization that has been certified as a Community Housing Development Organization (CHDO) the following provisions apply:

The CHDO warrants can covenants that it presently has no interest and shall not acquire any interest, directly or indirectly which could conflict in any manner or degree with the performance of its services hereunder. The CHDO further warrants and covenants that in the performance of this agreement, no person having such interest shall be employed.

HOME conflict of interest provisions, as stated in 92.356, apply to the award of any contracts under the agreement and the selection of tenant households to occupy HOME-assisted units. No officer, employee, agent, elected or appointed official, or consultant of the CHDO may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:

- Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by the CHDO, or the proceeds thereunder; or
- Any unit benefits or financial assistance associated with HOME projects or programs administered by the CHDO, including;
 - Occupancy of a rental unit in a HOME-assisted rental project;
 - Receipt of HOME tenant-based rental assistance;
 - Purchase or occupancy of a homebuyer unit in a HOME-assisted project;
 - Receipt of HOME homebuyer acquisition assistance; or
 - Receipt of HOME owner-occupied rehabilitation assistance.

This prohibition does not apply to an employee or agent of the CHDO who occupies a HOME-assisted unit as the on-site project manager or maintenance worker.

In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the City shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted project or program.

Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by the CHDO in writing to the City. The CHDO must demonstrate and certify that the policies and procedure adopted for this activity will ensure fair treatment of all parties, and that the covered persons referenced in this

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policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. The City may grant exceptions or forward the request to HUD as permitted by 24 CFR 92.256, 85.36 and 84.42, as they apply.

I hereby certify that Spokane Neighborhood Action Partners has adopted policies and procedures for this Project that will ensure fair treatment of all parties and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance, unless the City or HUD have granted an exception as noted above.

By: _____

Date: _____

Name: _____

Title: _____

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**CITY OF SPOKANE
SPOKANE NEIGHBORHOOD ACTION PARTNERS**

RESIDENT COURT

PROMISSORY NOTE

OPR #2018-_____

Borrower: Spokane Neighborhood Action Partners
3102 W Fort Wright Drive
Spokane, WA 99224

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

Principal: \$250,000.00

Date: _____

1. **PROMISE TO REPAY:** FOR VALUE RECEIVED, the undersigned **SPOKANE NEIGHBORHOOD ACTION PARTNERS**, a Washington nonprofit corporations, hereinafter referred to as "Borrower", promises to repay to the order of the **CITY OF SPOKANE**, a Washington state municipal corporation, or its successors and assigns (hereinafter called "Lender") the maximum principal sum of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS** (\$250,000.00) or so much of said sum or sums as may now or hereafter be loaned or disbursed to the Borrower by the Lender, for the purpose of providing a portion of the financing for the Borrower's Resident Court Apartments, located at 1203 W 5th Avenue, Spokane, WA 99204 (the "Project"). This Promissory Note (the "Note") is part of a transaction further reflected in a HOME Program Loan Agreement ("Loan Agreement") and HOME Program Loan Covenant Agreement ("Covenant Agreement") of even date herewith. Lender's disbursements under the Loan Agreement and the Note are further secured by a Deed of Trust of even date herewith ("Deed of Trust"). The terms of said documents are incorporated herein as if fully set forth herein, and together shall be referenced as the "Related Documents". The capitalized terms in said Related Documents shall have the same meaning in this Note unless the context clearly suggests otherwise. In the event of conflict or ambiguity in the terms of any of these documents, the terms most favorable to Lender shall apply.

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

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Affordability Requirement defined in the Loan Agreement, or any other provisions, covenants, terms, conditions or restrictions of the Loan Agreement are not adhered to, then the rate on the outstanding balance shall be increased to the prevailing prime lending rate as published in The Wall Street Journal, plus three percent (3%), compounded monthly, for the period of noncompliance, as determined by the Director of Community, Housing, and Human Services for the City of Spokane (the "Director").

3. REPAYMENT; MATURITY:

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

B. Payment Period: Principal and interest on this Note shall be payable in approximately equal amortized installments on the first day of each month (or the first business day thereafter if the first day of the month is a weekend or a holiday for the City), commencing immediately after the HOME Affordability Period ends, in the amount required to fully amortize the outstanding principal and accrued interest on this Note (including the interest accrued) during the remaining City Affordability Period, as defined in the Loan Agreement. During the Affordability Period, Borrower shall notify the City in writing if, for any reason, Borrower and/or the Project will not comply with the Affordability Requirements, at which time any remaining balance would become immediately due and payable in full.

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

E. Late Charges: A late charge of thirty dollars (\$30.00) will be added to any payment received after the 10th day of the month in which it is due in addition to any other remedy.

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

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

H. Potential Debt Forgiveness: Repayment shall further be subject to provisions and applicable sections of the Loan Agreement, which allows for debt forgiveness in exchange compliance with the Affordability Requirements during the

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Forgiveness Period, as defined in the Loan Agreement, subject to conditions specified in the Loan Agreement.

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

5. THIS LOAN IS made for the purpose of financing rehabilitation work on the property described in the Deed of Trust and Loan Agreement. As a condition of receiving this loan, Borrower agrees to abide by all of the terms and conditions of this Note, the Deed of Trust, the Loan Agreement and associated Covenant Agreement, incorporated herein by reference as if fully set forth.

6. IF THE BORROWER SHALL default in the payment of any amount due under this Note, and such default is not cured within ten (10) days after such payment is due, or if any other Event of Default occurs under the Deed of Trust, the Loan Agreement or the Covenant Agreement and such default is not cured within the cure period, if any, applicable thereto, the entire unpaid principal amount of this Note, together with accrued interest, shall immediately become due and payable, at Lender's option, upon notice to the Borrower. Failure of Lender to exercise such option shall not constitute a waiver of default. If Lender exercises its option to declare the entire amount of Borrower's loan immediately due and payable as provided above, Borrower agrees to pay Lender's cost and expenses of collection, including reasonable attorney's fees and court costs. If this Note is reduced to judgment, the judgment shall bear interest at the maximum rate permissible on judgments in the State of Washington.

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

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

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

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

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

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

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

8. THIS NOTE IS not assignable or assumable without the express written consent of the Lender.

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

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

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

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

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

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

IN WITNESS WHEREOF, the Borrower executed this Promissory Note on this ____ day of _____, 2018.

SPOKANE NEIGHBORHOOD ACTION PARTNERS

By: _____
Julie Honekamp, Chief Executive Officer

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AFTER RECORDING MAIL TO:

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

OPR #2018-_____

**CITY OF SPOKANE
SPOKANE NEIGHBORHOOD ACTION PARTNERS**

RESIDENT COURT

DEED OF TRUST

Grantor: Spokane Neighborhood Action Partners, a Washington nonprofit corporation

Beneficiary: City of Spokane, a Washington state municipal corporation

Assessor's Parcel No.: 35192.4211

Legal Description (abbreviated):

PTN LTS 1 & 2 BLK 54 AND PTN LTS 4 & ALL LTS 5 & 6 BLK 53, 2ND
ADD TO RAILROAD ADD AND VAC STS

(See Attachment 1 for full legal description.)

THIS DEED OF TRUST, made this _____ day of _____, 2018, by and between **SPOKANE NEIGHBORHOOD ACTION PARTNERS**, a Washington nonprofit corporation, referred to herein as GRANTOR, whose address is 3102 W Fort Wright Drive, Spokane, WA 99224, Spokane County Title Company, TRUSTEE, whose address is 1010 N. Normandie St., Ste. 100, Spokane, WA 99201, and the **CITY OF SPOKANE**, Washington, a Washington state municipal corporation, BENEFICIARY, whose address is City of Spokane, c/o Community, Housing, and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201.

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

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

PTN LTS 1 & 2 BLK 54 AND PTN LTS 4 & ALL LTS 5 & 6 BLK 53, 2ND
ADD TO RAILROAD ADD AND VAC STS

Assessor's Parcel Number: 35192.4211

Property Address: 1203 W 5th Avenue Spokane, WA 99204

See Attachment 1 for full legal description.

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

This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained and as further contained in the Loan Agreement, Covenant Agreement, and Promissory Note, secured by this Deed of Trust, and for the purpose of securing payment of the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) with interest, in accordance with the terms of a Promissory Note of even date herewith, payable to Beneficiary, and made by Grantor, and all renewals, modifications, and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of his/her/their successors or assigns, together with interest thereon at such rate as shall be agreed upon. This Deed of Trust also secures to Beneficiary: (a) the payment of other sums, with interest, advanced to protect the security of this Deed of Trust; and (b) the performance of Grantor's covenants and agreements under this Deed of Trust and the Promissory Note, Covenant Agreement and Loan Agreement of even date herewith.

GRANTOR COVENANTS that Grantor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property that the Property is unencumbered, except for encumbrances of record. Grantor warrants and will defend the title to the Property against all claims and demands, subject to any prior encumbrances of record.

COVENANTS: Grantor and Beneficiary covenant and agree as follows:

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

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

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

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

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

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

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

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

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

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interest. Grantor shall also be in default if Grantor, during the loan application process, gave materially false or inaccurate information or statements to Beneficiary (or failed to provide Beneficiary with any material information) in connection with the loan evidenced by the Promissory Note. If this Deed of Trust is on a leasehold, Grantor shall comply with all the provisions of the lease. If Grantor acquires fee title to the property, the leasehold and the fee title shall not merge unless Beneficiary agrees to the merger in writing.

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

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

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

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

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

9. CONDEMNATION. A. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust and other liens as approved by the Beneficiary, whether or not then due, with any excess paid to Grantor. In the event of a partial taking of the Property in which the fair market value of the Property

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immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Grantor and Beneficiary otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the proceeds multiplied by the following fraction: (i) the total amount of the sums secured immediately before the taking, divided by (ii) the fair market value of the Property immediately before the taking. Any balance shall be paid to Grantor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Grantor and Beneficiary otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

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

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

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

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

12. LOAN CHARGES. If the loan secured by this Deed of Trust is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and; (ii) any sums already collected from Grantor which exceeded permitted limits will be refunded to Grantor. Beneficiary may choose to make this refund by reducing the principal owed

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under the Promissory Note or by making a direct payment to Grantor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Promissory Note.

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

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

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

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

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

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

17. GRANTOR'S RIGHT TO REINSTATE FOLLOWING ACCELERATION. If Grantor meets the conditions outlined in this paragraph, Grantor shall have the right to have enforcement by acceleration of this Deed of Trust discontinued at any time

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prior to the earlier of: (i) 10 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (ii) entry of a judgment enforcing this Deed of Trust. The conditions which Grantor must meet are that Grantor shall: pay Beneficiary all sums which then would be due under this Deed of Trust and the Promissory Note as if no acceleration had occurred; cure any default of any other covenants or agreements; pay all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees, and; take such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's rights in the Property, and Grantor's obligation to pay the sums secured by this Deed of Trust continue unchanged. Upon reinstatement by Grantor, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration caused by Grantor's selling or transferring all or any part of the Property or any interest in it (or if a beneficial interest of Grantor is sold or transferred and Grantor is not a natural person) without Beneficiary's prior written consent.

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

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

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

B. Grantor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property, and any hazardous substance or Environmental

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Law of which Grantor has actual knowledge. If Grantor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any hazardous substance affecting the Property is necessary, Grantor shall promptly take all necessary remedial actions in accordance with Environmental Law and shall bear all costs and expenses thereof.

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

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

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

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

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

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

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

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

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

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

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

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

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.)

BENEFICIARY - CITY OF SPOKANE

Date: _____

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

Date:

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this ____ day of _____, 2018, personally appeared before me **David A. Condon** and **Terri L. Pfister**, to me known to be the **Mayor** and **City Clerk**, respectively, of and for the City of Spokane, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

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

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

DRAFT

ATTACHMENT 1

LEGAL DESCRIPTION

LOTS 1 AND 2, EXCEPT THE SOUTH 17 FEET THEREOF, CONVEYED TO THE CITY OF SPOKANE FOR STREET PURPOSES BY DEED DATED JUNE 5, 1985 RECORDED IN VOLUME "J" OF DEEDS, PAGE 290, BLOCK 54, SECOND ADDITION TO THE RAILROAD ADDITION, AS PER PLAT RECORDED IN VOLUME "A" OF PLATS, PAGE 8, INCLUDING THE EAST HALF OF VACATED JEFFERSON STREET LYING WESTERLY OF AND ADJACENT TO SAID LOT 1, RECORDS OF SPOKANE COUNTY;

ALSO, THE EAST 8 FEET OF LOT 4 AND ALL OF LOTS 5 AND 6, BLOCK 53, SECOND ADDITION TO THE RAILROAD ADDITION, AS PER PLAT RECORDED IN VOLUME "A" OF PLATS, PAGE 8, INCLUDING THE WEST HALF OF VACATED JEFFERSON STREET LYING ADJACENT TO THE NORTH 125 FEET OF LOT 6, RECORDS OF SPOKANE COUNTY;

INCLUDING THE NORTH 17 FEET OF VACATED BISHOP COURT FROM THE EAST LINE OF LOT 6, BLOCK 53 TO THE EAST LINE OF LOT 1, BLOCK 54, EXTENDED SOUTH, ALL IN SAID SECOND ADDITION TO THE RAILROAD ADDITION, RECORDS OF SPOKANE COUNTY;

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

Tax Parcel Number: 35192.4211

Situs Address: 1203 W 5th Avenue Spokane, WA 99204

DRAFT

WHEN RECORDED RETURN TO:

CITY OF SPOKANE

COMMUNITY, HOUSING, AND HUMAN SERVICES DEPARTMENT

808 W. SPOKANE FALLS BLVD., ROOM 650

SPOKANE, WASHINGTON 99201-3339

OPR #2018-_____

**CITY OF SPOKANE
SPOKANE NEIGHBORHOOD ACTION PARTNERS**

RESIDENT COURT

HOME PROGRAM LOAN COVENANT AGREEMENT

Grantor: Spokane Neighborhood Action Partners, a Washington nonprofit corporation

Beneficiary: City of Spokane, a Washington state municipal corporation

Assessor's Parcel No.: 35192.4211

Legal Description (abbreviated):

PTN LTS 1 & 2 BLK 54 AND PTN LTS 4 & ALL LTS 5 & 6 BLK 53, 2ND
ADD TO RAILROAD ADD AND VAC STS

See Attachment 1 for full legal description.

This HOME Program Loan Covenant Agreement ("Covenant Agreement") is made this ____ day of _____, 2018, by and between the **CITY OF SPOKANE**, a Washington municipal corporation (the "City"), whose address is City of Spokane, c/o Community, Housing, and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, Washington 99201-3339 and **SPOKANE NEIGHBORHOOD ACTION PARTNERS**, a Washington nonprofit corporation (the "Borrower" or "Grantor"), whose address is 3102 W Fort Wright Drive, Spokane, WA 99224.

I. STIPULATIONS

1. This Covenant Agreement is a condition of and part of the consideration for the financial assistance provided by the City to the Borrower for the Borrower's rehabilitation of the Resident Court, a 43-unit apartment building, located at 1203 West 5th Avenue, Spokane, WA 99204 (the "Project"). Thirty (30) of the 43 units will be

HOME-assisted, including 17 studio units, 8 one-bedroom units, and 5 two-bedroom units.

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

3. The Project is situated in the City and County of Spokane, State of Washington, and is legally described in Attachment 1. The abbreviated legal description is:

PTN LTS 1 & 2 BLK 54 AND PTN LTS 4 & ALL LTS 5 & 6 BLK 53,
2ND ADD TO RAILROAD ADD AND VAC STS

Assessor's Parcel Number: 35192.4211

Property Address: 1203 W 5th Avenue Spokane, WA 99204

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

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

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

II. COVENANTS

Borrower shall:

- A. Comply with the Affordability Requirements described in this Covenant Agreement and Related Documents.
- B. Maintain all required insurance, including without limitation the insurance required by the Deed of Trust.
- C. Maintain Project financial reports, Project financial records and provide all other information and documentation that the City may reasonably request.
- D. Make prompt payment of all taxes and financial liabilities.
- E. Not hypothecate or encumber Project assets in any way, except to the extent provided for under the Loan Agreement or as approved of by the Director of Community, Housing, and Human Services of the City of Spokane (the "Director") in writing. The Director may withhold such approval at his/her reasonable discretion.
- F. Promptly provide (i) rent and tenant income information at initial tenant occupancy and (ii) rent, occupancy, and tenant income information annually throughout the term of the Loan Agreement, in accordance with the Loan Agreement, or as otherwise requested by the City. If the Project has floating HOME units, the Borrower must provide the City with information regarding the unit substitution and filling vacancies so that the Project remains in compliance with HOME rental occupancy requirements.
- G. Promptly provide, upon request by the City, such documentation as is necessary (including financial statements) to enable the City to determine the financial condition and continued financial viability of the Project.
- H. During the Affordability Period, prohibit occupancy of any HOME-assisted unit by Borrower (or officer, employee, agent, elected or appointed official, or consultant of the Borrower, or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of Borrower) whether private, for-profit or nonprofit, including a community housing development organization ("CHDO") when acting as an owner, developer or sponsor.
- I. Comply with all applicable federal, state, and local regulations and requirements, including, but not limited to, Uniform Administrative Requirements, Federal Labor Standards, Davis-Bacon and Related Acts, Uniform Relocation Act requirements applicable as of the date of the execution of this Covenant Agreement, and the provisions of the Lead-Based Paint Poisoning Prevention Act. The Federal Labor Standards Provisions with which Borrower must comply are attached to the Loan Agreement as "Attachment 4" and incorporated herein. City's cost to administer Davis Bacon Federal Labor Standard, and Related Acts shall be borne by the Borrower. When Washington State prevailing wages apply, the Borrower shall comply with all State requirements under RCW 39.12 to the satisfaction of the State of Washington.

When applicable, the higher of Washington State prevailing wages or Davis-Bacon wages shall apply.

- J. Comply with all HOME program project requirements pursuant to 24 CFR part 92 et seq.
- K. Maintain housing in compliance with the property standards of 24 CFR §92.251 and local code requirements throughout the term of the Loan Agreement.
- L. Upon Project completion, the Project shall complete the final inspections and obtain final approvals on all construction permits, meet all licensing requirements needed to operate the facility as proposed by Borrower in its various funding applications, and meet the property standards of 24 CFR §92.251, minimum rehabilitation standards, and all applicable federal, state and local codes and ordinances. New construction projects must also meet HUD, state, and local requirements relating to accessibility and disaster mitigation.
- M. Cause each of the thirty (30) HOME-assisted units to be occupied by income-eligible households within eighteen (18) months after the Project is completed. If any HOME-assisted units are not occupied by eligible tenants within 6 months following the date of Project Completion, Borrower shall submit to the City current marketing information and, if the City requests it, an enhanced marketing plan for leasing the unoccupied units as quickly as possible, which information the City will provide to HUD as required by 24 CFR §92.252. If any HOME-assisted unit has not been rented to eligible tenants within eighteen (18) months after the date of Project Completion, Borrower shall repay the City \$8,333.33/unit for each such unit within thirty (30) days of the City's written request for repayment. This reflects the proportionate per unit share of HOME funds, i.e., \$250,000 HOME dollars/thirty (30) HOME units.

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

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

III. INCOME DETERMINATIONS

- A. For purposes of this Covenant Agreement, tenant "annual income" is defined pursuant to 24 CFR §92.203), and includes income from all persons in the household, less income adjustments pursuant to 24 CFR §5.611. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

- B. Initial tenant annual income determinations shall be made by the Borrower pursuant to 24 CFR §92.203. Subsequent tenant income determinations shall be made by the Borrower pursuant to 24 CFR §92.203 and 24 CFR §92.252(h).
- C. Rent increases and annual income recertifications shall be governed by the terms outlined in the Affordability Requirements below.

IV. AFFORDABILITY REQUIREMENTS

- A. HOME Affordability Period. The HOME Affordability Period, established pursuant to 24 CFR §92.252, is five (5) years, beginning after Project Completion, as determined by the Director. "Project Completion" means that all necessary title transfer requirements and construction work have been performed; the Project complies with the requirements of 24 CFR §92, including the property standards under 24 CFR §92.251; the final drawdown of HOME funds has been disbursed for the Project; and the project completion information has been entered in the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of §92.502(d), project completion occurs upon completion of construction and before occupancy. Repayment of the loan during the HOME Affordability Period will not extinguish the requirements of the Related Documents.
- B. City Affordability Period. The City Affordability Period is ten (10) years, beginning after Project completion, as determined by the Director. The HOME Affordability Period and City Affordability Period shall run concurrently. Collectively, the two periods are hereinafter referred to as the "Affordability Period." Upon expiration of the HOME Affordability Period, the City Affordability Period shall continue, but HUD will no longer monitor compliance with affordability requirements, unless the City Affordability Period is coterminous with the HOME Affordability Period. The requirements of the Affordability Period and other conditions of the Related Documents shall apply, as long as there are funds owing under the Note.
- C. Rent Limit. During the Affordability Period, rents on thirty (30) of the HOME-assisted units shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%) of Spokane area median income ("AMI"), as defined by HUD and adjusted for family size, unit size by number of bedrooms, tenant-paid utilities and tenant-supplied appliances. These units shall include seventeen (17) studio units, eight (8) one-bedroom units, and five (5) two-bedroom units. Should the HUD rents decline below the initial project rents, the Borrower's rents do not need to be reduced below the initial rents. A table of initial HUD rents for the Project is attached to the Loan Agreement as Attachment 3. The adjustment for tenant-paid utilities and tenant-supplied appliances is subject to §92.252. New HUD requirements include that the adjustment for tenant-paid utilities and tenant-supplied appliances be based on the HUD Utility Schedule Model, twelve (12) months of documented actual utility costs as acceptable to the City's Community,

Housing, & Human Services Department, or other methods as determined by HUD. Currently, the HUD Utility Schedule Model can be found at: <http://huduser.org/portal/resources/utilmodel.html>. HUD may clarify the new requirements to allow the use (in some circumstances) of the prior requirement, which used the Section 8 existing housing allowance for tenant-furnished utilities and other services as published annually by HUD and issued by the Spokane Housing Authority.

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

The City will provide Borrower with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits exclusive of rent paid through project-based subsidies) in accordance with this Loan Agreement and 24 CFR §92.252(f)(2). The Borrower must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance with the Affordability Requirements of this Loan Agreement. The City will review rents for compliance and approve or disapprove them every year. The Borrower must provide tenants of HOME-assisted units written notification of rent increases no less than 30 days prior to the beginning of the month in which the increase is intended to be implemented, subject to the provisions of a tenant's lease agreement, pursuant to 24 CFR §92.252(f)(3).

- D. LIHTC Rent Clause. For tenants of low-income tax credit assisted units (if low-income housing tax credits are awarded to the Project or portions of the Project), any increases in rent associated with tenant income shall be governed solely by section 42 of the Internal Revenue Code of 1986, as amended from time to time.
- E. Upon completion of the HOME Affordability Period, if the maximum rent and income limits are exceeded, the loan will be subject to repayment at the higher interest rate as provided for in Paragraph 2 of the Promissory Note.
- F. Income Limit. At initial occupancy, tenants of the thirty (30) HOME-assisted units shall have incomes not greater than fifty percent (50%) of the Spokane area median income ("AMI") as defined by HUD. If the income of a tenant of a HOME-assisted unit increases and exceeds eighty percent (80%) of AMI, then the tenant's rent shall increase to the lesser of thirty percent (30%) of the tenant's adjusted monthly income or Fair Market Rent, subject to paragraph IV.D hereof.
- G. Income Certifications. All tenants' incomes shall be recertified annually by the Borrower. Any applicable rent increases will be effective upon the next lease renewal, and are subject to thirty (30) days' written notice.

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

V. DEFAULT

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

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER

IN WITNESS WHEREOF, the Parties have executed this Agreement on this _____ day of _____, 2018.

By: _____
Julie Honekamp, Chief Executive Officer

On this ____ day of _____, 2018, personally appeared before me **Julie Honekamp**, to me known to be the Chief Executive Officer of Spokane Neighborhood Action Partners, a Washington nonprofit corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said person and the Grantor, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument.

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

By: David A. Condon, Mayor

Date: _____

APPROVED AS TO FORM:

By: _____
Terri L. Pfister, City Clerk

By: _____
Assistant City Attorney

Date: _____

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this ____ day of _____, 2018, personally appeared before me **David A. Condon and Terri L. Pfister**, to me known to be the **Mayor** and **City Clerk**, respectively, of and for the **City of Spokane**, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

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

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

ATTACHMENT 1

LEGAL DESCRIPTION

LOTS 1 AND 2, EXCEPT THE SOUTH 17 FEET THEREOF, CONVEYED TO THE CITY OF SPOKANE FOR STREET PURPOSES BY DEED DATED JUNE 5, 1985 RECORDED IN VOLUME "J" OF DEEDS, PAGE 290, BLOCK 54, SECOND ADDITION TO THE RAILROAD ADDITION, AS PER PLAT RECORDED IN VOLUME "A" OF PLATS, PAGE 8, INCLUDING THE EAST HALF OF VACATED JEFFERSON STREET LYING WESTERLY OF AND ADJACENT TO SAID LOT 1, RECORDS OF SPOKANE COUNTY;

ALSO, THE EAST 8 FEET OF LOT 4 AND ALL OF LOTS 5 AND 6, BLOCK 53, SECOND ADDITION TO THE RAILROAD ADDITION, AS PER PLAT RECORDED IN VOLUME "A" OF PLATS, PAGE 8, INCLUDING THE WEST HALF OF VACATED JEFFERSON STREET LYING ADJACENT TO THE NORTH 125 FEET OF LOT 6, RECORDS OF SPOKANE COUNTY;

INCLUDING THE NORTH 17 FEET OF VACATED BISHOP COURT FROM THE EAST LINE OF LOT 6, BLOCK 53 TO THE EAST LINE OF LOT 1, BLOCK 54, EXTENDED SOUTH, ALL IN SAID SECOND ADDITION TO THE RAILROAD ADDITION, RECORDS OF SPOKANE COUNTY;

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

Tax Parcel Number: 35192.4211

Situs Address: 1203 W 5th Avenue Spokane, WA 99204

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

06/04/2018

<u>Date Rec'd</u>	5/22/2018
<u>Clerk's File #</u>	OPR 2018-0348
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER
<u>Contact Name/Phone</u>	ALI BRAST 625-6638
<u>Contact E-Mail</u>	ABRAST@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	4700 - MULTI FAMILY HOUSING FOR 743 S SCOTT ST

Agenda Wording

Multiple Family Housing Property Tax Exemption Agreement with The Second Scott, LLC for two multi-family buildings with 15 units located at 743 S Scott St, Parcel Number 35204.0667.

Summary (Background)

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

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

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	BECKER, KRIS	<u>Study Session</u>	
<u>Division Director</u>	KINDER, DAWN	<u>Other</u>	Urban Experience Committee 5/14/18
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE	abrast@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	sbishop@spokanecity.org	
<u>Additional Approvals</u>		kbecker@spokanecity.org	
<u>Purchasing</u>			

Briefing Paper

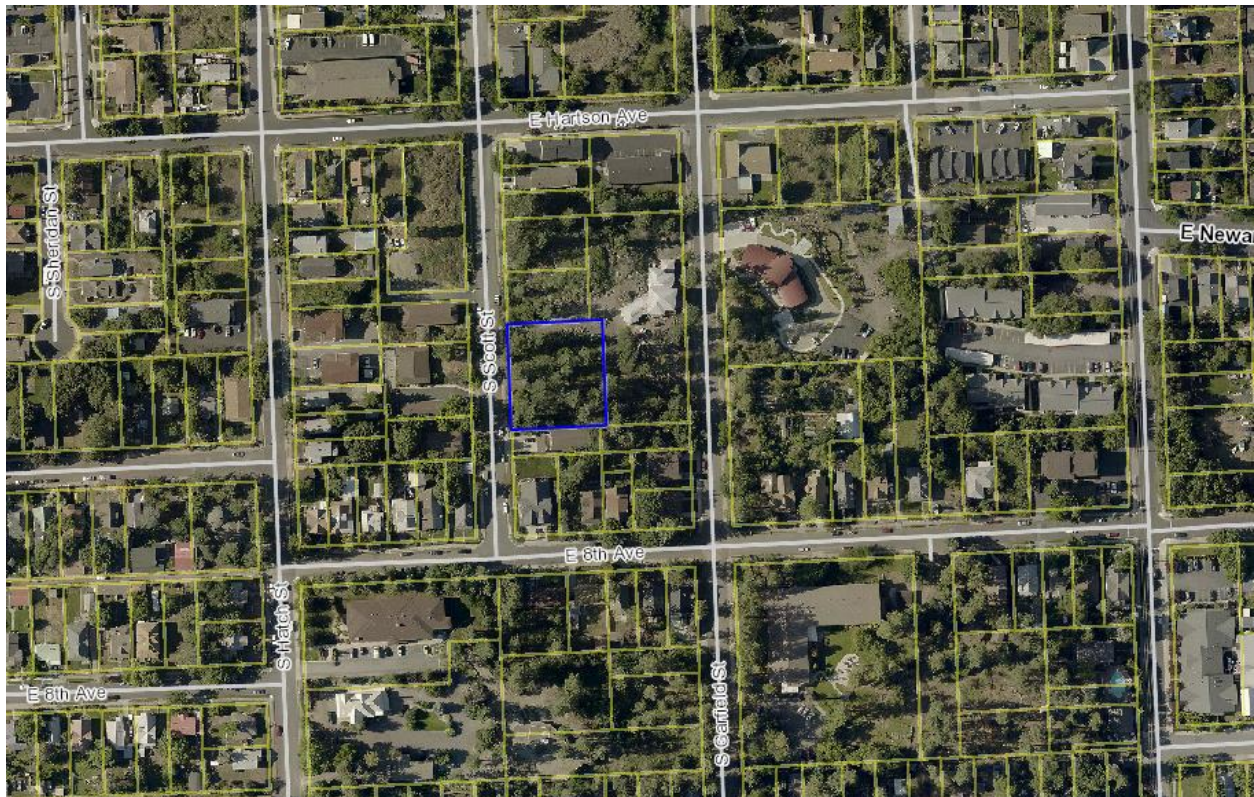
Urban Experience Committee

Division & Department:	Development Services Center
Subject:	MFTE Conditional Contract
Date:	May 14th, 2018
Contact (email & phone):	Ali Brast (abrast@spokanecity.org , 625-6638)
City Council Sponsor:	TBD
Executive Sponsor:	Dawn Kinder
Committee(s) Impacted:	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)	SMC 08.15 Multi- Family Housing Property Tax Exemption
Strategic Initiative:	
Deadline:	Will file for Council consideration following committee meeting
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of Conditional Multi-Family Tax Exemption contract
<p>Background/History: Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council enacted Ordinance No. C-32575, which provides for the property tax exemption program for multiple housing in residential targeted areas. Pursuant to Ordinance No. C-33079, the City Council expanded the residential targeted areas. Pursuant to Ordinance No. C-35524, the regulations were revised, allowing for rental rates of up to 115% AMI. The State statute and the City ordinance require the City to approve the application regarding the tax exemption and the necessary construction requirements. This contract authorizes the appropriate city official to enter into the Multiple Family Housing Property Tax Exemption Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office.</p>	
<p>Executive Summary:</p> <ul style="list-style-type: none"> Applicant applying for a conditional contract for a 15-unit apartment building on Scott St at 743 S Scott St. Property is zoned Residential Multi-Family, so the use is allowed. All surrounding zoning is multi-family as well. There is an existing single-family home to the south and to the east. This same developer built the new Scott Street Apartments, kitty corner from this site at 712 S Scott. 	
<p>Budget Impact:</p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p>Operations Impact:</p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	

Tax Abatement Information:

2018 Multi-Family Tax Exemption MFTE Property Tax Forgone & Savings Calculator	
Project Name: Scott St Apartments Two	
Number of units in the project	15
*Average Property Value Exempt per unit	\$121,094
Estimated City Property Tax forgone annually per unit	\$781
Estimated Property Tax saved per project annually	\$24,703
Enter the number of years of MFTE (8 or 12)	12
Estimated Property Tax saved during the term of exemption	\$296,439
Estimated City Tax forgone during the term of exemption per unit	\$9,373
Estimated City Tax forgone during the term of exemption all units	\$112,472
<i>Once a project has met programmatic criteria the owner can expect to save approximately \$1,600 on their tax bill for every \$120,000 of Exempt Assessed Value on the housing portions of the property.</i>	
<small>*Average Property Value Exempt per unit is based upon the average of all properties currently in the MFTE Program and 2017 Property value assessments</small>	

Site Map:



MULTIPLE FAMILY HOUSING PROPERTY
TAX EXEMPTION AGREEMENT

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and The Second Scott, LLC, as "Owner" whose business address is 2356 NW Quimby Street, Portland, OR 97210.

WITNESSETH:

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

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

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

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

HIGHLAND PARK HARTSONS TR E & F OF LT 8 BLK 5; SITUATE IN THE CITY
OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON

Assessor's Parcel Number(s) 35204.0667, commonly known as 743 South Scott Street.

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

The City and the Owner do mutually agree as follows:

1. The City agrees to issue the Owner a Conditional Certificate of Acceptance of Tax Exemption subsequent to the City Council's approval of this agreement.
2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application for a building permit is received. However, if the proposal includes rehabilitation or demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the

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

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

4. The Owner intends to construct on the site, approximately 15 new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 3 day of April, 2018

CITY OF SPOKANE

By: _____

Mayor, David A. Condon

Attest:

City Clerk

Jordan Samiee for
The Second Scott, LLC

By: Jordan Samiee

Its: manager

Approved as to form:

Assistant City Attorney

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared DAVID A. CONDON and TERRI L. PFISTER, to me known to be the Mayor and the City Clerk, respectively, of the CITY OF SPOKANE, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2018.

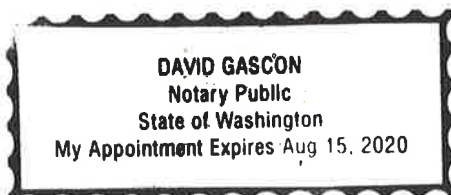
Notary Public in and for the State
of Washington, residing at Spokane

My commission expires _____

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this 3rd day of April, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Jordan Samice, to me known to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 3rd day of April, 2018.



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

My commission expires Aug 15, 2020

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

06/04/2018

<u>Date Rec'd</u>	5/22/2018
<u>Clerk's File #</u>	OPR 2018-0349
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER
<u>Contact Name/Phone</u>	ALI BRAST 625-6638
<u>Contact E-Mail</u>	ABRAST@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	4700 - MULTI FAMILY HOUSING FOR 2020 W 7TH AVE

Agenda Wording

Multiple Family Housing Property Tax Exemption Agreement with Namva Chan for 56 new multiple family permanent residential housing units located at 2020 West 7th Avenue, Parcel Number 25244.5601.

Summary (Background)

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

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

<u>Approvals</u>	<u>Council Notifications</u>		
<u>Dept Head</u>	BECKER, KRIS	<u>Study Session</u>	
<u>Division Director</u>	KINDER, DAWN	<u>Other</u>	Urban Experience Committee 5/14/18
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE	abrast@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	sbishop@spokanecity.org	
<u>Additional Approvals</u>		kbecker@spokanecity.org	
<u>Purchasing</u>			

Briefing Paper

Urban Experience Committee

Division & Department:	Development Services Center
Subject:	MFTE Conditional Contract
Date:	May 14th, 2018
Contact (email & phone):	Ali Brast (abrast@spokanecity.org , 625-6638)
City Council Sponsor:	TBD
Executive Sponsor:	Dawn Kinder
Committee(s) Impacted:	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)	SMC 08.15 Multi- Family Housing Property Tax Exemption
Strategic Initiative:	
Deadline:	Will file for Council consideration following committee meeting
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of Conditional Multi-Family Tax Exemption contract
<p>Background/History: Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council enacted Ordinance No. C-32575, which provides for the property tax exemption program for multiple housing in residential targeted areas. Pursuant to Ordinance No. C-33079, the City Council expanded the residential targeted areas. Pursuant to Ordinance No. C-35524, the regulations were revised, allowing for rental rates of up to 115% AMI. The State statute and the City ordinance require the City to approve the application regarding the tax exemption and the necessary construction requirements. This contract authorizes the appropriate city official to enter into the Multiple Family Housing Property Tax Exemption Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office.</p>	
<p>Executive Summary:</p> <ul style="list-style-type: none"> Applicant applying for a conditional contract for a 56-unit apartment building at the corner of 7th and Cannon at 2020 W 7th Ave. Property is zoned Office, with a height limit of 150ft, so the use is allowed. The zoning across 7th is RMF, while the zoning across Cannon is also Office. 	
<p>Budget Impact:</p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p>Operations Impact:</p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	

Tax Abatement Information:

2017 Multi-Family Tax Exemption MFTE Property Tax Forgone & Savings Calculator	
Project Name: Vinegar Flats	
Number of units in the project	56
*Average Property Value Exempt per unit	\$121,094
Estimated City Property Tax forgone annually per unit	\$2,916
Estimated Property Tax saved per project annually	\$92,225
Enter the number of years of MFTE (8 or 12)	12
Estimated Property Tax saved during the term of exemption	\$1,106,704
Estimated City Tax forgone during the term of exemption per unit	\$34,991
Estimated City Tax forgone during the term of exemption all units	\$419,897
<i>Once a project has met programmatic criteria the owner can expect to save approximately \$1,600 on their tax bill for every \$120,000 of Exempt Assessed Value on the housing portions of the property.</i>	
<small>*Average Property Value Exempt per unit is based upon the average of all properties currently in the MFTE Program and 2017 Property value assessments</small>	

Site Map:



**MULTIPLE FAMILY HOUSING PROPERTY
TAX EXEMPTION AGREEMENT**

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and Namva Chan, as "Owner" whose business address is 1918 West 10th Avenue.

WITNESSETH:

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

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

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

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

CANNONS ADD LTS 1-2-3-4-5&6 BLK 50 INC VAC W LY 25FT OF CANNON ST
ADJ ON THE E & VAC BANK AVE ADJ ON THE N EX C PTN OF LTS 1-2&3 &
VAC CANNON ST LYG SLY OF A LN DRWN FROM A PT 5FT W OF SW COR OF
LT 3 TO A PT 25FT E & 55FT S OF THE N ECOR OF LT 1 & EXC PTN OF LT 4
CONVEYED TO CITY VOL 187 PA GE338

Assessor's Parcel Number(s) 25244.5601, commonly known as 2020 West 7th Avenue.

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

The City and the Owner do mutually agree as follows:

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

2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application for a building permit is received. However, if the proposal includes rehabilitation or

demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

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

4. The Owner intends to construct on the site, approximately 56 new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement, which can be

given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

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

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

DATED this 4 day of April, 2018

CITY OF SPOKANE

By: _____

Mayor, David A. Condon

Attest:

City Clerk

Namva Chan

By: 

Its: member manager

Approved as to form:

Assistant City Attorney

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared DAVID A. CONDON and TERRI L. PFISTER, to me known to be the Mayor and the City Clerk, respectively, of the CITY OF SPOKANE, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2018.

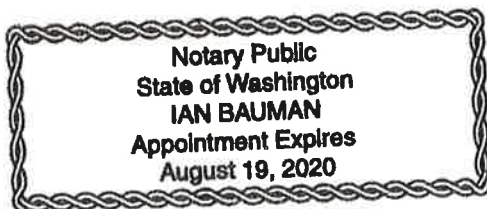
Notary Public in and for the State
of Washington, residing at Spokane

My commission expires _____

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this 4 day of APRIL, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared NAMKA CHAN, to me known to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 4 day of APRIL, 2018.



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

My commission expires 8/19/2020

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

06/04/2018

<u>Date Rec'd</u>	5/22/2018
<u>Clerk's File #</u>	OPR 2018-0350
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER
<u>Contact Name/Phone</u>	ALI BRAST 625-6638
<u>Contact E-Mail</u>	ABRAST@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	4700 - MULTI FAMILY HOUSING FOR 174 S HOWARD ST

Agenda Wording

Multiple Family Housing Property Tax Exemption Agreement with Brent & Susannah Stoltz for 21 residential housing units located at 174 S Howard St, Parcel Number 35191.2608.

Summary (Background)

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

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

<u>Approvals</u>	<u>Council Notifications</u>		
<u>Dept Head</u>	BECKER, KRIS	<u>Study Session</u>	
<u>Division Director</u>	KINDER, DAWN	<u>Other</u>	Urban Experience Committee 5/14/18
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE	abrast@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	sbishop@spokanecity.org	
<u>Additional Approvals</u>		kbecker@spokanecity.org	
<u>Purchasing</u>			

Briefing Paper

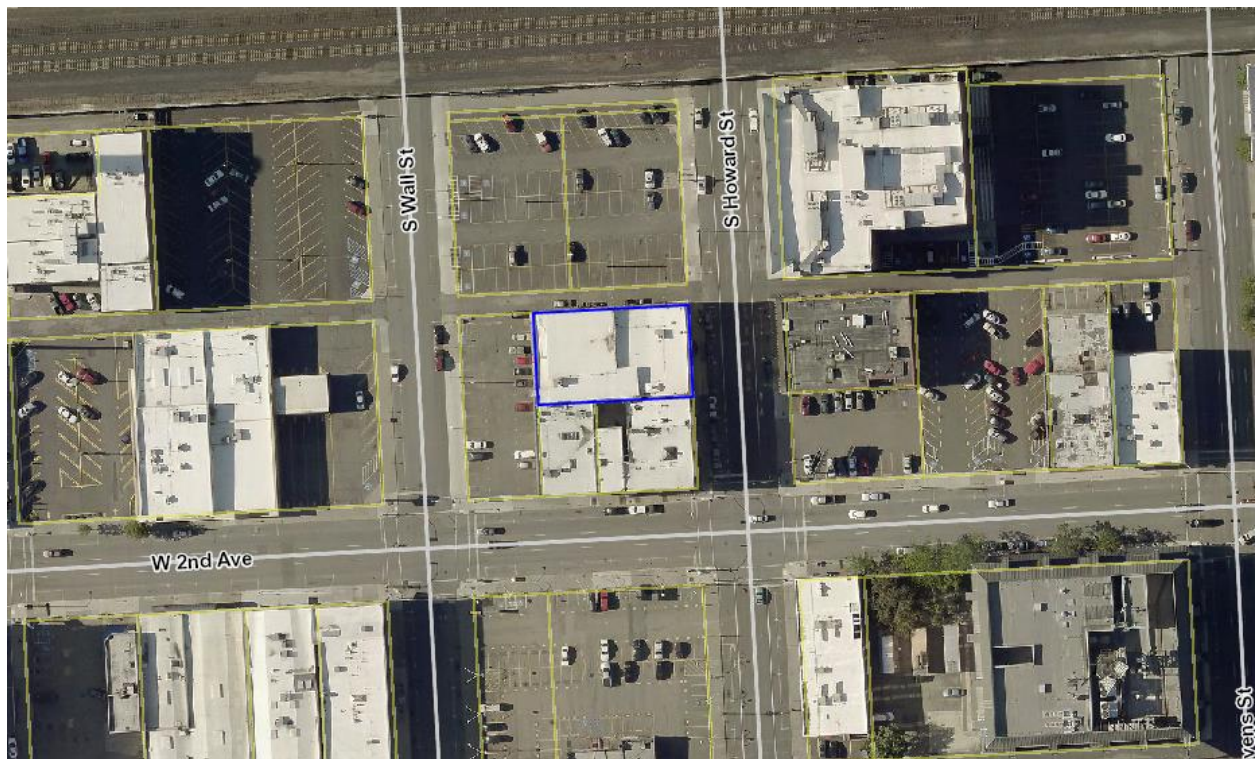
Urban Experience Committee

Division & Department:	Development Services Center
Subject:	MFTE Conditional Contract
Date:	May 14th, 2018
Contact (email & phone):	Ali Brast (abrast@spokanecity.org , 625-6638)
City Council Sponsor:	TBD
Executive Sponsor:	Dawn Kinder
Committee(s) Impacted:	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)	SMC 08.15 Multi- Family Housing Property Tax Exemption
Strategic Initiative:	
Deadline:	Will file for Council consideration following committee meeting
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of Conditional Multi-Family Tax Exemption contract
<p><u>Background/History:</u> Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council enacted Ordinance No. C-32575, which provides for the property tax exemption program for multiple housing in residential targeted areas. Pursuant to Ordinance No. C-33079, the City Council expanded the residential targeted areas. Pursuant to Ordinance No. C-35524, the regulations were revised, allowing for rental rates of up to 115% AMI. The State statute and the City ordinance require the City to approve the application regarding the tax exemption and the necessary construction requirements. This contract authorizes the appropriate city official to enter into the Multiple Family Housing Property Tax Exemption Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office.</p>	
<p><u>Executive Summary:</u></p> <ul style="list-style-type: none"> Applicant applying for a conditional contract to convert downtown office space at 174 S Howard (above the old Modern Theater) into a 21-unit apartment building, above two retail spaces. Property is zoned Downtown General. 	
<p><u>Budget Impact:</u></p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><u>Operations Impact:</u></p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	

Tax Abatement Information:

2018 Multi-Family Tax Exemption MFTE Property Tax Forgone & Savings Calculator	
Project Name: Howard Apartments	
Number of units in the project	21
*Average Property Value Exempt per unit	\$121,094
Estimated City Property Tax forgone annually per unit	\$1,093
Estimated Property Tax saved per project annually	\$34,585
Enter the number of years of MFTE (8 or 12)	12
Estimated Property Tax saved during the term of exemption	\$415,014
Estimated City Tax forgone during the term of exemption per unit	\$13,122
Estimated City Tax forgone during the term of exemption all units	\$157,461
<i>Once a project has met programmatic criteria the owner can expect to save approximately \$1,600 on their tax bill for every \$120,000 of Exempt Assessed Value on the housing portions of the property.</i>	
<small>*Average Property Value Exempt per unit is based upon the average of all properties currently in the MFTE Program and 2017 Property value assessments</small>	

Site Map:



**MULTIPLE FAMILY HOUSING PROPERTY
TAX EXEMPTION AGREEMENT**

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and Brent and Susannah Stoltz, as "Owner" whose business address is 3511 South High Drive, Spokane, WA 99203.

WITNESSETH:

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

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

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

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

THE NORTH HALF OF LOTS 4 AND 5, BLOCK 28 OF RAILROAD ADDITION, AS
PER PLAT THEREOF RECORDED IN VOLUME "D" OF PLATS, PAGE 82; IN
THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON.

Assessor's Parcel Number(s) 35191.2608, commonly known as 174 South Howard Street.

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

The City and the Owner do mutually agree as follows:

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

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

fail to comply with one or more standards of applicable building or housing codes, and the rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

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

4. The Owner intends to construct on the site, approximately 21 new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement, which can be

given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

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

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

DATED this 1st day of May, 2018

CITY OF SPOKANE

By: _____

Mayor, David A. Condon

Attest:

City Clerk

Susannah Stoltz

By: Susannah Stoltz

Its: owner

Approved as to form:

Assistant City Attorney

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared DAVID A. CONDON and TERRI L. PFISTER, to me known to be the Mayor and the City Clerk, respectively, of the CITY OF SPOKANE, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2018.

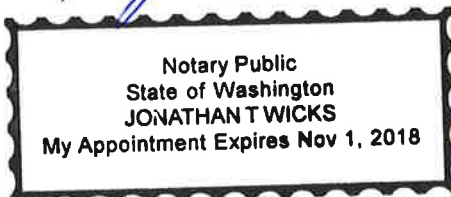
Notary Public in and for the State
of Washington, residing at Spokane

My commission expires _____

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this 18 day of May, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Susan L. Stoltz, to me known to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 18 day of May, 2018.



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

My commission expires 11/01/2018

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

06/04/2018

<u>Date Rec'd</u>	5/22/2018
<u>Clerk's File #</u>	OPR 2018-0351
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER
<u>Contact Name/Phone</u>	ALI BRAST 625-6638
<u>Contact E-Mail</u>	ABRAST@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	4700 - MULTI FAMILY HOUSING FOR 1608 E HARTSON AVE

Agenda Wording

Multiple Family Housing Property Tax Exemption Agreement with Nick Barnes, Brook Cunningham, & Andrew Mills for one multi-family building with four units located at 1608 E Hartson Ave, Parcel Number 35213.1810.

Summary (Background)

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

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

<u>Approvals</u>	<u>Council Notifications</u>		
<u>Dept Head</u>	BECKER, KRIS	<u>Study Session</u>	
<u>Division Director</u>	KINDER, DAWN	<u>Other</u>	Urban Experience Committee 5/14/18
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE	abrast@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	sbishop@spokanecity.org	
<u>Additional Approvals</u>		kbecker@spokanecity.org	
<u>Purchasing</u>			

Briefing Paper

Urban Experience Committee

Division & Department:	Development Services Center
Subject:	MFTE Conditional Contract
Date:	May 14th, 2018
Contact (email & phone):	Ali Brast (abrast@spokanecity.org , 625-6638)
City Council Sponsor:	TBD
Executive Sponsor:	Dawn Kinder
Committee(s) Impacted:	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)	SMC 08.15 Multi- Family Housing Property Tax Exemption
Strategic Initiative:	
Deadline:	Will file for Council consideration following committee meeting
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of Conditional Multi-Family Tax Exemption contract
<p>Background/History: Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council enacted Ordinance No. C-32575, which provides for the property tax exemption program for multiple housing in residential targeted areas. Pursuant to Ordinance No. C-33079, the City Council expanded the residential targeted areas. Pursuant to Ordinance No. C-35524, the regulations were revised, allowing for rental rates of up to 115% AMI. The State statute and the City ordinance require the City to approve the application regarding the tax exemption and the necessary construction requirements. This contract authorizes the appropriate city official to enter into the Multiple Family Housing Property Tax Exemption Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office.</p>	
<p>Executive Summary:</p> <ul style="list-style-type: none"> <i>Applicant applying for a conditional contract to build a new 4-plex on a lot with an existing single-family home at 1608 E Hartson. The tax exemption will only apply to the new 4-plex and will not include the existing single-family home.</i> <i>Property is zoned Residential Multi-Family; all surrounding zoning is RMF.</i> 	
<p>Budget Impact:</p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p>Operations Impact:</p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	

Tax Abatement Information:

2018 Multi-Family Tax Exemption MFTE Property Tax Forgone & Savings Calculator	
Project Name: Barnes 4-Plex	
Number of units in the project	4
*Average Property Value Exempt per unit	\$121,094
Estimated City Property Tax forgone annually per unit	\$208
Estimated Property Tax saved per project annually	\$6,588
Enter the number of years of MFTE (8 or 12)	12
Estimated Property Tax saved during the term of exemption	\$79,050
Estimated City Tax forgone during the term of exemption per unit	\$2,499
Estimated City Tax forgone during the term of exemption all units	\$29,993
<i>Once a project has met programmatic criteria the owner can expect to save approximately \$1,600 on their tax bill for every \$120,000 of Exempt Assessed Value on the housing portions of the property.</i>	
<small>*Average Property Value Exempt per unit is based upon the average of all properties currently in the MFTE Program and 2017 Property value assessments</small>	

Site Map:



MULTIPLE FAMILY HOUSING PROPERTY
TAX EXEMPTION AGREEMENT

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and Nick Barnes, Brook Cunningham, and Andrew Mills (BMC, LLC), as "Owner" whose business address is 10209 North Navaho Drive, Spokane, WA 99208.

W I T N E S S E T H:

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

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

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

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

THE NORTH 90 FEET OF LOTS 11 AND 12, BLOCK 1, LIBERTY PARK
ADDITION TO SPOKANE FALLS (NOW SPOKANE), AS PER PLAT
RECORDED IN VOLUME "C" OF PLATS, PAGE 28; SITUATED IN THE CITY
OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON

Assessor's Parcel Number(s) 35213.1810, commonly known as 1608 East Hartson Avenue.

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

The City and the Owner do mutually agree as follows:

1. The City agrees to issue the Owner a Conditional Certificate of Acceptance of Tax Exemption subsequent to the City Council's approval of this agreement.
2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application

for a building permit is received. However, if the proposal includes rehabilitation or demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 26 day of April, 2018

CITY OF SPOKANE

By: _____

Mayor, David A. Condon

Attest:

City Clerk

Nick Barnes for BMC, LLC

By: Nick B

Its: BMC, LLC Member

Approved as to form:

Assistant City Attorney

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared DAVID A. CONDON and TERRI L. PFISTER, to me known to be the Mayor and the City Clerk, respectively, of the CITY OF SPOKANE, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2018.

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

My commission expires _____

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this 26th day of April, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Nick Barnes, to me known to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 26th day of April, 2018.



Emily Orellana

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

My commission expires 8/7/2020



Agenda Sheet for City Council Meeting

of:

06/04/2018

Date Rec'd	5/16/2018
Clerk's File #	OPR 2018-0352
Renews #	

Submitting Dept	INTEGRATED CAPITAL	Cross Ref #	
Contact	ERIC LESTER 625-6394	Project #	2016059
Contact E-Mail	ELESTER@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	N/A
Agenda Item Name	4250 - RCO FUNDING BOARD AGREEMENT		

Agenda Wording

Funding Board Project Agreement to obtain needed city approval of a grant from the Recreation and Conservation Office (RCO) for the South Gorge Trail Completion project.

Summary (Background)

As part of the South Gorge Trail project, the City of Spokane applied for RCO grant funding through their ALEA and WWRP programs. The City was awarded the full amount of \$495,000 from the ALEA grant, and \$486,901 (out of the original request for \$1.1 million) from the WWRP grant. RCO grant monies are applicable to defined project components relating to approved trail, trailhead, and boat slide work. Grant monies may be applied to multiple city projects for performing the approved improvements.

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

Revenue	\$ 981,901.00	# 3200 95132 99999 33427 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>	PSCH June 4, 2018
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	ODLE, MARI	eraea@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	sstopher@spokanecity.org	
Additional Approvals		elester@spokanecity.org	
<u>Purchasing</u>		icmaccounting@spokanecity.org	
<u>GRANTS &</u>	STOPHER, SALLY		

Funding Board Project Agreement

Project Sponsor: City of Spokane
Project Title: South Gorge Trail

Project Number: 16-1471D
Approval Date: 2/1/2018

A. PARTIES OF THE AGREEMENT

This Funding Board Project Agreement (Agreement) is entered into between the State of Washington by and through the Recreation and Conservation Funding Board (RCFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and City of Spokane (Sponsor, and primary Sponsor), 808 W Spokane Falls Blvd, Spokane, WA 99201-3317, and shall be binding on the agents and all persons acting by or through the parties.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Per the Applicant Resolution/Authorizations submitted by all sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project, including but not limited to, full authority to: (1) sign an application to the funding board for grant assistance, (2) enter into this project agreement on behalf of the Sponsor(s) (including indemnification and waiver of sovereign immunity as provided therein), (3) enter any amendments thereto on behalf of the Sponsors, and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative of all sponsors.

If a Sponsor wishes to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization, the Sponsor has the obligation to provide to RCO in writing a new Applicant Resolution/Authorization signed by its governing body. Unless a new Applicant Resolution/Authorization has been provided, RCO will be entitled to rely upon the fact that the current Authorized Representative/Agent has the authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (see Section 11. PROJECT REIMBURSEMENTS).

B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the Aquatic Lands Enhancement Account and Outdoor Recreation Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO) to the Sponsor for the project named above per the director's authority granted in RCW 79A.25.020.

C. DESCRIPTION OF PROJECT

The City of Spokane will use this grant for the renovation of two trailheads/parks within Spokane's Peaceful Valley neighborhood, and construct approximately one mile of a non-motorized trail along the Spokane River between the trailheads. Additional primary scope elements include the development of the Glover Park boat slide and portions of the Peaceful Valley Conservation Area between the proposed trailheads to include picnic areas and natural landscaping. Connection to several short spur trails will provide access to the Spokane River. This trail segment will link neighborhoods, parks, other trail systems and create a new 3.5 mile loop with the Centennial Trail that can be accessed from downtown Spokane. The primary recreational opportunity created by this project is non-motorized trail access along the south shore of the Spokane River.

D. PERIOD OF PERFORMANCE

The period of performance begins on February 1, 2018 (project start date) and ends on July 31, 2019 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement or specifically provided for by WAC Titles 286, 420; or RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement.

The Sponsor must request extensions of the period of performance at least 60 days before the project end date.

The Sponsor has obligations beyond this period of performance as described in Section F: Long-Term Obligations.

E. STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Project Agreement are hereby incorporated by reference as part of this Agreement.

F. LONG-TERM OBLIGATIONS

For this development and renovation project, the sponsor's on-going obligations shall be in perpetuity and shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as approved by the funding board. It is the intent of the funding board's conversion policy (see Section 25: Long-Term Obligations Of The Project Sponsors) that all lands acquired and/or facilities and areas developed, renovated, or restored with funding assistance remain in the public domain in perpetuity.

G. PROJECT FUNDING

The total grant award provided by the funding board for this project shall not exceed \$981,901.00. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
RCFB - WWRP - Trails	29.29%	\$486,901.00	State
RCFB - Aquatic Lands Enhancement Acct	29.78%	\$495,000.00	State
Project Sponsor	40.93%	\$680,500.00	
Total Project Cost	100.00%	\$1,662,401.00	

H. FEDERAL FUND INFORMATION

This Agreement is not a federal subaward. This Agreement is funded with a grant from the State of Washington.

I. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

J. AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by all parties. Extensions of the period of performance and minor scope adjustments consented to in writing (including email) by the Sponsor need only be signed by RCO's director or designee, unless otherwise provided for in another agreement a Sponsor has with the RCO. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so, and such signature shall be binding on the Sponsor if the representative/agent signing has been authorized to do so by Applicant Resolution/Authorization provided to the RCO and such Applicant Resolution/Authorization has not been withdrawn by the governing body in a subsequent resolution.

Any amendment to this Agreement, unless otherwise expressly stated, shall be deemed to include all current federal, state, and local government laws and rules, and funding board policies applicable and active and published in RCO manuals or on the RCO Website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

K. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES

This agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including any applicable RCFB and/or SRFB policies published in RCO manuals or on the RCO Website as exist on the effective date of this Agreement and any amendments to this Agreement. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

L. SPECIAL CONDITIONS

1. Cultural Resources-Survey Required

Section 8 of this agreement requires compliance with Executive Order 05-05 and/or Section 106 of the National Historic Preservation Act. RCO has completed the initial consultation for this project and a cultural resources survey is required. The Sponsor must submit to RCO the survey and receive from RCO a Notice to Proceed before any

ground disturbing activities can begin. Construction started without a Notice to Proceed will be considered a breach of contract. In the event that archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in Section 8 of this agreement.

M. AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

Project Contact

Name: Eric Lester
Title:
Address: 808 W Spokane Falls Blvd
Spokane, WA 99201-3343
Email: elester@spokanecity.org

RCO - RCFB

Ben Donatelle
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917
Ben.Donatelle@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

N. ENTIRE AGREEMENT

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

O. EFFECTIVE DATE

This Agreement, for project 16-1471D, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the Sponsor and the RCO, whichever is later (effective date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D: PERIOD OF PERFORMANCE are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE PROJECT AGREEMENT. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

City of Spokane

By: _____

Date: _____

Name: (printed) _____

Title: _____

State of Washington, Recreation Conservation Office

On behalf of the Recreation and Conservation Funding Board (RCFB or funding board)

By: _____

Date: _____

Kaleen Cottingham
Director
Recreation and Conservation Office

Pre-approved as to form:

By:  _____

Date: October 6, 2017

Assistant Attorney General

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Standard Terms and Conditions of the Project Agreement

Project Sponsor: City of Spokane
Project Title: South Gorge Trail

Project Number: 16-1471D
Approval Date: 2/1/2018

SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

acquisition project – A project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

Agreement or project agreement – The document entitled “Funding Board Project Agreement” accepted by all parties to the present transaction, including without limitation these Standard Terms and Conditions of the Project Agreement, all attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the Funding Board Project Agreement subject to any limitations on their effect.

applicant – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding board.

application – The documents and other materials that an applicant submits to the RCO to support the applicant’s request for grant funds; this includes materials required for the “Application” in the RCO’s automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

Authorized Representative/Agent – A Sponsor’s agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

Boating Infrastructure Grant (BIG) – A program administered through the United States Fish and Wildlife Service.

C.F.R. – Code of Federal Regulations

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

development project – A project that results in the construction of, or work resulting in, new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources.

director – The chief executive officer of the Recreation and Conservation Office or that person's designee.

education project – A project that provides information, education, and outreach programs for the benefit of outdoor recreationists.

education and enforcement project – A project that provides information, education, and outreach programs; encourages responsible recreational behavior, and may provide law enforcement for the benefit of outdoor recreationists.

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

enhancement project – 1) A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site, or 2) a project that (i) supports hatchery reform to improve hatchery effectiveness to minimize impacts to wild fish populations, (ii) ensures compatibility between hatchery production and salmon recovery programs, or (iii) supports sustainable fisheries (WAC 420.04.010).

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. § 200.33 (2013)).

funding board or board – The board that authorized the funds in this Agreement, either the Recreation and Conservation Funding Board (RCFB) created under RCW 79A.25.110, or the Salmon Recovery Funding Board (SRFB) created under RCW 77.85.110.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

long-term compliance period – The period of time after the project end date or end of the period of performance (depending on the project types and grant program). During this period, the Sponsor has continuing obligations under the Agreement. This period may have a nonspecific end date (in perpetuity) or an expressly specified number of years.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and applicable regulations and policies.

landowner agreement – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

maintenance – A project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreation or salmon recovery.

maintenance and operation – A project that maintains and operates existing areas and facilities through repairs, upkeep, and routine services for the benefit of outdoor recreationists.

match or matching share – The portion of the total project cost provided by the Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

monitoring project – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

monitoring and research project – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

Office – Means the Recreation and Conservation Office or RCO.

notice of grant – As required by RCO or another authority, a document that has been legally recorded in the county or counties where the project property is located that describes the grant funded project located on the property, the funding sources, and agencies responsible for awarding the grant.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

planning (RCFB projects only) – A project that results in one or more of the following: a study, a plan, construction plans and specifications, and permits to increase the availability of outdoor recreational resources.

planning (SRFB projects only) – A project that results in a study, assessment, project design, or inventory.

pre-agreement cost – A project cost incurred before the period of performance.

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. This administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – An undertaking that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.

project area, RCFB – A geographic area that delineates a grant assisted site which is subject to project agreement requirements (WAC 286.04.010).

project area, SRFB – The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project (WAC 420.04.010).

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (2 C.F.R. § 200.83 (2013)).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

research project – Means a project that studies salmon and the effectiveness of recovery restoration efforts on the population or habitat condition.

RCO – Recreation and Conservation Office – The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by RCW 79A.25.110 and 79A.25.150 and charged with administering this Agreement by RCW 77.85.110 and 79A.25.240.

reimbursement – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

restoration project – A project that brings a site back to its historic function as part of a natural ecosystem or improving the ecological functionality of a site.

restoration and enhancement project – A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site or a larger ecosystem which improvement may include benefiting fish stocks.

RCFB – Recreation and Conservation Funding Board

RCW – Revised Code of Washington

Recreational Trails Program (RTP) – A Federal Highways Administration grant program.

secondary Sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

SRFB – Salmon Recovery Funding Board

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in Section G: Project Funding.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

useful service life – Period during which an asset or property is expected to be useable for the purpose it was acquired, developed, renovated, and/or restored per this Agreement.

WAC – Washington Administrative Code.

SECTION 2. PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

SECTION 3. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the RCO.

SECTION 4. RESPONSIBILITY FOR PROJECT

While the funding board undertakes to assist the Sponsor with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the Sponsor. The funding board undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project is Sponsored by more than one entity, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO has no responsibility for reviewing, approving, overseeing or supervising design or construction of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO will act only to confirm at a general, lay, and nontechnical level, solely for the purpose of compliance and payment and not for safety or suitability, that the project has apparently been completed as per the Agreement.

SECTION 5. INDEMNIFICATION

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or the negligence of the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

This provision shall be included in any agreement between Sponsor and any contractors, subcontractor and vendor, of any tier.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06 or Section 30B.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

SECTION 7. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

SECTION 8. COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- A. Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the funding board. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law.
- B. Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.040. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
 - 1. Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130).** If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.
- D. Archaeological and Cultural Resources.** RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The Sponsor must assist RCO in compliance with Governor's Executive Order 05-05 or the National Historic Preservation Act before and after initiating ground-disturbing activity or construction, repair, installation, rehabilitation, renovation, or maintenance work on lands, natural resources, or structures. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the Sponsor shall comply with the requirements of Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.

- E. Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

- F. Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

SECTION 9. RECORDS

- A. Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. Maintenance.** The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in Section 11: PROJECT REIMBURSEMENTS. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. Public Records.** Sponsor acknowledges that the funding board is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04. Additionally, in compliance with RCW 77.85.130(8), Sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

SECTION 10. PROJECT FUNDING

- A. Authority.** This Agreement is funded through a grant award from the recreation and conservation funding board per WAC 286 and/or the salmon recovery funding board per WAC 420. The director of RCO enters into this Agreement per delegated authority in RCW 79A.25.020 and 77.85.120.
- B. Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this Agreement.
- C. Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in Section H: FEDERAL FUND INFORMATION are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- E. After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 11. PROJECT REIMBURSEMENTS

- A. Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in Section G: PROJECT FUNDING. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recently published/adopted RCO policies and procedures regarding reimbursement requirements.
- C. Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the project has been completed. A project is considered "complete" when:
 - 1. All approved or required activities outlined in the Agreement are done;
 - 2. On-site signs are in place (if applicable);
 - 3. A final project report is submitted to and accepted by RCO;
 - 4. Any other required documents and media are complete and submitted to RCO;

5. A final reimbursement request is submitted to RCO;
6. The completed project has been accepted by RCO;
7. Final amendments have been processed;
8. Fiscal transactions are complete, and
9. RCO has accepted a final boundary map, if requested by RCO, for which the Agreement terms will apply in the future.
10. Notice of Grant (if applicable) filed with the county lands records office and a stamped copy received by RCO

E. Requirements for Federal Subawards: Match. The Sponsor's matching share must comply with 2 C.F.R. § 200.306 (2013). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, can be accepted as part of the Sponsor's matching share when such contributions meet all of the following criteria:

1. Are verifiable from the non-Federal entity's (Sponsor's) records;
2. Are not included as contributions for any other Federal award;
3. Are necessary and reasonable for accomplishment of project or program objectives;
4. Are allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles (2013);
5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
6. Are provided for in the approved budget when required by the Federal awarding agency identified in Section H: FEDERAL FUND INFORMATION of this Agreement; and
7. Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.

F. Requirements for Federal Subawards: Close out. Per 2 C.F.R § 200.343 (2013), the non-Federal entity (Sponsor) must:

1. Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.
2. Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
3. Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.

4. Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property (2013).

SECTION 12. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements. See WAC 420-12.

SECTION 13. RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- B. **Overpayment Payments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.
- C. **Requirements for Federal Subawards.** RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

SECTION 14. COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 15. INCOME (AND FEES) AND USE OF INCOME

RCFB Projects. See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

A. Income.

1. **Farm and Forest Account (Farmland and Forestland Preservation Grants).** Excepted from this section is income generated and fees paid on/for properties which received funds from the Farm and Forest Account (RCW 79A.15.130).
2. **Firearms and Archery Range Recreation Projects.** Excepted from this section are safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).
3. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any policies adopted by the RCFB or SRFB.

- B. Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
1. The Sponsor's matching resources;
 2. The project's total cost;
 3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;
 4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
 5. Capital expenses for similar acquisition and/or development and renovation; and/or
 6. Other purposes explicitly approved by RCO
- C. Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored with funding board grants if the fees are consistent with the:
1. Grant program laws, rules, policies, and funding board policies;
 2. Value of any service(s) furnished;
 3. Value of any opportunities furnished; and
 4. Prevailing range of public fees in the state for the activity involved.
- D. Requirements for Federal Subawards.** Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013).

SECTION 16. PROCUREMENT REQUIREMENTS

- A. Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists the Sponsor must follow these minimum procedures:
1. Publish a notice to the public requesting bids/proposals for the project;
 2. Specify in the notice the date for submittal of bids/proposals;
 3. Specify in the notice the general procedure and criteria for selection; and
 4. Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
 5. Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

B. Requirements for Federal Subawards.

1. For all Federal subawards except RTP projects, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).
2. For RTP subawards, Sponsors follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)). State procurement policies are in subsection A of this section.

SECTION 17. TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in published funding board policies, or approved by RCO in writing.

A. Discontinued Use. Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.

B. Loss or Damage. The Sponsor shall be responsible for any loss or damage to equipment.

C. Requirements for Federal Subawards. Except in the RTP, procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013)):

1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
4. Adequate maintenance procedures must be developed to keep the property in good condition.
5. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

D. Requirements for RTP Subawards.

1. The subrecipient (Sponsor) shall follow such policies and procedures prescribed by and allowed by the State, as well as federal law and federal rules issued by the Federal Highways Administration and 2 CFR 200.

2. Sponsor may be required to pay prevailing wage rates as required by the Davis Bacon Act as amended.

SECTION 18. RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement.

If a landowner agreement or other form of control and tenure as described in Section 23.C: Control and Tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

SECTION 19. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in funding board policy, this Agreement, or as otherwise directed by RCO consistent with existing policies. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

SECTION 20. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 21. ACKNOWLEDGMENT AND SIGNS

A. Publications. The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.

B. Signs.

1. During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director; and
2. During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.

C. Ceremonies. The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.

D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:

1. The fund source;
2. The percentage of the total costs of the project that is financed with federal money;

3. The dollar amount of federal funds for the project; and
4. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 22. PROVISIONS FOR BOATING PROJECT GRANTS

If requested by RCO, or required per state or federal law or rule with respect to any project or project element that supports recreational boating, Sponsor shall manage the project or project element per federal rules to include 2 C.F.R. Part 200, and place a United States Coast Guard (or other federal agency) logo and funding program information at the project site.

SECTION 23. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is for construction of land or facilities in a development, maintenance, renovation or restoration project:

- A. Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted by the board and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration (WAC 286.13.130). It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
- B. Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.
 1. Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval of the board or RCO.
- C. Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure (such as landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for construction. The documentation must meet current RCO requirements identified in the appropriate grant program policy manual as of the effective date of this Agreement and determines the long-term compliance period unless otherwise approved by the board.
- D. Nondiscrimination.** Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

- E. Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009; "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.

SECTION 24. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is an acquisition project (including projects with any acquisition component):

- A. Evidence of Land Value.** Before disbursement of funds by RCO as provided under this Agreement, the Sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.
- B. Evidence of Title.** The Sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased with funding assistance provided through this Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be delivered to RCO before final payment.
- D. Conveyance of Rights to the State of Washington.** When real property rights (both fee simple and lesser interests) are acquired, the Sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The Sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the funding board project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
- 1. Deed of Right.** The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, access, and/or use the property for public purposes consistent with the funding source and project agreement. See WAC 286 or 420. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the Sponsor has acquired a perpetual easement for public purposes.
 - 2. Assignment of Rights.** The Assignment of Rights document transfers certain rights to RCO and the state such as public access, access for compliance, and enforcement. Sponsors shall use this document when an easement or lease is being acquired under this Agreement. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
 - 3. Easements and Leases.** The Sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; Sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

E. Real Property Acquisition and Relocation Assistance.

1. **Federal Acquisition Policies.** When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended, and applicable regulations and procedures of the federal agency implementing that Act.
2. **State Acquisition Policies.** When state funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
3. **Housing and Relocation.** In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the Sponsor agrees to provide any housing and relocation assistance required.

F. Buildings and Structures. In general, grant funds are to be used for outdoor recreation, conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsor must consult with RCO regarding treatment of such structures and compliance with Section 8.D Archeological and Cultural Resources.

G. Hazardous Substances.

1. **Certification.** The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(13), and certify:
 - a. No hazardous substances were found on the site, or
 - b. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
2. **Responsibility.** Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
3. **Hold Harmless.** The Sponsor will defend, protect and hold harmless the State and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the Sponsor is acquiring, except to the extent, if any, that the State, its officers and agents caused or contributed to the release. The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

H. Requirements for Federal Subawards. The non-federal entity (Sponsor) must submit reports at least annually on the status of real property in which the federal government retains an interest, unless the federal interest in the real property extends 15 years or longer. In those instances where the federal interest attached is for a period of 15 years or more, the federal awarding agency or the pass-through entity (RCO), at its option, may require the Sponsor to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a federal awarding agency or RCO may require annual reporting for the first three years of a federal award and thereafter require reporting every five years) (2 C.F.R § 200.329 (2013)).

SECTION 25. LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. Long-Term Obligations of RCFB Projects.** Sponsor shall comply with WAC 286-13-160, 170, and 180.
- B. Long-Term Obligations of SRFB Projects.** Sponsor shall comply with WAC 420.
- C. Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by policy, program rules, or this Agreement, or approved in writing by RCO or the funding board, RCO requires that the project area continue to function as intended after the period of performance in perpetuity.
- D. Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, renovated, and/or restored pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. Also see WAC Title 286 or 420 and applicable policies. All real property or facilities acquired, developed, renovated, and/or restored with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policy or unless a transfer or change in use is approved by the funding board through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon this Agreement, applicable law and RCFB/SRFB policies.

For acquisition projects that are expressly term limited in the Agreement, such as one involving a lease or a term-limited restoration, renovation or development project or easement, the restriction on conversion shall apply only for the length of the term, unless otherwise provided in this Agreement, by funding board policy, other RCO approved written documents, or required by applicable state or federal law.

When a conversion has been determined to have occurred, the Sponsor is required to remedy the conversion per established funding board policies, and the board or RCO may pursue such remedies as are allowed by law and board policies, and/or this Agreement.

SECTION 26. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force only if the project described in this Agreement is an acquisition, development, maintenance, renovation, or restoration project:

- A. Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:
 - 1. According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
 - 2. In a reasonably safe condition for the project's intended use;
 - 3. Throughout its estimated useful service life so as to prevent undue deterioration;
 - 4. In compliance with all federal and state nondiscrimination laws, regulations and policies.
- B. Open to the public.** Unless otherwise specifically provided for in the Agreement of funding board policies, and in compliance with applicable statutes, rules, and funding board policies, facilities must be open and accessible to the general public, and must:

1. Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
3. Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals, by a decision of the board, or by RCO in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

SECTION 27. RECORDED NOTICE OF GRANT

At the request of RCO, Sponsor shall record a notice of grant on the property and shall submit to the RCO a recorded and registry stamped copy of such notice. The purpose of the notice of grant is to ensure that the present and future use of the facility is and shall remain subject to the terms and conditions described in this Agreement. The notice of grant shall be in a format specified by RCO.

SECTION 28. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS

A corporate Sponsor, including any nonprofit Sponsor, shall:

- A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the Sponsor's obligation to the project as identified in the Agreement.
- B. Notify RCO before corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities, and transfer all property and assets to the successor. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the Sponsor's obligation to the qualified successor if requirements are met.
- C. Maintain sites or facilities open to the public and may not limit access to members.

SECTION 29. PROVISIONS FOR FEDERAL SUBAWARDS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded with a federal subaward as identified in Section H: FEDERAL FUND Information:

- A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. **Binding Official.** Per 2 CFR 200.415, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

C. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, paragraph C.

- 1. Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- 2. Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in Section H: Federal Fund Information.

The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: Federal Fund Information.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- F. Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).

- H. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

- I. Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- J. Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- K. Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- L. Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

SECTION 30. PROVISIONS FOR BOATING INFRASTRUCTURE GRANTS

- A. Use of Sport Fish Restoration Logo.** Per 50 CFR 86 Sec 75 and 76, the user of the logo must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from; any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the logo, or any other alleged action of the user; and any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the logo. No one may use any part of the logo in any other manner unless the United States Fish and Wildlife Service's Assistant Director for Wildlife and Sport Fish Restoration or Regional Director approves in writing.

SECTION 31. PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Firearms and Archery Range Recreation Account.

- A. Liability Insurance.** The Sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it carries, or shall procure a new policy of liability insurance, in a total coverage amount the Sponsor deems adequate to ensure it will have resources to pay successful claims of people who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- B. Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.

- C. Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor's obligation to the project as identified in this Agreement in Section F. LONG-TERM OBLIGATIONS.
- D. Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.
- E. Government Agencies.** The requirement of Subsection A through D above shall not apply if the Sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.
- F. Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

SECTION 32. PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS ONLY

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "LWCF Grant Agreement General Provisions" are made part of this Agreement and incorporated herein. The Sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the Sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

SECTION 33. PROVISIONS FOR FARM AND FOREST ACCOUNT PROJECTS (FARMLAND AND FORESTLAND PRESERVATION PROJECTS ONLY)

The following sections will not apply to Farmland and Forestland Preservation Projects if covered separately in a recorded RCO approved Agricultural Conservation Easement, or Forest Conservation Easement (or other method):

- A.** Section 15 - Income and Income Use;
- B.** Section 19 - Stewardship and Monitoring;
- C.** Section 21 - Acknowledgement and Signs;
- D.** Section 24 -- Provisions Applying To Acquisition Projects, Sub-sections D, F, and G;
- E.** Section 25C -Perpetuity; and
- F.** Section 26 -- Construction, Operation, Use and Maintenance of Assisted Projects.

SECTION 34. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS ONLY

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

SECTION 35. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded in part or wholly from the Puget Sound Acquisition and Restoration program.

The Sponsor agrees to the following terms and conditions:

- A. Cost Principles/Indirect Costs For State Agencies.** GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award. In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements," if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.
- B. Credit and Acknowledgement.** In addition to Section 21: Acknowledgement and Signs, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.
- C. Hotel Motel Fire Safety Act.** Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance or to find other information about the Act.
- D. Drug Free Workplace Certification.** Sub-recipient (Sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E.
- E. Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs that are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except for the extent authorized as a direct cost of carrying out the scope of work.
- F. Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA).** This provision applies only to a sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor), if any. Sub-recipient (Sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement.

"You as the sub-recipient, your employees, sub-awardees under this award, and sub-awardees' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award."

The sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor) must inform RCO immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

The federal agency funding this Agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

- G. Lobbying.** The chief executive officer of this recipient agency (Sponsor) shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States, unless authorized under existing law. The recipient (Sponsor) shall abide by its respective Cost Principles (OMB Circulars A-21, A-87, and A-122), which generally prohibits the use of federal grant funds for litigation against the United States, or for lobbying or other political activities.

The Sponsor agrees to comply with 40 C.F.R. Part 34, New Restrictions on Lobbying. Sponsor shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-awardees submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any Sponsor who makes a prohibited expenditure under 40 C.F.R. Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure.

All contracts awarded by Sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at 40 C.F.R. Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, Sponsor affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- H. Reimbursement Limitation.** If the Sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the Sponsor for costs incurred in excess of the RCO approved budget.
- I. Disadvantaged Business Enterprise Requirements.** The Sponsor agrees to comply with the requirements of EPA's Utilization of Small, Minority and Women's Business Enterprises in procurements made under this award.
- J. Minority and Women's Business Participation.** Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

These goals are expressed as a percentage of the total dollars available for purchase or agreement and are as follows:

Purchased Goods 8% MBE 4% WBE

Purchased Services 10% MBE 4% WBE

Professional Services 10% MBE 4% WBE

Meeting these goals is voluntary and no agreement award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and Sponsor and ALL prospective bidders or people submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.

3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

K. MBE/WBE Reporting. In accordance with the deviation from 40 C.F.R. §33.502, signed November 8, 2013, DBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

1. There are any funds budgeted in the contractual/services, equipment or construction lines of the award;
2. \$3,000 or more is included for supplies; or
3. There are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as
4. Described in items (a) and (b).

When completing the form, recipients (Sponsors) should disregard the quarterly and semi-annual boxes in the reporting period Section 1B of the form. For annual submissions, the reports are due by October 30th of each year or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on planned procurements. Recipients (Sponsors) with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in Section 5B when completing the form.

MBE/WBE reports should be sent to the DBE Coordinator in the Sponsor's region. Contact information can be found at <http://www.epa.gov/osbp/contactpage.htm>. The coordinators also can answer any questions.

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. To be in compliance with regulations, the Sponsor must submit a final MBE/WBE report. Non-compliance may impact future competitive grant proposals. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm.

L. Procurement involving an EPA Financial Assistance Agreement. Pursuant to 40 C.F.R. § 33.301, the Sponsor agrees to make the following six good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients (Sponsors), and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

1. Ensure Disadvantaged Business Enterprise (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government Sponsors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government Sponsors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when an agreement is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development of the Department of Commerce.
6. If the Sponsor awards subcontracts, require the Sponsor to take the steps in paragraphs (a) through (e) of this section.

M. Lobbying & Litigation. By signing this Agreement, the Sponsor certifies that none of the funds received from this Agreement shall be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

The chief executive officer of this Sponsor agency shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The Sponsor shall abide by its respective Attachment in 2 C.F.R. Part 200, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

For subawards exceeding \$100,000, EPA requires the following certification and disclosure forms:

1. Certification Regarding Lobbying, EPA Form 6600-06:
http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf
2. Disclosure of Lobbying Activities, SF LLL: http://www.epa.gov/ogd/AppKit/form/sfillin_sec.pdf
3. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

N. Payment to Consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients (Sponsors) or by a recipients' (Sponsor's) contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with his/her normal travel reimbursement practices).

Subagreements with firms for services that are awarded using the procurement requirements in 40 C.F.R. Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient (Sponsor) with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 C.F.R. § 30.27(b) or 40 C.F.R. § 31.369(j), as applicable, for additional information.

As of January 1, 2014, the limit is \$602.24 per day \$75.28 per hour.

- O. Peer Review.** Where appropriate, prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.
- P. International Travel (Including Canada).** All International Travel must be approved by the US Environmental Protection Agency's Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.
- Q. Unliquidated Obligations (ULO).** Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

SECTION 36. ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

1. Federal law and binding executive orders;
2. Code of federal regulations;
3. Terms and conditions of a grant award to the state from the federal government;
4. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
5. State law (constitution, statute);
6. Washington Administrative Code;
7. Funding board or RCO policies.

SECTION 37. LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate by writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

SECTION 38. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

SECTION 39. APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The funding board and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 40. SPECIFIC PERFORMANCE

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement and/or enforcement of long-term obligations. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

SECTION 41. TERMINATION AND SUSPENSION

The funding board and RCO will require strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and all funding board and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by the funding board. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

A. For Cause.

1. The funding board or the director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
 - a. If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
 - b. If the Sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
 - c. If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
2. Prior to termination, the RCO or the funding board shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director or board approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
3. RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

B. For Convenience. Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

1. The Sponsor was not in default; or
2. Failure to perform was outside Sponsor's control, fault or negligence.

C. Rights of Remedies of the RCO.

1. The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
2. In the event this Agreement is terminated by the funding board or director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. Non Availability of Funds. The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

1. **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

SECTION 42. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the funding board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

SECTION 43. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

SECTION 44. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington . In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington .

SECTION 45. PROVISIONS APPLICABLE ONLY IF FEDERALLY RECOGNIZED INDIAN TRIBE IS THE SPONSOR

In the cases where this Agreement is between the funding board (which includes the State of Washington for purposes of this Agreement) and a federally recognized Indian Tribe, the following terms and conditions apply, but only between those parties:

- A.** Notwithstanding the above venue provision, if the State of Washington intends to initiate legal action against a federally recognized Indian tribe relating to the performance, breach, or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such an action in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such action in federal court, otherwise the State may sue the Tribe in the Thurston County Superior Court, or such other superior court where venue is proper, if not proper in Thurston County. Interpretation of the Agreement shall be according to applicable State law , except to the extent preempted by federal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the State may bring suit in Thurston County Superior Court or such other superior court where venue is proper, if not proper in Thurston County.
- B.** Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such actions under subsection A above, shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers, or employees, or the State of Washington, its agencies, or its officers and employees may exceed the amount of funding awarded under this Agreement.
- C.** As requested by RCO, the Tribe shall provide to RCO its governing requirements and procedures for entering into Agreement with RCO and waiving its sovereign immunity. In addition, the tribe shall provide to RCO all authorizations the Tribe requires to authorize the person(s) signing the Agreement on the Tribe's behalf to bind the Tribe and waive the Tribe's sovereign immunity as provided herein .

- D.** The Tribe hereby waives its sovereign immunity for suit in federal and state court for the limited purposes of allowing the State to bring and prosecute to completion such actions relating to the performance, breach, or enforcement of this Agreement as provided in subsection A above, and to bring actions to enforce any judgment arising from such actions. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the funding board, the RCO, and any other state agencies as the term "agency" is broadly understood to include, but not be limited to, departments, commissions, boards, divisions, bureaus, committees, offices, councils, societies, etc.

SECTION 46. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

Eligible Scope Activities

Project Sponsor: City of Spokane
Project Title: South Gorge Trail
Program: WWRP - Trails

Project Number: 16-1471
Project Type: Development
Approval: 2/1/2018

Project Metrics

Sites Improved

Project acres developed:

4.10

This area represents the new trail improvements between and including the expanded portion of Glover Field Park parking lot, boat launch, viewpoint, River Walk park landscape and picnic enhancement, Peaceful Valley Conservation Area near the Clarke Pump Station picnic enhancement.

Project acres renovated:

0.61

Area represented by the existing parking lots at Peoples' Park and at Glover Field Park.

Development Metrics

Worksite #1, South Gorge Trail

Buildings and Structures

Construct / install restroom

Number of restrooms:

4 new, 0 renovated

Pad construction for one ADA sani-can, and one standard sani-can per location.

Pads for sani-cans

Select the restroom type :

Sani-can style units to be used.

Maintenance will be paid for through city maintenance funds, with no RCO funds used to procure or maintain.

Eligible Scope Activities

General Site Improvements

Develop viewpoint

Number of designated viewpoints:

1 new, 0 renovated

Select the viewpoint structures:

Benches/seating, Other

Install fencing/barriers

At People's Park, Glover Field, and River Walk Park estimated cost to provide and place boulders along park adjacent to lot/street to prevent unauthorized vehicle entry onto sensitive lands, cost estimate: 250 boulders at 163\$/ea = \$40,750; chain link fencing along top of retaining walls adjacent to trail, estimated cost: 550' x 69\$/lf = \$37,950; installation of bollards; Glover Field fence work covered under ALEA to include \$24,000 for modified chain link fence work.

Install lighting (general security)

Number of general security lights installed:

12

8 each for parking lots; 2 each for Clarke Pump Station along path, and 2 each on Clarke Pump Station building walls.

Install signs/kiosk

Number of kiosks:

1 new, 0 renovated

Number of interpretive signs/displays:

14 new, 0 renovated

Number of permanent entrance signs:

2 new, 0 renovated

Project involves installation of informational signs (yes/no):

No

Enter the number of signs / kiosks:

Kiosks

1

Directional / wayfinding signs

12

Informational signs

2

Interpretive signs

9

Install one each kiosk with tribal cultural information and commemoration of discovered Indian remains. To include 9 each interpretive signs; 14 each directional and wayfinding signs; renovate existing 2 each park entry signs.

Install site furnishings

Estimated cost to provide and install park standard furniture. Bike racks 4 ea at \$7,500; 8 each trash receptacles for \$7,500; pet waste station 8 each for 7,500; picnic tables 15 for \$25,000; benches 15 ea 20,000; drinking fountains 1 each at \$4,000 per each; 1 each native Indian sculpture at \$30,500 at Glover and Glover signage to use ALEA funding.

Eligible Scope Activities

Landscaping improvements

Acres of landscaped area :

1.02

Area adjacent to Glover Field parking lot and planned children's play area.

Boulders, Groundcover, Irrigation, Native vegetation, Water feature/fountain

No landscaping planned for the Peoples' Park parking lot; Glover Field to receive low-maintenance landscaping near the children's play area / park entrance.

Water feature with Indian theme sculpture (as part of park furniture) to be incorporated together.

Select the landscape features:

Site Preparation

General site preparation

Work to include removal of approximately 600 lf of temporary concrete barrier for \$10,000, removal of existing Glover play equipment, estimate \$4000; traffic control, estimate \$8,000; mobilization at \$60,000; surveying at \$64,000; clear and grub, tree removal, sidewalk removal, etc at \$50,000; remove/dispose existing ball field chain link fence fabric at Glover, estimate \$4,000 to use ALEA funding.

Trailheads

Trailhead Development

Number of parking stalls:

Vehicle + Trailer

3

Standard vehicle

32

ADA

6

Peoples' Park parking lot to use existing parking lot foot print with estimated 21 standard stalls and 3 ADA stalls, 1 vehicles/trailers. Vehicle/trailer 3 each; Glover Field Park parking lot to utilize existing lot foot print and additional area to south. Estimate 11 standard stalls, 3 ADA stalls, 2. Vehicle/trailer parking.

Eligible Scope Activities

Trails

Trail development

Miles of hard surfaced trail developed / renovated by surface type:

Concrete

0.07

Asphalt

0.85

Asphalt concrete to be pervious to enhance storm water treatment.

Concrete is sidewalk improvements on Spruce and Riverside to tie into the trail

Miles of natural surfaced trail developed / renovated by surface type:

Natural surface

0.00

Select the trail structures :

Retaining walls, Switchbacks

Controls used for road / street crossings:

Pavement markings, Signs

Markings to comply with Spokane traffic control standards, and Manual of Uniform Traffic Control Devices.

Water Access

Develop hand launch facilities

Number of hand launches:

1 new, 0 renovated

Select the type of hand launch facility:

Hard-surface access

Cultural Resources

Cultural resources

Estimated cost for Cultural Resource Tribe archeological observation during excavation work at all three sites, Peoples Park and River Walk Park locations. This cost does not reflect investment already made for consultant research and reporting by City consultant HRA; Glover location to be covered by ALEA.

Permits

Obtain permits

Permits to include Shoreline permit, JARPA permit, SEPA permit, the Archeological and Historical (05-05) permit, and Construction Storm Water General Permit,

Architectural & Engineering

Architectural & Engineering (A&E)

Project will be in-house design, with use consultant engineers as needed to include structural, and geotechnical engineering consultants; Cost includes Construction Management by City forces estimate.

Milestone Report By Project

Project Number: 16-1471 D
Project Name: South Gorge Trail
Sponsor: Spokane City of
Project Manager: Ben Donatelle

X	!	Milestone	Target Date	Comments/Description
X		SEPA/NEPA Completed	10/07/2016	Determination of Non-significance
X		Design Initiated	08/01/2017	
X		Bid Awarded/Contractor Hired	12/11/2017	Project will be added into a previously bid and existing construction (CSO Basin 25) project via a Change Order
X		Project Start	02/01/2018	
X		60% Plans to RCO	04/23/2018	Glover Slide plans
X		All Bid Docs/Plans to RCO	04/25/2018	CSO Basin 25 plans include trail heads
		Applied for Permits	05/29/2018	Glover Shoreline Permit
	!	Cultural Resources Complete	05/31/2018	Survey Required: See special condition #1; CSO Basin 25 Determination from ecology (WQC-2018-Spokane-00042) which includes reference to DAHP Log 2017-06-04317-ECY; Glover Slide CR report to be completed by 05/11/2018.
	!	Construction Started	05/31/2018	
		Funding Acknowl Sign Posted	06/15/2018	
		50% Construction Complete	07/15/2018	
	!	Progress Report Due	07/31/2018	
	!	Annual Project Billing Due	07/31/2018	
		RCO Interim Inspection	08/15/2018	
		90% Construction Complete	10/01/2018	
	!	Progress Report Due	10/01/2018	
		RCO Final Inspection	01/31/2019	
		Construction Complete	02/28/2019	
		Final Billing Due	04/30/2019	
		Final Report Due	05/31/2019	
	!	Agreement End Date	07/31/2019	

X = Milestone Complete

! = Critical Milestone

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

06/04/2018

<u>Date Rec'd</u>	5/21/2018
<u>Clerk's File #</u>	OPR 2018-0353
<u>Renews #</u>	

<u>Submitting Dept</u>	ASSET MANAGEMENT	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	DAVE STEELE 625-6064	<u>Project #</u>	
<u>Contact E-Mail</u>	DSTEELE@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	BT
<u>Agenda Item Name</u>	5900 - PAVING CONTRACT WITH ARROW CONCRETE AND ASPHALT		

Agenda Wording

Contract with Arrow Concrete and Asphalt (Spokane Valley, WA) for various levels of preventative maintenance of paved parking lots at various locations owned by the City of Spokane.

Summary (Background)

Funding has been identified to allow for the completion of \$200,000.00 worth of paving maintenance for the 2018 paving season. City staff released an RFP for the completion of the work in March of 2018. After a three week bid period we received one qualified bid from Arrow Concrete and Asphalt. This contract is a master contract. This contract is a master contract which allows for the development of individual scopes of work for each unique location. and the flexibility necessary to complete as

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? YES	
Expense	\$ 200,000.00	# 5900 30210 42300 54201 99999
Select	\$	#
Select	\$	#
Select	\$	#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	LUKAS, ED	<u>Study Session</u>
<u>Division Director</u>	DUNIVANT, TIMOTHY	<u>Other</u> F&A 1/29/18
<u>Finance</u>	HUGHES, MICHELLE	Distribution List
<u>Legal</u>	ODLE, MARI	eraea@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	dstele@spokanecity.org
<u>Additional Approvals</u>		publicworksaccounting@spokanecity.org
<u>Purchasing</u>		cbrazington@spokanecity.org
		mdoval@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

much maintenance work as possible during the paving season, while working around various public events at these locations and accounting for the differing levels of work needed at each site.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

BRIEFING PAPER
Asset Management Department
Finance & Administration Committee
January 29, 2017

Subject:

2018 citywide facility parking lot repair and maintenance project

Background:

The City of Spokane owns a wide variety of facilities across the City. These facilities range from city libraries, parks, utility locations, and community centers to police precincts and City Hall. Approximately 75 of these facilities have paved parking areas. These parking areas are currently in various conditions of disrepair and are in need of differing levels of preventative maintenance.

In 2017 City staff oversaw pavement repair and maintenance efforts at 12 of the 75 facilities across the community. This work was completed under a \$200,000 master contract in coordination with each of the affected departments such as Fire, Police, Library, and Parks.



Funding has been identified to allow for the completion of an additional \$200,000 worth of paving maintenance during the 2018 paving season. City staff intends to release an RFP for the completion of the work in early 2018, for work to be completed throughout the 2018 paving season. The request for bids will identify a list of the various common work items and associated unit costs for each. This format allows for the development of individual scopes of work for each unique location.

This contract will be developed in a master contract format, providing the flexibility necessary to complete as much work as possible at a wide variety of locations during the paving season, while working around various public events at these locations and accounting for the differing levels of work needed at each site.



Each of the City parking areas were audited in 2014 and ranked based on the condition of the pavement. It is the intent of staff to utilize this data to create individual task assignments for work to be completed in 2018 beginning with paved areas with the worst condition rankings that remain after the work completed in 2017.

Impact:

While paved parking areas see a much lower rate of wear and tear compared to city arterials and residential streets, all pavement requires maintenance to extend wear life. The majority of City parking lots have had maintenance deferred for many years. This contract bid process is anticipated to be repeated over multiple years to establish a program of continual maintenance of our paved areas. This effort will rebuild deficient areas and provide additional life for newer lots before they begin to break down.



City of Spokane

PUBLIC WORKS CONTRACT

Title: **2018 OFF-STREET PARKING LOT
REPAIR AND MAINTENANCE**

This Contract is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **ARROW CONCRETE AND ASPHALT SPECIALTIES, INC.**, whose address is PO Box 11133, Spokane Valley, Washington 99211 as ("Contractor"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the purpose of this Contract is for **Off-Street Asphalt Paving Repair and Maintenance**; and*

WHEREAS, the Contractor was selected through the Small Works Roster #SW63-18 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 Contractor mutually agree as follows:

1. TERM OF CONTRACT.

The term of this Contract begins on June 1, 2018, and ends on December 31, 2018, unless amended by written agreement or terminated earlier under the provisions.

2. TIME OF BEGINNING AND COMPLETION.

The Contractor 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 Contract shall not be extended because of delays for which the Contractor is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Contractor's control.

3. SCOPE OF WORK.

The Contractor's General Scope of Work for this Contract is described in Exhibit A, which is attached to and made a part of this Contract. In the event of a conflict or discrepancy in the Contract documents, this City Public Works Contract controls. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization and other items of work and costs necessary for the proper execution and completion of the work described in the specifications entitled **Off-Street Asphalt Paving Repair and Maintenance**.

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

4. COMPENSATION / PAYMENT.

Total compensation for Contractor's services under this Agreement shall be a maximum amount not to exceed **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)**, unless modified by a written amendment to this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section 3 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Agreement.

The Contractor shall submit its applications for payment to Asset Management, Administration Office, 808 West Spokane Falls Blvd., Spokane, Washington 99201. **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. 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. CONTRACT DOCUMENTS.

The contract documents are this Contract, the Contractor's completed bid proposal form, contract provisions, contract plans, standard specifications, standard plans, addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file in the Asset Management Department, and are incorporated into this Contract by reference, as if they were set forth at length.

6. BONDS.

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

7. 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 Washington State Department of Labor and Industries (L & I); 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.

8. 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.

9. STATE PREVAILING WAGES.

The Contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the Department of Labor and Industries, prior to any

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

10. TAXES, FEES AND LICENSES.

- A. Contractor shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Contract. It is the Contractor'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 Contract shall be included in the project budgets.

11. 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 Contractor shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

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

13. DEBARMENT AND SUSPENSION.

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

14. 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,

indemnity, 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.

15. INSURANCE.

During the period of the Contract, the Contractor 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 Contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Contractor's services to be provided under this Contract;

- 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 Contract; and

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

C. **Property Insurance** if materials and supplies are furnished by the Contractor. The amount of the insurance coverage shall be the value of the materials and supplies of the completed value of improvement. Hazard or XCU (explosion, collapse, underground) insurance should be provided if any hazard exists.

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 Consultant or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Consultant shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Consultant's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the thirty (30) day cancellation clause, and the deduction or retention level. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

16. SUBCONTRACTOR RESPONSIBILITY.

A. The Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350. The responsibility criteria are listed in the request for bids document. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts,

adjusting only as necessary the terms used for the contracting parties. Upon request of the City, the Contractor shall promptly provide documentation to the City demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.

- B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. If applicable, have:
 - a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department number, as required in Title 50 RCW;
 - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

17. INDEPENDENT CONTRACTOR.

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

18. ASSIGNMENT AND SUBCONTRACTING.

The Contractor shall not assign or subcontract its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Contractor shall incorporate by reference this Contract, except as otherwise provided. The Contractor 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 Contractor from liability or any obligation within this Contract, whether before or after City consent, assignment or subcontract.

19. TERMINATION.

Either party may terminate this Contract, 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 Contractor for all work previously authorized and performed prior to the termination date.

20. STANDARD OF PERFORMANCE.

The standard of performance applicable to Contractor's services will be the degree of skill and diligence normally employed by professional contractors in the region performing the same or similar Contracting services at the time the work under this Contract are performed.

21. 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 Contract shall have or acquire any interest in the Contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Contract.

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 AND WARRANTY.

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.

The Contractor guarantees and warranties all work, labor and materials under this Contract shall be in accord with the Contract documents. 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 his performance under this Contract. This warranty is in addition to any manufacturers' or other warranty in the Contract documents.

24. MISCELLANEOUS PROVISIONS.

- A. **Amendments/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 City, and the Contract time and compensation will be adjusted accordingly.
- B. The Contractor, 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.
- C. This Contract 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 Contract 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 Contractor after the time the same shall have become due nor payment to the Contractor 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 Contractor. If conflict occurs between Contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Contract to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Contract.
- I. 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).

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 by having legally-binding representatives affix their signatures below.

**ARROW CONCRETE AND
ASPHALT SPECIALTIES, 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 – Certification Regarding Debarment

PAYMENT BOND

We, **ARROW CONCRETE AND ASPHALT SPECIALTIES, INC.**, as principal, and _____, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)** for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all work and furnish all materials for the **Off-Street Asphalt Paving Repair and Maintenance**. If the principal shall:

- A. 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; and
- B. comply with all applicable federal, state and local laws and regulations;

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

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

SIGNED AND SEALED on _____.

ARROW CONCRETE AND ASPHALT
SPECIALTIES, INC.,

AS PRINCIPAL

By: _____
Title: _____

AS SURETY

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

By: _____
Its Attorney in Fact

[illegible]

I certify that I know or have satisfactory evidence that _____
_____ signed this document; on oath stated that he/she was author-
ized 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

PERFORMANCE BOND

We, **ARROW CONCRETE AND ASPHALT SPECIALTIES, INC.**, as principal, and _____, as Surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)**, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all the work and furnish all materials for the **Off-Street Asphalt Paving Repair and Maintenance**. If the principal shall:

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

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

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

SIGNED AND SEALED on _____

ARROW CONCRETE AND ASPHALT
SPECIALTIES, INC.,
AS PRINCIPAL

By: _____
Title: _____

_____,
AS SURETY

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

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) ss.
County of _____)

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

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

ATTACHMENT B

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

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

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

1. The lower tier contractor 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:**

06/04/2018

<u>Date Rec'd</u>	5/21/2018
<u>Clerk's File #</u>	OPR 2018-0354
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	WASTEWATER MANAGEMENT
<u>Contact Name/Phone</u>	DAN KEGLEY 625-7821
<u>Contact E-Mail</u>	DKEGLEY@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Report Item
<u>Agenda Item Name</u>	4310 - CLERK III HIRE AHEAD

Agenda Wording

Request to hire a full time Clerk to be mentored ahead of the retirement of the sole existing Clerk in January of 2019. Anticipated Cost w/Overhead: \$75,846.60

Summary (Background)

Currently, a single clerk serves the Wastewater Maintenance department for all routine clerical and office support activities. The existing clerk is retiring in January 2019; approval of this position would allow an FTE to be mentored and eventually assume all position duties as seamlessly as possible. Funding for this position is available without accessing reserves.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense \$ 75,846.60		# 4310-30210-35141-00030-99999
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>	<u>Council Notifications</u>	
<u>Dept Head</u>	KEGLEY, DANIEL	<u>Study Session</u>
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u>
		Finance/Admin 5/21/2018
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>
<u>Legal</u>	DALTON, PAT	mhughes@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	Tax & Licenses
<u>Additional Approvals</u>		dkegley@spokanecity.org
<u>Purchasing</u>		rgennett@spokanecity.org
		sjohnson@spokanecity.org

Briefing Paper

Finance & Administration Committee

Division & Department:	Public Works Division; Wastewater Collection
Subject:	Clerk III hire ahead
Date:	May 21 th
Contact (email & phone):	Dan Kegley dkegley@spokanecity.org 625 7821
City Council Sponsor:	Ben Stuckart
Executive Sponsor:	Scott Simmons
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)	
Strategic Initiative:	Innovative Initiative – Succession Planning and work force development
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	
Background/History: Clerical duties for Wastewater Maintenance staff including a variety of routine clerical and office support activities requiring proficiency in basic word processing, spreadsheet, and database programs. Work requires the application of some independent judgment based upon knowledge gained through experience. Any errors committed are easily detected, but may cause some loss of time and departmental embarrassment. Employee has regular contact with outside sources to obtain or supply factual information. Duties are sedentary in nature, performed under normal working conditions, and require normal attention to prevent errors.	
Executive Summary: <ul style="list-style-type: none"> The employee in the existing clerk position is retiring in January of 2019. The duties in the clerk's office in Wastewater Maintenance require training and succession planning. This is to request hiring a FTE to be mentored and take over the position upon the retirement of the existing clerk. Funding for this Hire Ahead position is available without accessing reserves. Anticipated cost with overhead is \$75,846.60 	
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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Water/Wastewater Rates Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" 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:



Agenda Sheet for City Council Meeting of:

06/04/2018

<u>Date Rec'd</u>	5/8/2018
<u>Clerk's File #</u>	OPR 2006-0976
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	COMMUNICATIONS
<u>Contact Name/Phone</u>	JOHN DELAY 6355
<u>Contact E-Mail</u>	JDELAY@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	DEPT. # 0330 AMENDMENT NO. 11 TO COMMUNITY MINDED CABLE CHANNEL FRANCHISE

Agenda Wording

Amendment No. 11 to Community Minded Enterprises (CME) Cable Channel Franchise Agreement with the City of Spokane

Summary (Background)

The City of Spokane contracts with Community Minded Enterprises to operate CMTV 14, the City of Spokane's Community Access Television Channel as part of the City's Cable Franchise with Comcast Cable.

<u>Fiscal Impact</u>	Grant related? YES	<u>Budget Account</u>
	Public Works? NO	
Expense \$ 128,000		# 1940-37330-18900-54201
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> Finance 05/21/18
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>
<u>Legal</u>	SZAMBELAN, TIMOTHY	kathyt@community-minded.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	jdelay@spokanecity.org
<u>Additional Approvals</u>	tszambelan@spokanecity.org	
<u>Purchasing</u>		
<u>GRANTS & CONTRACT MGMT</u>	STOPHER, SALLY	

Briefing Paper

Finance & Administration Committee

Division & Department:	Communication
Subject:	CME Cable Channel Agreement with Community Minded Enterprises
Date:	5/2/18
Author (email & phone):	John Delay jdelay@spokanecity.org 6355
City Council Sponsor:	Ben Stuckart
Executive Sponsor:	
Committee(s) Impacted:	Finance and Administration
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 contract fulfills a subsection of the City's Cable Franchise with Comcast to provide for Public Access Television.
Strategic Initiative:	Innovative Infrastructure
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	As part of the Franchise, CME operates CMTV at no additional charge, and viewable by Comcast Subscribers without the need for additional equipment beyond that required to receive the Basic Cable Tier.
Background/History: The City of Spokane Contracts with Community Minded Enterprises to operate CMTV 14, the City of Spokane's Community access Television Channel as part of the City's Cable Franchise with Comcast Cable. We are increasing this contract from \$88,000 to \$128,000 and will be submitting a separate SBO.	
Executive Summary: approval of this contract allows the City to fulfill Comcast Cable Franchise Requirements	
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: <div style="text-align: center;"> <input type="checkbox"/> <input type="checkbox"/> </div>	

Consistent with current operations/policy?

Yes

No

Requires change in current operations/policy?

☐ Yes

☐ No

Specify changes required:

Known challenges/barriers:

DRAFT



CITY OF SPOKANE

**Title: AMENDMENT NO. 11 TO COMMUNITY-MINDED
ENTERPRISES (CME) CABLE CHANNEL
FRANCHISE AGREEMENT**

This Amendment No. 11 to Agreement is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and COMMUNITY-MINDED ENTERPRISES, whose address is 25 West Main Avenue, Suite 310, Spokane, Washington 99201, as "CME."

WHEREAS, the City has previously entered into an Agreement dated February 6, 2007, with Community Minded Enterprises (CME), a not for profit corporation organized under the laws of the State of Washington, wherein the City provided certain capital grant funds from "PEG" fees from the City's cable franchise (C-33571), together with limited operational support; and

WHEREAS, "CME" agreed to provide community programming on the cable channel designated for that purpose; and,

WHEREAS, the City has proposed and "CME" has accepted a capital grant fund reimbursement for 2018 from Comcast PEG monies, with the grant not involving funds other than PEG fees dedicated to such purposes under the Comcast franchise; and,

WHEREAS, "CME" has agreed to continue to provide community access cable programming and the continued operation of CME as Community Channel Manager is in the public interest;

-- NOW, THEREFORE, the parties agree as follows:

1. DOCUMENTS. The Agreement dated February 6, 2007, any previous amendments and/or extensions/renewals thereto are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. AMENDMENT No. 11: Section 3 of the Agreement is amended to include the following:

2018 CAPITAL FUNDING. Subject to applicable Franchise requirements as provided in the cable franchise between the City and the Comcast cable company (C-33571) for PEG Fee source expenditures, the City agrees to pay CME from the "PEG Fee" resource identified in Section 19 J of the franchise, a grant up to ONE HUNDRED TWENTY-EIGHT THOUSAND AND 00/100 DOLLARS (\$128,000.00) for capital expenditures for the calendar year 2018. Future grant funding at this value is not a guarantee, and is subject to change on a yearly basis.

- A. "CME" agrees to continue to present community programming on the cable channel designated for this purpose and represents to the City that it has adequate operational funding and other resources necessary to accomplish this function; and
- B. "CME" understands its obligation to be sure that all expenditures of PEG fee grant monies are consistent with any Comcast franchise restrictions for use of said monies. "CME" shall furnish the City with reasonable proof, upon request, that its use meets cable franchise requirements. In the event "CME" cannot do so to City's satisfaction, "CME" is responsible to reimburse the City any reduction in PEG funding obligations by Comcast under Section 19 J (4). "CME" further agrees to indemnify and hold harmless the City from any other loss or liability for failure to the City from failure to satisfy Comcast; and
- C. This is a grant from PEG fee resources only. Under no circumstances shall the City be independently liable to CME for payment of any sums under this agreement, directly or indirectly by way of reduction of other monies due and payable by Comcast.

3. FUNDING APPROVAL. PEG funds and expenses will be approved upon submission of expense receipts to the City.

Dated: _____

CITY OF SPOKANE

By: _____
David A. Condon, Mayor

Dated: _____

COMMUNITY-MINDED ENTERPRISES

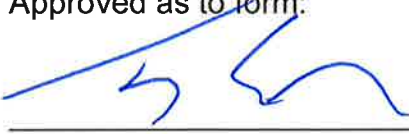
By: _____

Title: _____

Email Address: _____

Attest:

Approved as to form:



City Clerk

Assistant City Attorney

2018-1100-

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

06/04/2018

<u>Date Rec'd</u>	5/7/2018
<u>Clerk's File #</u>	OPR 2007-0767
<u>Renews #</u>	

Submitting Dept	COMMUNICATIONS	Cross Ref #	
Contact Name/Phone	JOHN DELAY 6355	Project #	
Contact E-Mail	JDELAY@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	CR19377
Agenda Item Name	KSPS FRANCHISE AGREEMENT WITH CITY OF SPOKANE AMENDMENT NO. 8		

Agenda Wording

Amendment No. 8 to Cable Access Agreement between Friends of KSPS and City of Spokane providing funding for 2018 for educational cable TV access for the City of Spokane.

Summary (Background)

The City of Spokane entered into a cable access agreement in 2013 with KSPS for public / educational television. This agreement, aka Amendment No. 8, provides funding for this program for the year 2018 in the amount of \$63,415.00.

<u>Fiscal Impact</u>	Grant related? YES	<u>Budget Account</u>
	Public Works? NO	
Expense \$ 63,415.00		# 1940-37330-18900-54201
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	DELAY, JOHN	<u>Study Session</u>
<u>Division Director</u>	CODDINGTON, BRIAN	<u>Other</u> Finance 05/21/18
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>
<u>Legal</u>	SZAMBELAN, TIMOTHY	jdelay@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	tszambelan@spokanecity.org
<u>Additional Approvals</u>		rriedinger@spokanecity.org
<u>Purchasing</u>		Gary Stokes / KSPS at ksps@ksps.org
<u>GRANTS &</u>	STOPHER, SALLY	

Briefing Paper

Finance & Administration Committee

Division & Department:	Communication
Subject:	Cable Educational Access Agreement with the Friends of KSPS
Date:	5/2/18
Author (email & phone):	John Delay jdelay@spokanecity.org 6355
City Council Sponsor:	Ben Stuckart
Executive Sponsor:	
Committee(s) Impacted:	Finance and Administration
Type of Agenda item:	<input checked="" type="checkbox"/> X 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 contract fulfills a subsection of the City's Cable Franchise with Comcast to provide for Public Access Television.
Strategic Initiative:	Innovative Infrastructure
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	As part of the Franchise, KSPS ensures that the (E) Educational Channels of the PEG Channels are provided to any subscriber, at no additional charge, and viewable by Comcast Subscribers without the need for additional equipment beyond that required to receive the Basic Cable Tier.
Background/History: The City of Spokane designates KSPS as the administrator of C.A.B.L.E. PEG funds under Section 19 subsection (b) of the City's Cable Franchise. KSPS prioritizes the Capital Equipment needs of the C.A.B.L.E then relays those requests on to the City for funding.	
Executive Summary: approval of this contract allows the City to fulfill Comcast Cable Franchise Requirements	
Budget Impact: Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input 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?

☐ Yes

☐ No

Requires change in current operations/policy?

☐ Yes

☐ No

Specify changes required:

Known challenges/barriers:

DRAFT



City of Spokane

**Title: AMENDMENT NO. 8 TO CABLE ACCESS
AGREEMENT BETWEEN FRIENDS OF
KSPS AND CITY OF SPOKANE**

THIS AGREEMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and Friends of KSPS, whose address is 3911 South Regal Street, Spokane, Washington 99223, as "KSPS."

WHEREAS, the City entered into an Agreement dated February 6, 2007, with Spokane School District 81 that provided PEG monies to KSPS for public educational programming, and the above mentioned agreement has been assigned from Spokane School District 81 to KSPS in 2013; and

WHEREAS, KSPS has agreed to continue to provide public educational television on the cable channel designated for that purpose; and

WHEREAS, City staff has proposed and KSPS has accepted capital grant fund reimbursement for 2018 needs from Comcast PEG monies with the grant not involving funds other than PEG fees dedicated to such purposes under the Comcast franchise; and

WHEREAS, KSPS has agreed to continue to public educational television programming and the continued operation of the channel is in the public interest;
-- Now, Therefore,

The parties agree as follows:

1. **DOCUMENTS.** The Agreement dated February 6, 2007, any previous amendments and/or extensions/renewals thereto are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.
2. **2018 CAPITAL FUNDING.** Subject to applicable Franchise requirements as provided in the cable franchise between the City and the Comcast cable company (C-33571) for PEG Fee source expenditures, the City agrees to pay KSPS from the "PEG Fee" resource identified in Section 19 J of the franchise, a grant up to SIXTY THREE THOUSAND FOUR HUNDRED FIFTEEN DOLLARS

(\$63,415.00) for capital expenditures for the calendar year 2018. Future grant funding at this value is not a guarantee, and is subject to change on a yearly basis.

- A. KSPS agrees to continue to present community public programming on the cable channel designated for this purpose and represents to the City that it has adequate operational funding and other resources necessary to accomplish this function; and
- B. KSPS understands its obligation to be sure that all expenditures of PEG fee grant monies are consistent with any Comcast franchise restrictions for use of said monies. KSPS shall furnish the City with reasonable proof, upon request, that its use meets cable franchise requirements. In the event KSPS cannot do so to City's satisfaction, KSPS is responsible to reimburse the City any reduction in PEG funding obligations by Comcast under Section 19 J (4). KSPS further agrees to indemnify and hold harmless the City from any other loss or liability for failure to the City from failure to satisfy Comcast; and
- C. This is a grant from PEG fee resources only. Under no circumstances shall the City be independently liable to KSPS for payment of any sums under this agreement, directly or indirectly by way of reduction of other monies due and payable by Comcast.

3. FUNDING APPROVAL. PEG funds and expenses will be approved upon submission of expense receipts to the City.

Dated: _____

CITY OF SPOKANE

By: _____
David A. Condon, Mayor

Attest:

Approved as to form:

City Clerk



Assistant City Attorney

Dated: _____

Friends of KSPS

Email Address: _____

By: _____

Title: _____

2018-1100

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

06/04/2018

<u>Date Rec'd</u>	5/18/2018
<u>Clerk's File #</u>	OPR 2016-0649
<u>Renews #</u>	

Submitting Dept	SOLID WASTE COLLECTION	Cross Ref #	
Contact Name/Phone	MATT 625-6221	Project #	
Contact E-Mail	MLOWMASTER@SPOKANECITY.ORG	Bid #	4254-16
Agenda Item Type	Contract Item	Requisition #	VALUE BLANKET
Agenda Item Name	4500 SWC ADDENDUM TO VALUE BLANKET CONTRACT FOR REFURBISHING		

Agenda Wording

Addendum to Value Blanket Contract with Linn Machine and Manufacturing, Inc. (Spokane Valley, WA) to refurbish additional metal refuse/recycling containers and roll off boxes -- estimated expenditure \$150,000 (including tax).

Summary (Background)

The Solid Waste Collection (SWC) Department owns, maintains and operates an inventory of metal refuse/recycling containers and roll off boxes. Refurbishing containers extends the useful life of these existing containers and saves valuable resources. SWC is currently utilizing the first extension provided for in the original contract which expires August 31, 2018. The original extension requested \$300,000 but due to an increase in commercial container services that amount has been exhausted.

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

Expense	\$ 15,000 estimated	# 4500-44200-37148-54803
Expense	\$ 135,000 estimated	# 4500-45100-37148-54803
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	CONKLIN, CHUCK	<u>Study Session</u>	PIES 05-21-18
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u>	
<u>Finance</u>	ALBIN-MOORE, ANGELA	<u>Distribution List</u>	
<u>Legal</u>	ODLE, MARI	rich@linnmachine.com	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	mlowmaster@spokanecity.org	
<u>Additional Approvals</u>		jsalstrom@spokanecity.org	
<u>Purchasing</u>	WAHL, CONNIE	cwahl@spokanecity.org	
		bpaschal@spokanecity.org	
		rschoonover@spokanecity.org	
		rhughes@spokanecity.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

This addendum will ensure that SWC has an adequate amount of refuse/recycling containers to provide our commercial customers.

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

Taxes & Licenses

Briefing Paper

Public Infrastructure, Environment, and Sustainability

Division & Department:	Public Works / Solid Waste Collection 4500
Subject:	Addendum with Linn Machine & Manufacturing, LLC
Date:	May 21, 2018
Author (email & phone):	Scott Windsor / swindsor@spokanecity.org / 509.625.7806
City Council Sponsor:	
Executive Sponsor:	
Committee(s) Impacted:	Public Infrastructure, Environment, and Sustainability
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)	Solid Waste Collection's Operating Budget
Strategic Initiative:	
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Seeking approval by City Council on an addendum to allow for additional dumpster refurbishing until the current contract can be extended September 1, 2018.
Background/History: <i>Current contract extension expires August 31, 2018. This addendum would allow additional metal dumpsters and roll off containers (collectively referred to as "dumpsters") to be refurbished until the contract can be extended. Additional expenditure requested -- \$150,000 (including tax).</i>	
Executive Summary: <ul style="list-style-type: none"> <i>Refurbishing worn dumpsters uses fewer resources which has a positive impact on the environment and extends their useful life.</i> <i>Solid Waste Collection has purchased less newly manufactured dumpsters over the past several years. Refurbishing costs less than new dumpsters.</i> <i>The City has had a contract with Linn Machine & Manufacturing since 2016 with highly satisfactory results; dumpsters are returned in a "like new" condition.</i> <i>Permanent and temporary dumpster services have increased tremendously over the past several years due to a good economy, real estate market, construction and annexations.</i> <i>This addendum will ensure that Solid Waste Collection has enough dumpsters available for our customers and special events.</i> <i>Solid Waste Collection is having Linn Machine & Manufacturing pick up dumpsters from the Marietta site, refurbish them and return them to the Spokane Central Service Center so they are in usable condition as we work on vacating the Marietta site.</i> 	
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 checked="" 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:	



City of Spokane

CONTRACT ADDENDUM

**Title: REFURBISH REFUSE/RECYCLING
CONTAINERS AND ROLL OFF BOXES**

This Contract Addendum is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **LINN MACHINE & MANUFACTURING, INC.**, whose address is 3808 North Sullivan Road, Building N7, Spokane Valley, Washington 99216 as ("Company"), individually hereafter referred to as a "party", and together as the "parties".

WHEREAS, the parties entered into a Contract wherein the Company agreed to REFURBISH REFUSE/RECYCLING CONTAINERS AND ROLL OFF BOXES for the City; and

WHEREAS, additional 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 September 1, 2016 and September 27, 2016, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

This Contract Addendum shall become effective on June 1, 2018, and end on August 31, 2018.

3. ADDITIONAL WORK.

The Scope of Work in the original Contract is expanded to include the following additional Work:

ADDITIONAL REFURBISHING OF METAL DUMPSTERS

4. COMPENSATION.

The City shall pay an additional amount not to exceed **ONE HUNDRED FIFTY THOUSAND NO/100 DOLLARS (\$150,000.00)**, including tax, for everything furnished and done under this Contract Addendum. This is the maximum amount to be paid under this Addendum, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this Addendum 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 Addendum by having legally-binding representatives affix their signatures below.

LINN MACHINE & MANUFACTURING, 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

18-092

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

06/04/2018

Date Rec'd

5/7/2018

Clerk's File #

OPR 2013-0295

Renews #Cross Ref #Submitting Dept

HUMAN RESOURCES

Contact Name/Phone

CHRIS CAVANAUGH 6383

Project #Contact E-Mail

CCAVANAUGH@SPOKANECITY.ORG

Bid #Agenda Item Type

Contract Item

Requisition #MASTER
CONTRACTAgenda Item Name

0620 OMA CONTRACT EXTENSION THROUGH DECEMBER 2018

Agenda Wording

Requesting an extension of the OMA Contract through December 2018.

Summary (Background)

Requesting an extension of the OMA Contract through December 2018. This will allow a full comprehensive RFP to obtain a new service provider for the City.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Expense \$ \$120,000

Various

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil Notifications**Dept Head**

CAVANAUGH, CHRISTINE

Study Session**Division Director**

CAVANAUGH, CHRISTINE

Other

Finance Committee 5/21

Finance

BUSTOS, KIM

Distribution List**Legal**

DALTON, PAT

For the Mayor

DUNIVANT, TIMOTHY

Additional Approvals**Purchasing**



City of Spokane

**MASTER CONTRACT EXTENSION
WITH COST**

Title: **PROFESSIONAL MEDICAL SERVICES**

This Contract Extension including additional compensation is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **OCCUPATIONAL MEDICINE ASSOCIATES**, whose address is 323 East 2nd Avenue, Spokane, Washington, 99202 as ("OMA"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the parties entered into a Contract wherein OMA agreed to provide **PROFESSIONAL MEDICAL SERVICES** for the City; and*

WHEREAS, additional time is required, and thus the Contract 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 Contract, dated March 28, 2013 and April 29, 2013, 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 December 31, 2018.

4. COMPENSATION.

The City shall pay an additional amount not to exceed **ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00)** for everything furnished and done under this Contract Extension.

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

OCCUPATIONAL MEDICINE ASSOCIATES

By  4.12.18
Signature Date

Paula A. Lantsberger, MD
Type or Print Name

President
Title

Attest:

City Clerk

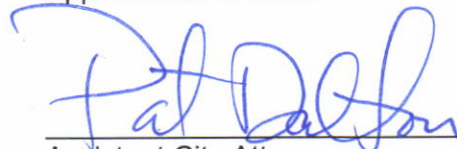
CITY OF SPOKANE

By _____
Signature Date

Type or Print Name

Title

Approved as to form:


Assistant City Attorney

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

06/04/2018

<u>Date Rec'd</u>	5/15/2018
<u>Clerk's File #</u>	OPR 2018-0072
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	2014805
<u>Bid #</u>	
<u>Requisition #</u>	CR19381

<u>Submitting Dept</u>	CITY ATTORNEY
<u>Contact Name/Phone</u>	MIKE ORMSBY 6287
<u>Contact E-Mail</u>	MORMSBY@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	0500 SPECIAL COUNSEL CONTRACT AMENDMENT

Agenda Wording

Collette Leland and the firm Winston Cashatt provide legal services and advice regarding a contract dispute with IMCO Construction.

Summary (Background)

Public Works needed legal advice on a dispute regarding completion and payment for a project at the Treatment Plant. This firm was hired earlier (with a report to the Council President that we were doing that). The dispute is now going to mediation and we need to continue these legal services, but will be going above the previous contractual amount to do so.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense	\$ 50,000.00	# 4320-30210-35141-54105
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	DALTON, PAT	<u>Study Session</u>	May 21, 2018
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	DALTON, PAT	ccl@winstoncashatt.com	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	sdhansen@spokanecity.org	
<u>Additional Approvals</u>		hbarnhart@spokanecity.org	
<u>Purchasing</u>		mtaylor@spokanecity.org	
		mdovol@spokanecity.org	
		kkeck@spokanecity.org	
		lberry@spokanecity.org	



City of Spokane
**SPECIAL COUNSEL
CONTRACT AMENDMENT**

This Contract Amendment is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **COLLETTE C. LELAND** and **WINSTON & CASHATT LAWYERS**, whose address is 601 West Riverside Avenue, Suite 1900, Spokane, Washington 99201, as ("Firm"), individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the parties entered into a Contract wherein the Firm agreed to act as SPECIAL COUNSEL ON BEHALF OF THE CITY IN A CONTRACT DISPUTE WITH IMCO CONSTRUCTION, consistent with applicable laws and this Contract.

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

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

1. CONTRACT DOCUMENTS.

The original Contract, dated January 30, 2018, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

This Contract Amendment shall become effective upon signature by both parties.

3. COMPENSATION.

The City shall pay an additional amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** as full compensation for everything furnished and done under this Contract Amendment. The total amount under the original Contract, any subsequent amendments, and this Contract Amendment is **NINETY NINE THOUSAND AND NO/100 DOLLARS (\$99,000.00)**.

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

WINSTON & CASHATT LAWYERS

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

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

06/04/2018

Date Rec'd

5/24/2018

Clerk's File #

OPR 2018-0357

Renews #Submitting Dept

CITY ATTORNEY

Cross Ref #Contact Name/Phone

JAMES RICHMAN 625-6239

Project #Contact E-Mail

JRICHTMAN@SPOKANECITY.ORG

Bid #Agenda Item Type

Contract Item

Requisition #Agenda Item Name

0500 PURCHASE AND SALE AGREEMENT WITH LIQUIDATION HOLDINGS CO.

Agenda Wording

Purchase Agreement between City of Spokane, as Seller, and Liquidation Holdings Co., as Buyer, for the sale of 5.37 acre property at 127 W. Mission aka the "Normandie Site" for Two Million, Seven Hundred Thousand Dollars (\$2,700,000.)

Summary (Background)

The City of Spokane desires to sell a property known as the "Normandie Site" located at 127 West Mission Avenue, Spokane. (Spokane County Parcel No. 35181.0201) Buyer agrees to pay the purchase price of Two Million, Seven Hundred Thousand Dollars (\$2,700,000.00)

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Revenue \$ 2,700,000

5901-99999-99999-39510-99999

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

DALTON, PAT

Study SessionDivision DirectorOtherFinance

ORLOB, KIMBERLY

Distribution ListLegal

RICHTMAN, JAMES

jrichtman@spokanecity.org

For the Mayor

DUNIVANT, TIM

tdunivant@spokanecity.org

Additional Approvals

rriedinger@spokanecity.org

Purchasing

cwofff@spokanecity.org

PURCHASE AND SALE AGREEMENT
Normandie Site

This Agreement is entered into as of _____ (the "Effective Date"), by and between the CITY OF SPOKANE, a Washington municipal corporation ("Seller"), and LIQUIDATION HOLDINGS COMPANY LLC, a Washington limited liability company *and or assigns* ("Buyer").

Whereas, the parties are desirous of entering into an agreement whereby the Buyer will purchase property owned by the Seller, consistent with Buyer's Proposal.

NOW, THEREFORE, in consideration of the respective agreements set forth below and for valuable consideration, the receipt and sufficiency of which is acknowledged, Seller and Buyer agree as follows:

1. Sale of Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, a portion of the real property commonly known as the Normandie Site, consisting of approximately 5.3 acres, situated at 127 W. Mission Avenue, in the City and County of Spokane, State of Washington, and legally described in Exhibit "A" hereto, together with all of Seller's right, title and interest in and to any rights, licenses, privileges, reversions and easements pertinent to the real property, including, without limitation, all minerals, oils, gas and other hydrocarbon substances on and under the real property as well as all development rights, air rights, water rights, water and water stock relating to the real property and any other easements, rights of way or appurtenances used in connection with the beneficial use and enjoyment of the real property (collectively, the "Property").

2. Earnest Money. Within five (5) working days of the execution of this Agreement by both Seller and Buyer, Buyer shall deliver to Spokane County Title Company in Spokane, Washington ("Title Company"), as escrow agent for the closing of this transaction, Fifty Thousand and 00/100 Dollars (\$50,000.00), to be paid or delivered as earnest money (the "Earnest Money") in part payment for the Purchase Price of the Property. The Title Company will hold the Earnest Money for the benefit of the parties pursuant to the terms of this Agreement. Interest will accrue on the Earnest Money for the benefit of Buyer; provided, however, that if Buyer forfeits the Earnest Money to Seller

pursuant to the terms of this Agreement, then all interest accrued on the Earnest Money will be paid to Seller.

3. Purchase Price. The purchase price for the Property (the "Purchase Price") will be Two Million Seven Hundred Thousand and 00/100 Dollars (\$2,700,000.00), of which the Earnest Money is a part. The Purchase Price, including the Earnest Money, will be paid to Seller in cash through escrow at closing.

4. Title to the Property.

4.1 Conveyance. At closing Seller shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged statutory warranty deed (the "Deed"), free and clear of all defects and encumbrances and subject only to those exceptions that Buyer approves pursuant to Section 4.2 below (the "Permitted Exceptions").

4.2 Preliminary Commitment. Seller shall order a preliminary commitment for an owner's standard coverage policy of title insurance in the amount of the Purchase Price to be issued by the Title Company and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment"). Within fifteen (15) days of Seller's delivery of a copy of the Preliminary Commitment to Buyer, Buyer shall advise Seller by written notice of the exceptions to title, if any, that are disapproved by Buyer ("Disapproved Exceptions"). All monetary encumbrances other than nondelinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Exceptions or (ii) Seller elects not to remove Disapproved Exceptions. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Exceptions. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer.

If Seller elects not to remove any nonmonetary Disapproved Exemptions, Buyer will have until the expiration of the Feasibility Study Period to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives notice that it will cause one or more nonmonetary exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Buyer will have the right to either (i) elect to terminate this Agreement by written notice to Seller or (ii) proceed with the purchase, with an abatement of the Purchase Price equal to the actual cost of removing from title those exceptions not approved by Buyer, and to take the Property subject to those exceptions. If Buyer elects to terminate this Agreement under this Section 6.2, the escrow will be terminated, the Earnest Money shall be returned

immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

4.3 Title Policy. Seller shall cause Title Company to issue to Buyer at closing a standard coverage owner's policy of title insurance insuring Buyer's title to the Property in the full amount of the Purchase Price subject only to the Permitted Exceptions (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

5. Conditions to Closing.

5.1 Due Diligence Materials. Seller shall provide to Buyer, or make available to Buyer for inspection, as soon as possible (but in any event no later than fifteen (15) days after the Effective Date) all materials relating to the Property specified in this Section 5.1 that exist and that are in Seller's actual possession or that Seller knows exist and to which Seller has access (collectively, the "Due Diligence Materials"). If Seller thereafter discovers any additional items that should have been included among the due diligence materials, Seller shall promptly deliver them to Buyer. Due Diligence Materials will include:

5.1.1 copies of any existing and proposed easements, covenants, restrictions, agreements or other documents that, to Seller's knowledge, affect title to the Property and that are not disclosed by the Preliminary Commitment;

5.1.2 all surveys, plats or plans relating to the Property;

5.1.3 all leases for the Property, or any portion thereof, if any, which remain in effect;

5.1.4 all existing service contracts pertaining to items such as janitorial, trash removal, maintenance, snow removal, laundry service, extermination and similar services, if any;

5.1.5 all labor contracts affecting the Property, if any;

5.1.6 all warranties and guarantees affecting any portion of the Property;

5.1.7 notice of any existing or threatened litigation affecting or relating to the Property and copies of any pleadings with respect to that litigation;

5.1.8 (i) all governmental permits and approvals obtained or held by Seller and relating to (A) the construction, operation, use or occupancy of any part of the Property or (B) zoning, land-use, subdivision, environmental, building and construction laws and regulations restricting, regulating or otherwise affecting the use, occupancy or enjoyment of the Property (collectively, "Permits") and (ii) any notices of violation of any Permits, or of any of the laws and regulations described in this Section 5.1.8; and

5.1.9 (i) all environmental assessment reports with respect to the Property that were performed or that are being performed by or for Seller and remain in the possession of or reasonably available to Seller, (ii) any raw data that relates to the environmental condition of the Property, (iii) any governmental correspondence, orders, requests for information or action and other legal documents that relate to the presence of Hazardous Material (as defined in Section 13 below) on, in or under the Property, and (iv) any other information material to the environmental condition or potential contamination of the Property.

5.2 Feasibility Study.

5.2.1 Ninety-day period. During the period ending on the date which is ninety (90) days following the Effective Date or such earlier date upon the Buyer giving Seller written notice that it waives any further feasibility (the "Feasibility Study Period"), Buyer may conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer's intended use (the "Feasibility Study").

The Feasibility Study may include all inspections and studies Buyer deems necessary or desirable, in its sole discretion. Buyer and Buyer's agents, representatives, consultants, architects and engineers will have the right, from time to time, during the Feasibility Study Period to enter onto the Property and make borings, drive test piles and conduct any other test and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Buyer's intended use. Such tests and inspections are to be performed in a manner not disruptive to tenants or to the operation of the Property. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released.

5.2.2 Extension of feasibility study period. Buyer will have the right, at Buyer's sole option, to extend the Feasibility Study Period for one Ninety (90) day period (the "Extension Period"). Buyer's right to extend must be exercised by providing written notice to Seller on or before the expiration of the Feasibility Study Period. Upon providing such notice to Seller, the Earnest Money shall become a nonrefundable fee earned by Seller; provided, the Earnest Money will be applied against the Purchase Price at closing. Notwithstanding anything herein to the contrary, the Feasibility Study Period, as extended, will in any event not extend past the date which is one hundred and eighty (180) days following the Effective Date.

5.2.3 Termination of Agreement. Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not suitable for Buyer's intended use or does not meet Buyer's intended investment objectives. Buyer's right to terminate must be exercised by delivering written notice of its election to Seller on or before the expiration of the Feasibility Study Period, or the Extension Period if exercised. In the event Buyer does not complete the purchase, Buyer shall return the Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this Section 5.2.3, except as provided in Section 5.2.2 the Earnest Money will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for Buyer's obligations to indemnify Seller under Sections 5.2.1 and 5.2.5 hereof. Notwithstanding the foregoing provisions, if Buyer does not elect to terminate this Agreement during the initial ninety-day Feasibility Study Period, the entire Earnest Money deposit paid pursuant to Section 2 hereof and all accrued interest thereon shall become non-refundable and shall be promptly disbursed by the Title Company to Seller following expiration of said ninety-day period, regardless of whether or not Buyer elects to extend the Feasibility Study Period for the Extension Period; provided, all such amounts shall be applied against the Purchase Price at closing.

5.2.4 Confidentiality of studies and reports. Prior to closing of the purchase of the Property, Buyer will not distribute or divulge the information or materials it and its agents and consultants may generate in connection with the Feasibility Study to other persons except as may be required by law or as may be necessary or desirable in connection with Buyer's evaluation of the Property and its suitability; provided, that during this time period no information or materials concerning wetlands or environmental matters will be divulged to any governmental entity without Seller's written consent, unless required by law. If Buyer elects not to purchase the Property, Buyer agrees that, except as may be required by law, it will not further divulge or further distribute the information and materials except with Seller's consent.

Notwithstanding the foregoing, if Buyer elects not to purchase the Property, and if Seller requests copies of the written reports and studies prepared for Buyer in connection with its Feasibility Study, then Buyer will deliver to Seller copies of the final reports and studies. Buyer will, in that event, cooperate reasonably with Seller to coordinate Seller's communications with the consultants, provided Buyer will not be obligated to bear any costs or expend more than a reasonable period of time in doing so.

5.2.5 Buyer's indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to person, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer or its agents or employees in exercising its rights under the right of entry granted in this Section 5, except for claims caused by Seller's negligence.

5.3 Buyer's contingencies. Buyer's obligation to purchase the Property is expressly contingent upon the following:

5.3.1 Feasibility Study. Buyer's approval, prior to expiration of the Feasibility Study Period and the Extension Period (if exercised by Buyer), of the suitability of the Property as a result of the Feasibility Study;

5.3.2 Environmental condition. Buyer's approval, prior to expiration of the Feasibility Study Period, of the environmental condition of the Property pursuant to Section 11 below;

5.3.3 Title Policy. Buyer's receipt of Title Company's firm commitment to issue, upon closing, the Title Policy as described in Section 4.3;

5.3.4 Seller's compliance. Seller's timely performance of all of its obligations under this Agreement; provided, Seller will be given notice of any failure on its part to perform any such obligations and will have a period of time that is reasonable under the circumstance to cure its nonperformance; and

The foregoing conditions contained in Section 5.3 are collectively referred to in this Agreement as "Buyer's Contingencies." The parties shall diligently attempt to timely satisfy all of the Buyer's Contingencies.

5.4 Satisfaction/waiver of Buyer's Contingencies. Buyer's Contingencies are solely for the benefit of Buyer. The parties shall diligently attempt to timely satisfy all of the Buyer's Contingencies. If any of Buyer's Contingencies are not timely satisfied, Buyer will have the right at its sole

election either to waive any of them in writing and proceed with the purchase or to terminate this Agreement. If Buyer elects to terminate this Agreement, the escrow will be terminated, the Earnest Money must immediately be returned to Buyer (except as provided in Section 5.2), all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the cost of terminating the escrow.

6. Closing Date. This transaction will be closed in escrow by the Title Company acting as escrow agent ("Escrow Agent"). The closing will be held at the offices of the Title Company on or before that date which is ten (10) days after the end of the Feasibility Study Period, as extended, but in any event no later than 5:00 p.m. Pacific Time, on _____ (the "Closing Date"). If closing does not occur on or before _____, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Earnest Money to the party entitled to receive it as provided in this Agreement, and return all documents to the party that deposited them.

7. Closing.

7.1 Seller's Escrow Deposits. On or before the Closing Date, Seller shall deposit into escrow the following:

7.1.1 the duly executed and acknowledged Deed;

7.1.2 a duly executed and acknowledged Real Estate Tax Affidavit;
and

7.1.3 any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered.

7.2 Buyer's Escrow Deposits. On or before the Closing Date, Buyer shall deposit into escrow the following:

7.2.1 cash in an amount sufficient to pay the Purchase Price and Buyer's share of closing costs;

7.2.2 a duly executed and completed Real Estate Excise Tax Affidavit; and

7.2.3 any other documents or instruments Buyer is obligated to provide pursuant to this Agreement (if any) in order to close this transaction.

7.3 Additional Instruments and Documentation. Seller and Buyer shall each deposit any other instruments and documents that are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.

7.4 Closing Costs.

7.4.1 Seller's Costs. Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price and one-half of Title Company's escrow fee. It is understood between the parties that pursuant to WAC 458-61-420(c) this sale will be exempt from the Washington State real estate excise tax, and Buyer agrees to cooperate with Seller in executing such documents as are required to qualify Seller for such exemption.

7.4.2 Buyer's Costs. Buyer shall pay the additional premium, if any, attributable to the extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer, the cost of recording the Deed and one-half of Title Company's escrow fee.

7.5 Foreign Investment in Real Property Tax Act. The parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder (the "Regulations").

8. Adjustments and Prorations. The following adjustments and prorations will be made as of the Closing Date (with Buyer either responsible for or entitled to a credit for, as the case may be, the actual Closing Date).

8.1 Property Taxes. All property taxes payable in the year of closing and assessments approved by Buyer, if any, will be prorated as of the Closing Date.

8.2 Utilities. All gas, electric and other utility charges will be prorated as of the Closing Date.

9. Covenants.

9.1 Seller's Covenants.

9.1.1 Covenant to Maintain. Prior to the Closing Date, Seller shall maintain, repair, manage and operate the Property in a businesslike manner in accordance with Seller's prior practices and Seller shall not dissipate any portion of the Property.

9.1.2 Contracts Prior to Closing. Seller shall not enter into any leases, contracts of sale or other agreements that are inconsistent with this Agreement without Buyer's prior written consent.

~~9.2 Buyer's Covenants. Buyer warrants and covenants to develop the Property substantially consistent with and according to the schedule and timeline set forth in Buyer's Proposal.~~

10. Representations and Warranties.

10.1 Seller's Representations and Warranties. Except as specifically provided in this Agreement, Seller makes no warranty or representation, express or implied, with respect to the condition of the Property or its suitability for any particular purpose.

10.1.1 Seller has full power and authority to convey the Property to Buyer.

10.1.2 Seller has not received notice of any special assessment or condemnation proceedings affecting the Property.

10.1.3 To the best of Seller's knowledge, there is no litigation pending or threatened against Seller (or any basis for any claim) that arises out of the ownership of the Property and that might materially and detrimentally affect (i) the use or operation of the Property for Buyer's intended use, or (ii) the ability of Seller to perform its obligations under this Agreement.

10.2 Waiver of Seller Disclosure Statement. Purchaser expressly waives Purchaser's right to receive from Seller a signed and dated Real Property Transfer Disclosure Statement as contemplated by Chapter 64.06 RCW.

10.3 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that Buyer is a limited liability company, duly organized and validly existing under the laws of the state of Washington; this Agreement and all documents executed by Buyer that are to be delivered to Seller at closing are, or at the time of closing will be (i) duly authorized, executed and delivered by Buyer, (ii) legal, valid and binding obligations of Buyer, and (iii) in compliance with all provisions of all agreements and judicial orders to which Buyer is a party or to which Buyer is subject.

11. Hazardous Materials. Notwithstanding the representations set forth in Section 10 herein above, the City makes no representation regarding any Hazardous Materials Condition, as defined below, affecting the Property. Buyer takes the Property "AS IS" with all physical defects, including those that cannot be observed by casual inspection. Seller will have no obligation to repair or remedy any physical defects of the Property. Buyer may, at its sole cost, expense, and liability, conduct an environmental site assessment of the Property during the Feasibility Period. For the purposes of this paragraph, "Hazardous Materials" shall include, but not be limited to, substances defined as "Hazardous Substances," "Hazardous Materials," "Hazardous Waste," in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Section 9601 et seq., and the Control Act of the State of Washington and all regulations, rules, and publications promulgated pursuant to such laws, collectively referred to as "Hazardous Materials Laws". A "Hazardous Materials Condition" for purposes of this paragraph is defined as the existence on, under or relevantly adjacent to the Property of Hazardous Materials that would require remediation under any applicable Federal, State or local law. In the event Buyer receives notice prior to the Closing Date that the Property is affected by a Hazardous Materials Condition and such notice is accompanied by a report from an engineer or consultant with experience in evaluating such matters, Buyer may either (a) terminate this contract, or (b) proceed to Closing notwithstanding such condition. If event Buyer elects to terminate this contract pursuant to this paragraph, Buyer shall receive a refund of the entire Earnest Money, plus interest thereon. To the extent allowed by law, the environmental site assessment investigation provided for herein and any information or data generated or collected by the environmental consultant in connection with this investigation shall be considered to be confidential information of the City and City until Closing. Prior to Closing, or in the event Closing occurs, Buyer shall not disclose such information to any third party, nor have any direct contact with any governmental agencies in connection with the environmental investigation without the prior written consent of the Director of Asset Management. Buyer may disclose said information to its employees, attorneys, consultants, lenders, and others who have a need to know and use the information in connection with this transaction. If Buyer discloses said information if required to do so by law, or by any governmental agency, or if an environmental investigation reveals any conditions that appear to be reported to any governmental agency, the City shall not be responsible for the responsibility to make such reports or disclosures, but Buyer reserves the right to do so in the event the City fails to do so within any time period specified by applicable law.

12. Eminent Domain. If all or any part of the Property is taken by condemnation or eminent domain and the value of the property so taken exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00), upon written notice to Seller, elect to terminate this Agreement.

A PORTION OF THE NE QUARTER OF SECTION 18, TOWNSHIP 25 NORTH, RANGE 43 EAST, W.M.

THIS SKETCH IS FURNISHED FOR INFORMATION PURPOSES ONLY TO ASSIST IN PROPERTY LOCATION. DIMENSIONS ARE NOT GUARANTEED AND MUST NOT BE RELIED UPON TO DETERMINE ACREAGE OR SHAPE. THIS COMPANY ASSUMES NO LIABILITY FOR LOSS INCURRED BY REASON OR RELIANCE THEREON.



SPOKANE COUNTY TITLE COMPANY
326-2626



SPOKANE
COUNTY TITLE

event all monies theretofore paid on account must be returned to Buyer, and neither party will have any further liability or obligation under this Agreement. If all or any portion of the Property has been or is hereafter condemned or taken by eminent domain and this Agreement is not canceled, Seller's right, title and interest in and to any awards in condemnation or eminent domain, or damages of any kind, to which Seller may have become entitled or may thereafter be entitled by reason of any exercise of the power of condemnation or eminent domain with respect to the Property or any portion thereof shall accrue to Buyer.

13. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date.

14. Events of Default.

14.1 By Seller. If there is an event of default under this Agreement by Seller (including a breach of any representation, warranty or covenant), Buyer will be entitled (a) in addition to all other remedies available at law or in equity, to seek specific performance of Seller's obligations under this Agreement or (b) to terminate this Agreement by written notice to Seller and Escrow Agent. If Buyer terminates this Agreement, the escrow will be terminated, the entire Deposit must immediately be returned to Buyer, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement except that Seller shall pay any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

14.2 By Buyer. IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY, THE EARNEST MONEY DEPOSIT MADE BY BUYER WILL BE FORFEITED TO SELLER AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER FOR SUCH FAILURE.

Seller's Initials



Buyer's Initials

15. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by Mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Seller:

City of Spokane
Attn: Charlie Wolff
808 W Spokane Falls Blvd

Spokane, WA 99201

With a copy to:

James Richman
Office of the City Attorney
808 W Spokane Falls Blvd
Spokane, WA 99201

Buyer:

LIQUIDATION HOLDINGS COMPANY, LLC
Attn: Chris Batten
502 W Riverside Avenue #103
Spokane, WA 99201

Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit at any post office in the United States of America, and if delivered via facsimile, the same day as verified, provided that any verification that occurs after 5 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9 a.m. on the following business day.

16. Brokers and Finders. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or a finder's fee as procuring cause of the purchase and sale contemplated by this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim.

17. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

19. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Washington.

20. Entire Agreement. This Agreement and the exhibits to it constitute the entire agreement between the parties with respect to the purchase and sale of the Property, and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth.

21. Attorney Fees. Each party shall pay its own legal fees relating to negotiation and drafting of this Agreement and the documents to be executed at closing. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not substantially prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy court proceeding.

22. Time of the Essence. Time is of the essence of this Agreement.

23. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of a subsequent breach of the same covenant.

24. Nonmerger. The terms and provisions of this Agreement, including, without limitation, all indemnification obligations will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

26. Assignment. Buyer may assign its rights under this Agreement at any time prior to Closing to a to be formed limited partnership in which Buyer is a majority owner.

27. Governmental Approval. Buyer acknowledges and agrees that this Agreement does not bind the City of Spokane until it is signed by the Mayor following approval by the Spokane City Council in open public meeting.

298. Exhibit. The following exhibit is attached to and made a part of this Agreement by this reference.

In witness whereof, the Buyer and Seller have signed this Agreement effective as of the date first hereinabove written.

By: _____
Mayor

Assistant City Attorney

By: Mr. H. Bell
Its: Manager

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

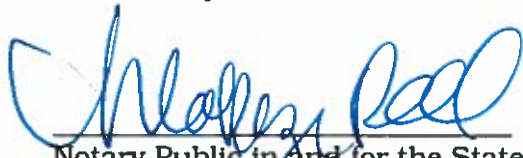
Notary Public in and for the State
of Washington, residing at Spokane
My Appointment expires _____

STATE OF WASHINGTON :
:ss.
County of Spokane :

On this 24th day of May, 2018, before me personally
appeared Christopher M. Batten, to me known to be the
Manager of LIQUIDATION HOLDINGS COMPANY, LLC
, the entity that executed the within and foregoing instrument, and acknowledged the
said instrument to be the free and voluntary act and deed of the corporation, for the uses
and purposes therein mentioned, and on oath stated that he/she was authorized to
execute said instrument and that the seal affixed is the corporate seal of said
corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and
year first above written.




Notary Public in and for the State
of Washington, residing at Spokane
My Appointment expires 12-29-21

MINUTES OF SPOKANE CITY COUNCIL

Monday, May 14, 2018

BRIEFING SESSION

The Briefing Session of the Spokane City Council held on the above date was called to order at 3:30 p.m. in the Council Briefing Center in the Lower Level of the Municipal Building, 808 West Spokane Falls Boulevard, Spokane, Washington.

Roll Call

On roll call, Council President Stuckart and Council Members Beggs, Burke, Fagan, Kinnear, Mumm, and Stratton were present.

Finance and Administration Division Director Tim Dunivant, Assistant City Attorney Mike Piccolo, and City Clerk Terri Pfister were also present on the dais.

Advance Agenda Review

The City Council received an overview from staff on the May 21, 2018, Advance Agenda items.

Intertie Agreement with the City of Medical Lake (OPR 2017-0726)

Motion by Council Member Beggs, seconded by Council Member Mumm, **to defer** the Intertie Agreement with the City of Medical Lake to June 4, 2018; **carried unanimously**.

Action to Approve May 21, 2018, Advance Agenda

Following staff reports and Council inquiry and discussion regarding the May 21, 2018, Advance Agenda items, the City Council took the following action (pursuant to Council Rule 2.1.2):

Motion by Council Member Fagan, seconded by Council Member Kinnear, **to approve** the Advance Agenda for Monday, May 21, 2018 (as amended); **carried unanimously**.

ADMINISTRATIVE SESSION

Current Agenda Review

The City Council reviewed changes to the May 14, 2018, Current Consent Agenda.

Final Reading Ordinance C35620

Motion by Council Member Fagan, seconded by Council Member Mumm, **to replace** the previously filed version of Ordinance C35620 with the updated revised version of the ordinance; **carried unanimously**.

Resolution 2018-0039

Motion by Council Member Fagan, second by Council Member Stratton, **to suspend** the City Council Rules; **carried unanimously**.

Motion by Council Member Fagan, seconded by Council Member Stratton, **to add** Resolution 2018-0039 (concerning the City's Combined Communications Center for routing of 911 calls; and reaffirming Resolution 2017-0080); **carried unanimously**.

Memorandum of Understanding between the Police Department and Catholic Charities of Spokane (OPR 2018-0296)

Council President Stuckart requested that Item No. 3 on the Consent Agenda—Memorandum of Understanding between the Police Department and Catholic Charities of Spokane to provide special patrol policing—be deferred for one month (to June 18, 2018). The following action was taken:

Motion by Council Member Stratton, seconded by Council Member Mumm, **to so move** [to defer the Memorandum of Understanding between the Police Department and Catholic Charities of Spokane to provide Special Patrol Policing for one month (to June 18, 2018)]; **carried unanimously**.

CONSENT AGENDA

Upon motion by Council Member Fagan, seconded by Council Member Mumm, the City Council unanimously approved Staff Recommendations for the following:

Purchase of a Vactor 2100 Plus using the NJPA Contract #022014-FSC—\$339,953.41, and one Kenworth Chassis using the NJPA Contract #081716-KTC for the Wastewater Maintenance Department—\$140,485.89. Total Contract Amount: \$467,021.71 (incl. tax). (OPR 2018-0295)

Accept additional funds from the Department of Commerce and to sub-grant the funds to Goodwill by amending their current HEN grant agreement—\$53,389. (OPR 2017-0412)

Report of the Mayor of pending:

- a. Claims and payments of previously approved obligations, including those of Parks and Library, through May 4, 2018, total \$9,409,225.23 (Check Nos. 548747-548903; ACH Payment Nos. 49738-50020), with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$9,267,301.17. (CPR 2018-0002)
- b. Payroll claims of previously approved obligations through May 5, 2018: \$6,902,031.81 (Payroll Check Nos. 548747-548914). (CPR 2018-0003)

City Council Meeting Minutes: April 30, 2018 and May 3, 2018. (CPR 2018-0013)

Council Recess/Executive Session

The City Council adjourned at 3:55 p.m. The City Council immediately reconvened into an Executive Session to discuss pending litigation for ten minutes. City Attorney Mike Ormsby was present during the Executive Session. The City Council reconvened again at 6:00 p.m. for the Regular Legislative.

LEGISLATIVE SESSION

Pledge of Allegiance

The Pledge of Allegiance was led by Council President Stuckart.

Roll Call

Council President Stuckart and Council Members Beggs, Burke, Fagan, Mumm, and Stratton were present.

City Clerk Terri Pfister and City Council's Policy Advisor Brian McClatchey were also present.

PROCLAMATIONS

May 2018 *Spokane Lilac Festival Month*

Council Member Stratton read the proclamation. The Spokane Lilac Festival is an 80-year legacy event that originated for the celebration of the Associated Garden Clubs operated entirely by volunteers, holds the largest armed forces torchlight parade in the nation. The Spokane Lilac Festival Association embraces this year's theme "Swing into Spokane" and invites all citizens of Spokane, Spokane County, and the Greater Inland Northwest area to enjoy and participate in the numerous activities hosted throughout the week, including the Spokane Lilac Festival Armed Forces Torchlight Parade in Downtown Spokane on Saturday, May 19. The proclamation urges all citizens to join in celebrating and participating in the events bringing up to this wonderful annual tradition in our beautiful lilac city. The Lilac Festival Queen and Court and representatives accepted the proclamation.

May 2018 *Older Americans Month*

Council Member Kinnear read the proclamation. The City of Spokane is committed to engaging and supporting the countless older adults, their families and caregivers in our community who enrich and strengthen our community. The proclamation urges all citizens to take time during this month to recognize older adults and the people who serve them as vital parts of our community. Maria Hernandez-Peck accepted the proclamation.

COUNCIL SALUTATION

Recognition of Maria Hernandez-Peck

Council Member Fagan read a Council Salutation recognizes Maria Hernandez-Peck. The Salutation recognizes that Maria has devoted many years and provided outstanding contributions to the field of aging. The City Council salutes Maria for her service and dedication to the field of aging in our community.

There were no **City Administration Reports**.

There were no **Appointments**.

There were no **Council Committee Reports**.

OPEN FORUM

David Camp, Linda Carroll, Pauline Druffel, Theodora Sallee, Autum Reed, Barry Kathrens, and Judy Fitzpatrick remarked on climate change and spoke in support of a fossil free community.

Henry Valder spoke regarding Vets United opening up a campground for vets in Ford, Washington, and remarked on disabled vets and the homeless.

Tamar Powers remarked on a recent matter involving sexual predator allegations against an individual and the use of position of power.

Yolonde Collins spoke regarding the same matter as Ms. Powers and remarked on her personal experiences.

LEGISLATIVE AGENDA

There were no **Special Budget Ordinances**.

There were no **Emergency Ordinances**.

RESOLUTIONS

Resolution 2018-0039

Upon consideration of Resolution 2018-0039, Council President Stuckart requested a motion to remove the third “whereas” clause in the resolution. The following action was taken:

Motion by Council Member Fagan, seconded by Council Member Stratton, to so move (**to remove** the third “whereas” clause in the resolution); **carried unanimously**.

The City Clerk read Resolution 2018-0039, as amended, into the record. Council commentary was held and there was an opportunity for public testimony, with one individual requesting to speak. The following action was taken:

Upon Unanimous Roll Call Vote, the City Council **adopted Resolution 2018-0039 (as amended)** concerning the City’s Combined Communications Center for routing of 911 calls; and reaffirming Resolution 2017-0080.

FINAL READING ORDINANCE

Final Reading Ordinance C35620

Council Member Mumm provided an overview of Final Reading Ordinance C35620. There was an opportunity for public testimony, with no individuals requesting to speak. The following action was taken:

Upon Unanimous Roll Call Vote, the City Council **passed Final Reading Ordinance C35620 (as amended during the 3:30 p.m. Administrative Session)** relating to standards for the for-cause removal of members of boards and commissions; enacted new sections 4.01.035, 4.05.025, 4.06.035, 4.06.125, 4.07.020, 4.08.035, 4.10.025, 4.11.020, 4.12.035, 4.14.045, 4.16.045, 4.20.045, 4.28.035, 4.30.025, 4.34.035, and 4.35.035; and amending sections 4.01.030, 4.13.030 and 4.23.040 of the Spokane Municipal Code.

There were no **First Reading Ordinances**.

There were no **Special Considerations**.

There were no **Hearings**.

SECOND OPEN FORUM

Rebecca MacMullan and David Randall expressed concern regarding the impacts of climate change on the City of Spokane and spoke in support of a fossil free community.

Carmen Pacheco-Jones stated she stands before the City Council as a representative of Lutheran Community Services and as a crisis response advocate and spoke in support of victims.

Jenny Cumbie and Amanda Braley spoke in support of women and stated they believe women.

Tera Bailey stated she is in support of women and also spoke in support of her friend who she stated has been wrongly accused of being a sexual predator.

Alan McDowell remarked on the mental health industry and self-achievement.

CLOSING COMMENTS

Council Member Stratton shared her thoughts about what has transpired the last two weeks as it pertains to a matter involving accusations of an individual being a sexual predator. She thanked the NOW (National Organization of Women) organization for coming down, as well as everyone who testified tonight. Council Member Stratton stated that while she understands the value of these community conversations, she indicated she is disappointed and saddened how we got to the discussion tonight, and provided other remarks pertaining to the matter.

ADJOURNMENT

There being no further business to come before the City Council, the Regular Legislative Session of the Spokane City Council adjourned at 7:21 p.m.

Minutes prepared and submitted for publication in the May 23, 2018, issue of the *Official Gazette*.

Terri Pfister
Spokane City Clerk

Approved by Spokane City Council on _____, 2018.

Ben Stuckart
City Council President

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

06/04/2018

<u>Date Rec'd</u>	5/23/2018
<u>Clerk's File #</u>	CPR 2007-0039
<u>Renews #</u>	

<u>Submitting Dept</u>	MAYOR	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	BRANDY COTE 625.6774	<u>Project #</u>	
<u>Contact E-Mail</u>	BCOTE@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Boards and Commissions	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0520 APPOINTMENT TO THE WEST QUADRANT TIF NEIGHBORHOOD PROJECT		

Agenda Wording

Appointment of Vicki Munch to the West Quadrant TIF Neighborhood Project Advisory Committee as the Riverside representative. This term will be from 6/4/18 - 6/4/21.

Summary (Background)

Appointment of Vicki Munch to the West Quadrant TIF Neighborhood Project Advisory Committee as the Riverside representative. This term will be from 6/4/18 - 6/4/21.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Select \$		#
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	COTE, BRANDY	<u>Study Session</u>
<u>Division Director</u>		<u>Other</u>
<u>Finance</u>		<u>Distribution List</u>
<u>Legal</u>		bcote@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	bborisov@spokanecity.org
<u>Additional Approvals</u>		
<u>Purchasing</u>		

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

06/04/2018

Date Rec'd

5/21/2018

Clerk's File #

ORD C35626

Renews #

Submitting Dept

FINANCE & ADMIN

Cross Ref #

Contact Name/Phone

GAVIN COOLEY 368-1430

Project #

Contact E-Mail

GCOOLEY@SPOKANECITY.ORG

Bid #Agenda Item Type

Special Budget Ordinance

Requisition #Agenda Item Name

0410 - SPECIAL BUDGET ORDINANCE FOR BID EQUIPMENT

Agenda Wording

This special budget ordinance is to help with costs for BID equipment that is needed by the Downtown Spokane Partnership. Funding is from the General Fund unappropriated reserves.

Summary (Background)

This special budget ordinance is to help with costs for BID equipment that is needed by the Downtown Spokane Partnership to fulfill their contractual agreement for cleaning in the Downtown Corridor.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Expense \$ 101,000

0020-88300-18900-54101

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

MARCHAND, CRYSTAL

Study SessionDivision Director

DUNIVANT, TIMOTHY

Other

Urban Development

Finance

BUSTOS, KIM

Distribution ListLegal

DALTON, PAT

gcooley@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

dkinder@spokanecity.org

Additional ApprovalsPurchasingCITY COUNCIL

MCDANIEL, ADAM

ORDINANCE NO 35626

An ordinance amending Ordinance No. C-35565, passed 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>\$ 101,000</u>
TO:	0020-88300	Non-Departmental	
	18900-54101	Professional Services	<u>\$ 101,000</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 purchase equipment for the Downtown Spokane Partnership BID contract changes, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage..

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date

Briefing Paper Urban Experience

Division & Department:	NBS
Subject:	DSP Equipment Purchase
Date:	4/30/2018
Author (email & phone):	dkinder@spokanecity.org 625-6734
City Council Sponsor:	CM Lori Kinnear
Executive Sponsor:	Gavin Cooley
Committee(s) Impacted:	Public Safety & Community Health
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 Plan – Urban Experience
Strategic Initiative:	Advancing Downtown – Clean/Safe
Deadline:	N/A
Outcome: (deliverables, delivery duties, milestones to meet)	Approve contract for up DSP cleaning equipment
<p>Background/History: The DSP manages the BID contract for completing clean and safe work in the downtown core. In the early part of 2018 the City installed Big Belly trash and recycle compactors and took over the solid waste collection from these receptacles freeing up responsibilities, and therefore time, for the DSP/BID Clean & Safe Team. Through the process of realigning BID work to match contract expectations the following items were added to the BID contract:</p> <p style="padding-left: 40px;">In consideration of the City relieving DSP of its duty to empty trash containers under its Clean Team Scope of Services, DSP will deploy the equivalent resources previously deployed for emptying trash containers first to cleaning the downtown railway viaducts from Division Street west to Cedar, and after those are clean, devote any remaining resources to enhancing sidewalk cleaning in the BID, expanded planter maintenance and graffiti removal along with other items in the existing Clean Team Scope of Services. Cleaning the railway viaducts, as allowed by BSNF, shall include graffiti removal, trash and litter pick up, and cleaning of sidewalks and gutters.</p>	
<p>Executive Summary:</p> <p>Changing the BID contract to include the viaduct, graffiti, and enhanced sidewalk cleaning requires the purchase of equipment which will allow the BID to efficiently and effectively meet these requirements:</p> <ul style="list-style-type: none"> 1 gator 1 walk behind sidewalk cleaner with trailer <p>Maximum cost amount of \$101,000.00 for one time purchase of equipment.</p>	
<p>Budget Impact:</p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p>Operations Impact</p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	

Specify changes required:
Known challenges/barriers:

DRAFT

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

06/04/2018

Date Rec'd

5/9/2018

Clerk's File #

ORD C35627

Renews #

Submitting Dept

COMMUNICATIONS

Cross Ref #

Contact Name/Phone

JOHN DELAY X6355

Project #

Contact E-Mail

JDELAY@SPOKANECITY.ORG

Bid #Agenda Item Type

Special Budget Ordinance

Requisition #Agenda Item Name

SPECIAL BUDGET ORDINANCE - CMTV PEG CONTRACT

Agenda Wording

To add money from Channel Five Equipment Reserve Fund Unappropriated Reserves to the Channel Five Equipment Reserve Fund Contractual Services budget line for the CMTV PEG Contract.

Summary (Background)

To add money from the Channel Five Equipment Reserve Fund Unappropriated Reserves to the Channel Five Equipment Reserve Fund Contractual Services budget line for the CMTV PEG Contract.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Expense \$ 40,000.00

1940-37330-18900-54201

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

DELAY, JOHN

Study SessionDivision Director

CODDINGTON, BRIAN

Other

Finance Committee 5/21

Finance

BUSTOS, KIM

Distribution ListLegal

SZAMBELAN, TIMOTHY

jdelay@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

Additional ApprovalsPurchasingCITY COUNCIL

MCDANIEL, ADAM

ORDINANCE NO C35627

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 **Channel Five Equipment Reserve 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 Channel Five Equipment Reserve Fund, and the budget annexed thereto with reference to the Channel Five Equipment Reserve Fund, the following changes be made:

FROM:	1940-99999-99999-	Channel Five Unappropriated Reserves	<u>\$ 40,000</u>
TO:	1940-37330-18900-54201	Contractual Services	\$ 40,000

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 add additional funds for CMTV PEG Capital and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage..

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date

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

06/04/2018

<u>Date Rec'd</u>	5/17/2018
<u>Clerk's File #</u>	ORD C35628
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	CITY COUNCIL
<u>Contact Name/Phone</u>	BEN STUCKART 6256269
<u>Contact E-Mail</u>	AMCDANIEL@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Special Budget Ordinance
<u>Agenda Item Name</u>	0320 COMMUNITY ENGAGEMENT FUNDS FOR COMMUNITY ASSEMBLY

Agenda Wording

An ordinance amending Ordinance No. C-35565, passed the City Council December 11, 2017, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2018."

Summary (Background)

This special budget ordinance moves \$20,000 from General Fund unappropriated reserves to ONS Administration/Overhead-Information Services- Other Misc Charges for Community Assembly use in granting funds to neighborhoods for Community Engagement.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense	\$ 20,000	# 0100-99999-99999-
Revenue	\$ 20,000	# 0550-30210-57200-54999
Select	\$	#
Select	\$	#

<u>Approvals</u>	<u>Council Notifications</u>
<u>Dept Head</u>	MCDANIEL, ADAM
<u>Division Director</u>	
<u>Finance</u>	BUSTOS, KIM
<u>Legal</u>	PICCOLO, MIKE
<u>For the Mayor</u>	DUNIVANT, TIMOTHY
<u>Additional Approvals</u>	
<u>Purchasing</u>	
<u>CITY COUNCIL</u>	MCDANIEL, ADAM

ORDINANCE NO C35628

An ordinance amending Ordinance No. C-35565, passed 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- 99999-	General Fund (GF) Unappropriated Reserves	<u>\$ 20,000</u>
TO:	0550-30210- 57200-54999	ONS (GF) Administration/Overhead-Information Services-Other Misc Charges	<u>\$ 20,000</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 shift funds to the Office of Neighborhood Services for Community Assembly use in granting funds to neighborhoods for Community Engagement, 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:**

05/07/2018

Date Rec'd

4/24/2018

Clerk's File #

RES 2018-0037

Renews #Cross Ref #Submitting Dept

CITY COUNCIL

Contact Name/Phone

BEN STUCKART 625-6258

Project #Contact E-Mail

BSTUCKART@SPOKANECITY.ORG

Bid #Agenda Item Type

Resolutions

Requisition #Agenda Item Name

0320- POLICY FRAMEWORK FOR SPECIAL EVENT PERMIT PROCESS CHANGES

Agenda Wording

A resolution regarding City policy for approval of special event permits.

Summary (Background)

City staff have indicated that they are working on changes to the City's special event permitting process. This resolution sets some simple guidelines for what those process changes should entail, including equality of treatment for events regardless of size, and ensuring that cultural events and parades receive support and consideration.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

MCDANIEL, ADAM

Study SessionDivision DirectorOther

PIES Comm., 4-23-2018

Finance

BUSTOS, KIM

Distribution ListLegal

PICCOLO, MIKE

For the Mayor

DUNIVANT, TIMOTHY

Additional Approvals

PurchasingCITY COUNCIL

MCDANIEL, ADAM

RESOLUTION NO. 2018-0037

A Resolution regarding City policy for approval of special event permits.

WHEREAS, the City Council has the duty to ensure that conditions within the City of Spokane are conducive and supportive of new and expanded economic and cultural activity and to enhance the quality of life of Spokane's residents; and

WHEREAS, the City's Comprehensive Plan requires the City to "[p]romote downtown Spokane as the economic and cultural center of the region (goals ED 3.10 and N 1.1), "[i]ncrease the number of public gathering spaces within neighborhoods" (goal N 7.1), "[p]romote actions designed to increase pedestrian use of streets, especially downtown, thereby creating a healthy street life in commercial areas" (goal DP 4.2), "[e]ncourage public and private participation in and support of arts and cultural events in recognition of their contribution to the physical, mental, social, and economic wellbeing of the community" (goal SH 3.1), and "[s]upport celebrations that enhance the community's identity and sense of place" (goal SH 3.8); and

WHEREAS, the City's strategic plan states the City's goals to "[i]ncrease and embrace diversity," "[m]arket Spokane's urban advantages and experiences", "[a]dvance downtown as [the] region's largest and strongest center," "[s]upport arts and cultural activities," and to increase our City's social capital, all of which are advanced by encouraging and supporting all special events in Spokane; and

WHEREAS, special events are a very good way to attract visitors to Spokane, but they are also crucial components of the kind of increased vitality and type of urban experience we seek for our residents as well; and

WHEREAS, Spokane is the urban hub of the region, and people come to Spokane for an urban experience, which means that the City of Spokane has a unique role to play; and

WHEREAS, annual special events such as Hoopfest, Elkfest, parades, Terrain, Bloomsday, and many others, make vast positive contributions to the high quality of life we enjoy in Spokane; and

WHEREAS, this high quality of life and increasing urban vitality and energy are key competitive advantages as Spokane seeks to attract new investment, new visitors and conventions, and new and expanded business and cultural activity within the City of Spokane which can spur additional economic growth, improve neighborhoods, increase property values, increase tax collections, and raise wages and median income; and

WHEREAS, it is essential to ensure that special events are permitted in a streamlined, fair, and publicly accessible manner which encourages and fosters innovative and creative ways for people to enjoy the highest possible quality of life and the very best cultural and recreational opportunities available anywhere.

NOW, THEREFORE, BE IT RESOLVED that it is the policy of the City of Spokane that the City's special events permitting process shall put all of the following principles into action:

- All special event permit requests shall be considered under the same criteria, regardless of size, length of tenure in Spokane, type of activity (i.e., arts, culture, athletic, recreational, etc.), or sponsoring entity, except that the City shall provide greater leeway for not for profit events that are primarily for free expression protected under the First Amendment.
- Street closures shall be made available for all special public events on equal terms, and street closures may be denied only if no other arrangement is possible to provide absolutely necessary life safety protections
- All fees and charges shall be reduced for events which meet standards of environmental responsibility (such as the availability of recycling, bicycle parking, encouragement of the use of transit, biking and walking to the event, etc.)
- Cost-sharing for Police and other public safety services shall be made available for all events that are open to the public, on a non-discriminatory basis, regardless of the size of the event. Not for profit or non-profit entities may receive a higher level of cost-subsidy, especially if the event is primarily for free expression protected under the First Amendment.
- Because Spokane is the hub of our region's economy, all special public events which occur in Spokane, no matter how large or how small, are "events of regional significance"

BE IT ALSO RESOLVED that the Council requests that City staff produce an ordinance or set of ordinances for Council adoption which implement these principles.

Passed by the City Council this ____ day of _____, 2018.

City Clerk

Approved as to form:

Assistant City Attorney

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

06/04/2018

<u>Date Rec'd</u>	5/21/2018
<u>Clerk's File #</u>	RES 2018-0040
<u>Renews #</u>	
<u>Cross Ref #</u>	OPR 2016-0396
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	CR 19395000
<u>Agenda Item Name</u>	5300 MITCHELL HUMPHREY 2018 ANNUAL MAINTENANCE AND SUPPORT

Agenda Wording

Resolution declaring Mitchell Humphrey as sole source for annual maintenance and support of City's Financial Management System (FMS) and authorizing staff to execute contract. July 1, 2018-June 30, 2019. Contract amount is \$93,856.32, including tax.

Summary (Background)

This contract is necessary in order to obtain software upgrades for all modules and receive Help Desk support. Mitchell Humphrey is the only authorized firm to provide maintenance services on this software system. Included in this support are: General Ledger and related modules, Budget Ledger, Accounts Payable, Accounts Receivable-Invoicing, Purchasing and related modules, FMS-EXEC, Test Account, FMS Productivity Suite, AP, ACH Wire Transfer, and Credit Card Processing.

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

Expense	\$ 93,856.32, inc. tax	# 5300-73300-18850-54820
Select	\$	#
Select	\$	#
Select	\$	#

Approvals**Council Notifications**

<u>Dept Head</u>	SLOON, MICHAEL	<u>Study Session</u>	FIN COM 5/21/2018
<u>Division Director</u>	SLOON, MICHAEL	<u>Other</u>	
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<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	
		IT - itadmin@spokanecity.org	
		Taxes & Licenses	
		kschaefer@mitchellhumphrey.com	

RESOLUTION 2018-0040

A RESOLUTION declaring the Mitchell Humphrey & Co. a sole source for the maintenance of the City's Financial Management System (FMS) and authorizing a maintenance contract at an annual cost of \$93,856.32 including tax.

WHEREAS the City acquired a financial management system from Mitchell Humphrey & Co, in 1983, which is used for General Ledger, Accounts Payable, Accounts Receivable and Purchasing; and

WHEREAS it is necessary to have a software maintenance contract in order to obtain software upgrades for all modules and receive Help Desk support which is of benefit to staff; and

WHEREAS Mitchell Humphrey & Co. is the only authorized firm to provide maintenance services on its software system; -- Now, Therefore,

BE IT RESOLVED by the City Council for the City of Spokane that it hereby declares Mitchell Humphrey & Co. a sole source for providing software maintenance services on the City's Financial Management System; and

BE IT Further RESOLVED that staff is hereby authorized to enter into a maintenance contract with Mitchell Humphrey & Co without public bidding at a cost of \$93,856.32 including sales tax.

ADOPTED BY THE CITY COUNCIL ON _____

City Clerk

Approved as to form:

Assistant City Attorney



City of Spokane

CONTRACT RENEWAL

**Title: SOFTWARE MAINTENANCE AND UPGRADES
FOR THE CITY'S FINANCIAL MANAGEMENT SYSTEM**

This Contract Renewal is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **MITCHELL HUMPHREY & COMPANY**, whose address is 1285 Fern Ridge Parkway, Suite 140, St. Louis, Missouri 63141-4022 as ("MH&CO"), individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the parties entered into a Contract wherein the Contractor agreed to perform SOFTWARE MAINTENANCE AND UPGRADES FOR THE CITY'S FINANCIAL MANAGEMENT SYSTEM; and

WHEREAS, the original Contract needs to be formally renewed by this written Contract Renewal document; and

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

1. CONTRACT DOCUMENTS.

The original Contract executed by the parties on May 5, 2016 and May 26, 2016, any previous amendments, renewals and / or extensions / 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. RENEWAL TERM.

This Contract Renewal shall become effective on July 1, 2018 and run through June 30, 2019, unless terminates sooner.

3. COMPENSATION.

The City shall pay an estimated maximum amount not to exceed **NINETY THREE THOUSAND EIGHT HUNDRED FIFTY SIX AND 32/100 (\$93,856.32)**, including tax, for everything furnished and done under this Contract Renewal. This is the maximum amount to be paid under this Renewal, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this Renewal 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 Renewal by having legally-binding representatives affix their signatures below.

MITCHELL HUMPHREY & COMPANY

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

David A. Condon

Title

Title

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments that are part of this Agreement:

Contract Renewal - Scope of Work document
Briefing Paper

18-087



MITCHELL
HUMPHREY
s o f t w a r e

1285 Fern Ridge Parkway
St. Louis, Missouri 63141-4402

800 237-0028 • 314 991-2440
www.mitchellhumphrey.com

April 15, 2018

Ms. Joan Hamilton
City of Spokane
West 808 Spokane Falls Boulevard
Spokane, Washington 99201-3344

Dear Joan:

Below is the breakdown for your annual maintenance and support fee for the period July 1, 2018 through June 30, 2019.

General Ledger and related modules	\$20,230.00
Budget Ledger	9,025.00
Accounts Payable	8,600.00
Accounts Receivable-Invoicing	11,100.00
Purchasing and related modules	20,040.00
FMS-EXEC	2,565.00
Test Account	8,480.00
FMS Productivity Suite	3,895.00
AP ACH Wire Transfer	765.00
Credit Card Processing	<u>1,565.00</u>
Total Maintenance	\$86,265.00

The invoice is enclosed with this letter.

Sincerely,

Cindy Bari
Business Manager

Enclosure



MITCHELL
HUMPHREY
s o f t w a r e

RECEIVED

APR 16 2018

IT DEPARTMENT
CITY OF SPOKANE

1285 Fern Ridge Parkway
St. Louis, Missouri 63141-4402

800 237-0028 • 314 991-2440
www.mitchellhumphrey.com

April 15, 2018

City of Spokane
W. 808 Spokane Falls Boulevard
Spokane, WA 99201-3344

Attn: Ms. Joan Hamilton

Reference:

Invoice No.: 109000000000017
Terms: Net 30 Days

I N V O I C E

Annual maintenance fee for FMS Software Products for the period July 1, 2018
through June 30, 2019

	86,265.00
Amount Due	\$86,265.00

Make check payable to Mitchell Humphrey & Co.

Briefing Paper

Finance & Administration Committee

Division & Department:	Innovation and Technology Services Division
Subject:	Mitchell Humphrey & Co. Annual Support and Upgrades
Date:	May 21, 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 Maintenance Contract for the Financial Management System (FMS).
Strategic Initiative:	
Deadline:	June 30, 2019
Outcome: (deliverables, delivery duties, milestones to meet)	Ongoing support and upgrades
Background/History: <i>This contract provides the annual maintenance and support for the City's Financial Management System (FMS). This contract is necessary in order to obtain software upgrades for all modules and receive Help Desk support. Mitchell Humphrey is the only authorized firm to provide maintenance services on this software system. Included in this support are: General Ledger and related modules, Budget Ledger, Accounts Payable, Accounts Receivable-Invoicing, Purchasing and related modules, FMS-EXEC, Test Account, FMS Productivity Suite, AP, ACH Wire Transfer, and Credit Card Processing.</i>	
Executive Summary: <ul style="list-style-type: none"> Requesting \$93,856.32 including tax for this contract. 2017 contract amount was \$91,217.92 Utilizing budget account # 5300-73300-18850-54820. 	
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:**

06/04/2018

Date Rec'd

5/21/2018

Clerk's File #

RES 2018-0041

Renews #Submitting Dept

DEVELOPER SERVICES CENTER

Cross Ref #Contact Name/Phone

ELDON BROWN 625-6305

Project #Contact E-Mail

EBROWN@SPOKANECITY.ORG

Bid #Agenda Item Type

Resolutions

Requisition #Agenda Item Name

4700 - RESOLUTION FOR VACATION OF MALLON AND CEDAR

Agenda Wording

Resolution setting hearing before the City Council for July 9th, 2018 for the vacation of the alley between Mallon Ave and Broadway Ave, from Cedar St. to Adams St., as requested by Chris Batten.

Summary (Background)

A petition was submitted representing 89.21% of the abutting property. Staff requests that City Council set a public hearing on the vacation petition.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? YES

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

BECKER, KRIS

Study SessionDivision Director

KINDER, DAWN

OtherUrban Development
Committee 05/14/18Finance

BUSTOS, KIM

Distribution ListLegal

RICHTMAN, JAMES

edjohnson@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

ebrown@spokanecity.org

Additional Approvals

kbecker@spokanecity.org

Purchasing

smsimmons@spokanecity.org

CITY COUNCIL

MCDANIEL, ADAM

sbishop@spokanecity.org

RESOLUTION NO. 2018-0041

WHEREAS, on March 30, 2018 the Spokane City Council received a petition for the vacation of the alley between Broadway Avenue and Mallon Avenue, from Cedar Street to Adams Street in the City of Spokane from owners having an interest in real estate abutting the above right-of-way; and

WHEREAS, it was determined that the petition was signed by the owners of more than two-thirds of the property abutting the alley between Broadway Ave and Mallon Ave, from Cedar St. to Adams St., in the City of Spokane; and

WHEREAS, the City Council desires to set a time and date through this resolution to hold a public hearing on the petition to vacate the above property in the City of Spokane;

NOW, THEREFORE,

The City Council does hereby resolve the following:

That hearing on the petition to vacate the alley between Broadway Ave and Mallon Ave, from Cedar St. to Adams St., in the City of Spokane will be held in front of the City Council at 6:00 P.M. or as soon thereafter as possible on **July 9, 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 _____, 2018.

City Clerk

Approved as to form:


Assistant City Attorney

P1801461VACA



Right of Way Description:
The alley between Mallon Ave
and Broadway Ave, from Cedar
St. to Adams St.

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.



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

06/04/2018

<u>Date Rec'd</u>	5/16/2018
<u>Clerk's File #</u>	RES 2018-0042
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	CITY COUNCIL
<u>Contact Name/Phone</u>	BEN STUCKART 625-6258
<u>Contact E-Mail</u>	BSTUCKART@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Resolutions
<u>Agenda Item Name</u>	0320 - RESOLUTION SETTING THE PLAN COMMISSION'S 2018 WORK PLAN

Agenda Wording

A resolution approving the Plan Commission's 2018 work program.

Summary (Background)

Each year, the City Council by resolution adopts the Plan Commission's annual work program. Recently, the City Council and Plan Commission, in a joint meeting, and with a follow-up in the Council's Urban Development Committee, discussed and finalized the attached work program.

<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>	MCCLATCHEY, BRIAN	<u>Study Session</u>	5/3/2018
<u>Division Director</u>		<u>Other</u>	UD Comm., 5/14/2018
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	RICHMAN, JAMES		
<u>For the Mayor</u>	DUNIVANT, TIMOTHY		
<u>Additional Approvals</u>			
<u>Purchasing</u>			
<u>CITY COUNCIL</u>	MCCLATCHEY, BRIAN		

RESOLUTION NO. 2018-0042

A resolution approving the Plan Commission's 2018 Work Program.

WHEREAS, pursuant to SMC 4.12.080, the City Council adopts by resolution an annual work program, which assigns certain policy and planning issues for consideration by the Plan Commission; and

WHEREAS, SMC 4.12.080 requires that the Plan Commission shall, when requested by City Council resolution, solicit information and comment from the public about planning goals and policies or plans for the City, and report to the City Council its recommendations and a summary and analysis of the comments received from the public; and

WHEREAS, the City Council and the Plan Commission met on May 3, 2018 to review and discuss the proposed Plan Commission 2018 Work Program.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts the Plan Commission's 2018 Work Program as set forth in Attachment A and approves of the work program for assigned policy and planning issues for consideration by the Plan Commission for 2018.

BE IT ALSO RESOLVED that the City Council recognizes that work assignments can change throughout the year and, therefore, calls upon the Chairperson of the Plan Commission, the Planning Director and the City Council liaison to the Plan Commission to coordinate the implementation of the work program.

BE IT FURTHER RESOLVED that the Council and the Plan Commission commit to review the 2018 Work Program periodically to determine if further revisions to the Work Program are necessary.

Passed by the City Council this ____ day of _____, 2018.

City Clerk

Approved as to form:

Assistant City Attorney

2018 Planning Initiatives/ Plan Commission Work Program Items

Planning & Development Projects - 2017	Mandate	Sponsor	Project Sart	Plan Commission Anticipated Completion	Project Anticipated Completion	Strategic Plan Alignment	NOTES
6 Year Transportation Program Update	Yes	Annual Requirement	In Progress	Spring 2018	Spring 2018	Improving Streets	Completed by June 30th 2018
Citywide Capital Improvement Program Update	Yes	Annual Requirement	In Progress	Fall 2018	Fall 2018		Hearing Oct 2018
Downtown Plan Update		Council	Stakeholder and Public Engnagement Starting		4th Quarter of 2018	Regional Center & Grow Targeted Areas	Draft to be competed by September with adoption December to January 2019
Impact Fee Update			In Progress		2nd Quarter 2018	Spokane Mobility Advantage	Streets is lead/ Awaiting FAA Interpretation
Street Standards Code Update			In Progress	TBD	TBD	Improving Streets & Transportation Choices	
Design Review Process Update		Staff	In Progress				Minor changes through code cleanup; major overhaul 2019
Urban Farming Code Updates		Stuckart	In Progress		tent. Hearing Aug 8th	Sustainability	Part of Code Cleanup
Height Limits Along Spokane Falls Blvd		Stuckart			Completed PC 4/25	Regional Center & Grow Targeted Areas	City Council Urban Experience 5/14, City Council hearing on 6/11/18
Maple to Jefferson Gateway Master Plan		Mayor	Spring 2018		2018	Safer Community & Beautification	
Bike Standards Code Update		BAB	In process		TBD	Transportation Choice	BAB Initiative - Part of Code Cleanup?
Neighborhood Planning		Existing Commitment	In process		2019		Minnehaha
Neighborhood Planning		Existing Commitment	In process		2019		Audobon/Northwest
Sub Area Planning		Mumm	Spring 2018				Prioritization completed.
*South University District Sub Area Planning		Fagan/Burke	funding to do pre-work scheduled		2nd Quarter 2019	Grow Targeted Areas	Develop project scope with sponsors and partners - timeline can be impacted by scope such as transporation and reglation changes.
*West Hills Subarea Plan		Mumm/Stratton	Jun-18		Jun-19	Grow Targeted Areas	Develop project scope with sponsors and partners
*29th/Grand		Kinnear/Beggs	Jun-18		Jun-19	Grow Targeted Areas	Review of this location after Lincoln/27th priorities changed as the new District 2 sub-area choice?
Infill Code Revisions		Council			In phases through 2019	Redefining Sustainability	Began in 2017

2018 Planning Initiatives/ Plan Commission Work Program Items

*Infill MF Dimensional & Transitional Requirements			In process		Late Spring 2018	Grow Targeted Areas & Available Housing	
*Infill-FAR & Buildable Area							Pending DT Plan update and Udistrict subarea plan.
* Infill- Form-Based Code - Design standards in CA4 (Logan)		Burke?			Fall 2018	Grow Targeted Areas	Part of Infill Code Initiative
*Infill -CCL Overlay Comp Plan/Code Amendment		Staff			2019	Transportation Choices	Infill Code Initiative
Code Maintenance/Cleanup 2018	Yes	Staff	Spring 2018		Fall 2018		
2018 Comprehensive Plan Amendment Docketing	Yes		Fall 2017		Mar-18		
*W 6th & S Stevens (Z2017-621COMP)			Mar-18		Oct-18		
*W 9th Ave & S Madison (Z2017-623COMP)			Mar-18		Oct-18		
*1616 S Rustle St (Z2017-624COMP)			Mar-18		Oct-18		
*6216 N Washington St (Z2017-630COMP)			Mar-18		Oct-18		
* Text Amendment re Strategic Plan (Z2018-253COMP)			Mar-18		Oct-18		
Shoreline Access Plan		Kinnear	g Project and timeline		Aug-19	River Connection	Met with Gavin Cooley, funding available. Updating scope for Stragey Plan and meet with Council sponsor
Street name change- Ft George Wright,		Stuckart			DO IN 2018	Diversity	Separate from West Hills Subarea Plan

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

06/04/2018

<u>Date Rec'd</u>	5/22/2018
<u>Clerk's File #</u>	RES 2018-0043
<u>Renews #</u>	

Submitting Dept	INNOVATION & TECHNOLOGY	Cross Ref #	OPR 2016-0395
Contact Name/Phone	MICHAEL 625-6468	Project #	
Contact E-Mail	MSLOON@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Resolutions	Requisition #	CR 19400000
Agenda Item Name	5300 ACCELA, INC., ANNUAL MAINTENANCE SUPPORT		

Agenda Wording

Resolution declaring Accela, Inc, a sole source for annual maintenance support of the City's permitting and licensing software and authorizing staff to execute the first of three one-year renewal options for annual maintenance support.

Summary (Background)

This contract will allow the City to obtain software upgrades and receive Help Desk support. The Accela system is utilized by several City departments and processes one-time and renewable permits and licenses. This renewal contract term is July 1, 2018, through June 30, 2019. This renewal contract amount is 178,453.79, including tax.

<u>Fiscal Impact</u>		Grant related?	NO	<u>Budget Account</u>	
		Public Works?	NO		
Expense	\$ 178,453.79, 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 5/21/2018
<u>Division Director</u>		SLOON, MICHAEL		<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	
Additional Approvals				Legal - modle@spokanecity.org	
<u>Purchasing</u>				Purchasing - cwahl@spokanecity.org	
<u>CITY COUNCIL</u>		MCDANIEL, ADAM		IT - itadmin@spokanecity.org	
				Taxes & Licenses	
				jknight@accela.com	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

skogan@accela.com

aharris@accela.com

knelson@accela.com

AMENDMENT

1. Parties

ACCELA Accela, Inc. 2633 Camino Ramon, Suite 500 Bishop Ranch 3 San Ramon, California 94583 Attention: Contracts Administration T: 925.659.3200 e-Mail: contractsadmin@accela.com	CUSTOMER City of Spokane 808 West Spokane Falls Boulevard Spokane, WA 99201 Attention: Joan Hamilton T: 509.625.6487 e-Mail: jhamilton@spokanecity.org
--	--
2. Effective Date This Amendment is effective as of the date of last signature ("Amendment Effective Date").
3. Extension of Contract Term. Accela and Customer entered into a Maintenance Agreement dated July 14, 2016 for Accela's performance of certain maintenance and support to Customer (the "Agreement"). The parties agree, as of the Amendment Effective Date, to extend the Term of such Agreement for one additional year commencing on July 1, 2018 ending on June 30, 2019 and subject to such fees as stated in the attached Invoice.
4. Terms and Conditions
 - 4.1 Unless specifically amended, modified, or supplemented by this document, all terms and conditions of prior written agreements between the parties shall remain unchanged and in full force and effect. The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
 - 4.2 If any particular provision of this document is determined to be invalid or unenforceable, that determination shall not affect the other provisions which shall be construed in all respects as if the invalid or unenforceable provision were omitted.

ACCELA

By: _____
Signature

Print Name

Its _____
Title

Dated: _____
Month, Day, Year

CUSTOMER

By: _____
Signature

Print Name

Its _____
Title

Dated: _____
Month, Day, Year



2633 Camino Ramon, Suite 500
San Ramon CA 94583

Bill To:
Spokane, WA
808 West Spokane Falls Blvd
Spokane WA 99201

Invoice #	INV-ACC39738
Invoice Date	5/22/2018
Invoice Due Date	6/21/2018
Invoice Currency	USD
Term Start Date	7/1/2018
Term End Date	6/30/2019
Open Air #	
Page	1 of 1

Ship To:
Spokane, WA
808 West Spokane Falls Blvd
Spokane WA 99201

Purchase Order No.	Customer ID	Sales Order	Payment Terms
	1455 Spokane, WA - City of	SO-ACC11785	Net 30
Item Number	Description	Quantity	Ext. Price
MR100ACAM120601	Accela Citizen Access Annual Maintenance and Support Renewal	197,400	\$11,279.04
MR100GISM120601	Accela GIS Annual Maintenance and Support Renewal	200	\$31,927.26
MR100WIRM120601	Accela Wireless Annual Maintenance and Support Renewal	50	\$31,461.44
MR100ENTLM0601	Accela Land Management Site License Annual Maintenance and Support Renewal	1	\$44,676.17
MR100ENTLC0601	Accela Licensing and Case Mgt Site License Annual Maintenance and Support Renewal Annual term: 7/1/18 - 6/30/19	1	\$44,676.12

Subtotal	\$164,020.03
Trade Discount	
Tax	\$14,433.76
Total Invoice Amount USD	\$178,453.79
Balance Due USD	\$178,453.79

Please direct inquiries to:
Accounts Receivable Dept. at (925) 659-3275
Send an email to: accountsreceivable@accela.com

Accela TAX ID: 94-276-7678

Remit To:
Accela Inc.
774375
4375 Solutions Center
Chicago, IL 60677-4003

Wiring Instructions
Wells Fargo Bank
For credit to: Accela Inc.
Account: 412-1765507
ABA: 121000248

RESOLUTION 2018-0043

A RESOLUTION declaring Accela, Inc., provider of government enterprise software solutions for permitting and licensing, as a sole source for the maintenance of the City's permitting and licensing Software and authorizing a maintenance contract at an annual cost of \$178,453.79 including tax, without public bidding.

WHEREAS the City acquired a permitting and licensing system from Accela, Inc. in 2006 after a detailed vendor selection process consisting of user evaluation, technical compatibility, vendor references and costs comparison; and

WHEREAS it is necessary to have a software maintenance contract in order to obtain software upgrades and receive Help Desk support which is of benefit to staff; and

WHEREAS Accela, Inc. is the only authorized firm to provide maintenance services on its software system; and

WHEREAS the costs associated with this maintenance contract are considered fair and reasonable as it adheres to the City's 2.99% increase limitations; and

WHEREAS if this Sole Source is not approved the City's ability to maintain its software will be severely impacted as the City will not be able to obtain upgrades and helpdesk support.

-- Now, Therefore,

BE IT RESOLVED by the City Council for the City of Spokane that it hereby declares Accela, Inc. a sole source for providing software maintenance services on the City's permitting and licensing software; and

BE IT Further RESOLVED that staff is hereby authorized to enter into a maintenance contract with Accela, Inc. without public bidding at a cost of \$178,453.79 including sales tax.

ADOPTED BY THE CITY COUNCIL ON _____

City Clerk

Approved as to form:

Assistant City Attorney

Briefing Paper

Finance & Administration Committee

Division & Department:	Innovation and Technology Services Division
Subject:	Accela, Inc. Annual Maintenance Support
Date:	May 21, 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 & 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 Maintenance Contract for Permitting, Licensing, and Software Program.
Strategic Initiative:	
Deadline:	June 30, 2019
Outcome: (deliverables, delivery duties, milestones to meet)	Ongoing support
Background/History: <i>First of three one-year renewal options for annual maintenance support of the City's permitting and licensing software. This contract will allow the City to obtain software upgrades and receive Help Desk support. The Accela system is utilized by several City departments and processes one-time and renewable permits and licenses.</i>	
Executive Summary: <ul style="list-style-type: none"> • Requesting an estimated amount of \$182,056.45 including tax for this contract based on a 2.99% annual increase. • 2017 contract amount was \$176,771.00. • Utilizing budget account # 5300-73300-18850-54820. 	
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:	

TRANSMITTAL OF FIRST READING ORDINANCE

DATE: May 7, 2018

TO: Eldon Brown
Engineering Services

Clerk's File No.
ORD C35607

FROM: Terri Pfister, City Clerk

RE: Vacation of the alley between Spokane Falls Boulevard and Main Avenue from the east line of Wall Street to the west line of Howard Street.

Attached is a copy of Ordinance C35607 for the vacation of:

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.

This ordinance was read for the first time on March 26, 2018, and will be read for the final time when the necessary conditions have been met and this transmittal, signed and dated by the Engineering Services Director, is returned to the City Clerk's Office.



City Clerk

5/7/18

Date

Precedent conditions have been met and Ordinance C35607 is hereby returned for Final Reading.



Principal Engineer – Developer Services

Dated: 5-15-18



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

April 2, 2018

City Clerk File No.:
ORD C35607

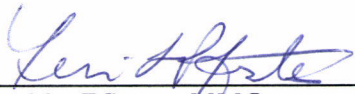
COUNCIL ACTION MEMORANDUM

RE: HEARING ON THE VACATION OF THE ALLEY BETWEEN SINTO AVENUE
AND SHARP AVENUE and RELATED FIRST READING ORDINANCE C35607

During its 6:00 p.m. Legislative Session held Monday, March 26, 2018, City Council held a hearing on 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, as requested by owners having an interest in real estate abutting the above right-of-way. Subsequent to an overview by Eldon Brown of Development Services and an opportunity for public testimony, with no individuals requesting to speak, the following action was taken:

Upon Unanimous Roll Call Vote (Council President Stuckart absent), the City Council **approved, subject to conditions** (in the Street Vacation Report dated January 31, 2018), 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, as requested by owners having an interest in real estate abutting the above right-of-way.

In conjunction with the hearing, 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 —was read the first time, with further action deferred.



Terri L. Pfister, MMC
Spokane City Clerk

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

03/26/2018

Date Rec'd

3/14/2018

Clerk's File #

ORD C35607

Renews #Submitting Dept

DEVELOPER SERVICES CENTER

Cross Ref #Contact Name/Phone

ELDON BROWN 625-6305

Project #Contact E-Mail

EBROWN@SPOKANECITY.ORG

Bid #Agenda Item Type

Hearings

Requisition #Agenda Item Name

4700 - 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.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

BECKER, KRIS

Study SessionDivision Director

BECKER, KRIS

Other

P.I.E.S 1/22/18

Finance

BUSTOS, KIM

Distribution ListLegal

RICHTMAN, JAMES

ebrown@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

edjohnson@spokanecity.org

Additional Approvals

sbishop@spokanecity.org

Purchasing

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

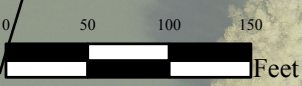
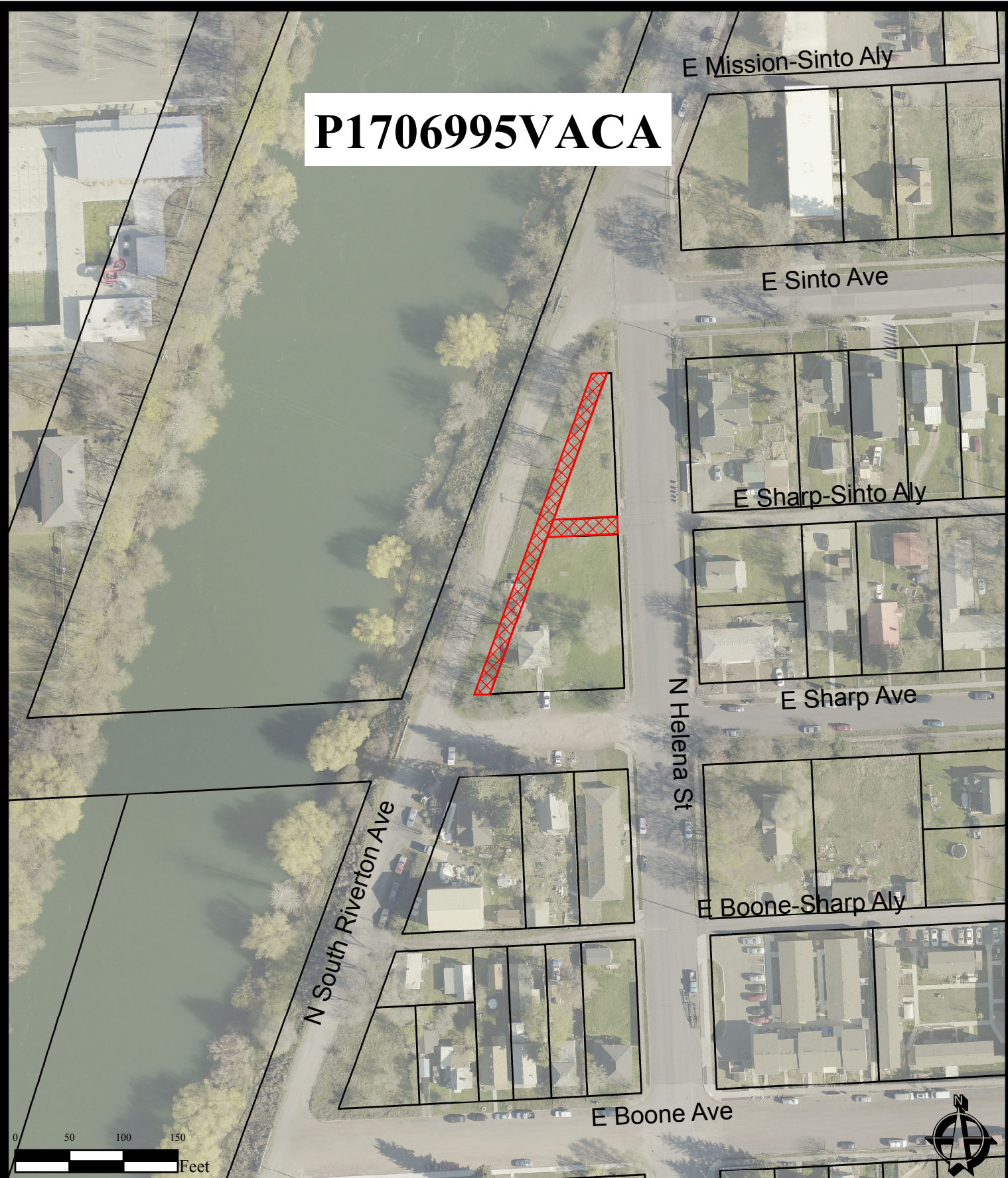
Mayor

Date: _____

Effective Date: _____

\\cosfile4\bds\dsc\permitting\stvac\s riverton-sinto to sharp\ordinance.docx

P1706995VACA



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



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

05/21/2018

Date Rec'd

5/9/2018

Clerk's File #

ORD C35622

Renews #Cross Ref #Project #Bid #Requisition #Submitting Dept

CITY ATTORNEY

Contact Name/Phone

TIM SZAMBELAN 6225

Contact E-Mail

TSZAMBELAN@SPOKANECITY.ORG

Agenda Item Type

First Reading Ordinance

Agenda Item Name

NEW CINGULAR WIRELESS FRANCHISE

Agenda Wording

An ordinance granting a non-exclusive franchise to use the public right of way to provide noncable telecommunications service to the public to New Cingular Wireless Inc, subject to certain conditions and duties as further provided.

Summary (Background)

The proposed telecommunications franchise agreement is for a 10-year term with 2 five years extensions. New Cingular Wireless is in the process of the development and implementation of the next generation of a LTE network. This new network will provide high-speed, high-capacity bandwidth in order to facilitate the next generation of devices and data-driven services and to meet the growing demand for connectivity. This network will utilize small cell technology which combines fiber, repeaters, and microwave technologies to ensure that the network is cost-efficient, low-impact to communities, and can be effectively upgraded and augmented in the future.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

DALTON, PAT

Study SessionDivision DirectorOtherFinance

DOVAL, MATTHEW

Distribution ListLegal

SZAMBELAN, TIMOTHY

tsambelan@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

jdealy@spokanecity.org

Additional Approvals

bstuckart@spokanecity.org

PurchasingCITY COUNCIL

MCDANIEL, ADAM

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

Ordinance No. C35622

An ordinance granting a non-exclusive franchise to use the public right-of-way to provide noncable telecommunications service to the public to New Cingular Wireless PCS, LLC, subject to certain conditions and duties as further provided.

THE CITY OF SPOKANE DOES ORDAIN:

- Section 1. Definitions
- Section 2. Parties, grant
- Section 3. Limits on permission
- Section 4. Effective Date, Term
- Section 5. General provisions
- Section 6. Plans; Locate, Relocate
- Section 7. Grantee to restore affected areas
- Section 8. Information, good engineering, inspections
- Section 9. Limited access, no obstruction, accommodation
- Section 10. Undergrounding
- Section 11. Facilities for City Use
- Section 12. Liability; No duty
- Section 13. Insurance
- Section 14. Taxes, fees
- Section 15. Franchise administration
- Section 16. Additional

Section 1. Definitions

"City" means the City of Spokane and its legal successors.

"Administering officer" is the designee of the Mayor who administers this Franchise.

"Cable television service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

"Facilities" means the equipment, fixtures and appurtenances necessary for Grantee to furnish and deliver telecommunications services as provided in the Franchise. It includes poles, antennas, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, fiber optic cables, wires and conduits and related

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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materials and equipment, but not above ground pedestals or other special installations in the Public right-of-way absent written permission of the Administering officer.

"Municipal infrastructure" means the road bed and road area, street and sidewalk paving, curbing, utility easements (unless there are relevant use, structure or other restrictions), associated drainage facilities, combined sewer tanks, bike paths and other construction or improvements pertaining to public travel. It further includes municipal water and sewer lines or other municipal utility facilities, as well as municipal traffic signal, street lighting and communications facilities in the right-of-way or other areas or easements open for municipal use. It further includes skywalks, street trees, plants, shrubs, lawn and other ornamental or beautification installations owned by the City in the right-of-way or other ways open for public travel or municipal use, and accepted for municipal management or control as such. The definition is intended to encompass any municipal physical plant, fixtures, appurtenances or other facilities located in or near the right-of-way or areas or easements opened and accepted for municipal use.

"Public right-of-way" or "right-of-way" means land acquired by or dedicated to the City for public roads and streets, but does not include state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; structures, including poles and conduits, located within the right-of-way; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way acquired under 43 U.S.C. 912 and related provisions of federal law that are not open for motor vehicle use.

"Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For purposes of this definition, "telecommunications service" excludes the over-the-air transmission of broadcast television or broadcast radio signals and "cable service" as defined in 42 USC 522 (5) or other distribution of multichannel video programming.

Section 2. Parties, grant

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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A. This is a Franchise agreement between the City of Spokane as Grantor, hereafter also "City", and New Cingular Wireless PCS, LLC, as Grantee, hereafter also "Grantee". Grantee is a Delaware Limited Liability Company whose home office is 575 Morosgo Drive NE, Atlanta, GA 30324. Any notice sent hereunder to Grantee shall be sent, via certified mail, return receipt requested, or express carrier with notice deemed given upon receipt or first refusal, to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: _____; Name: _____ (**State Abbrev**)
Fixed Asset #: _____
575 Morosgo Drive NE
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Re: Cell Site #: _____; Name: _____ (**State Abbrev**)
Fixed Asset #: _____
208 S. Akard Street
Dallas, TX 75202-4206

Any contact necessary for effectuating this Franchise or any logistics hereunder shall be made to: Kristy Weaver, phone: (425) 214-2186; email: ko3199@att.com facsimile: (503) 691-4930.

Any notice sent hereunder to the City shall be sent, via certified mail, return receipt requested, or express carrier with notice deemed given upon receipt or first refusal, to:

City of Spokane
808 West Spokane Falls Boulevard
Spokane, WA 99201
Attention: City Clerk's Office

With a copy to:
City of Spokane
808 West Spokane Falls Boulevard
Spokane, WA 99201

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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Attention: City Attorney's Office

B. In return for promises made and subject to the stipulations and conditions stated, the City grants to Grantee general permission to enter, use, and occupy (including, but not limited to, permission to relocate, install, operate, maintain, replace, relocate, excavate, repair, reinstall, restore and upgrade fiber optic cable, small cell devices) the Public right-of-way, to locate Facilities to provide telecommunications service to the public in the City of Spokane and/or to transport telecommunications services through the City and for no other purpose. This grant expressly does not include permission to use the Public right-of-way for cable service or cable television service. The grant is by way of general permission to occupy the right-of-way, and not in place of specific location permits. In accepting this Franchise, Grantee stipulates and agrees to the City's authority to issue and require the Franchise and stipulates and agrees to the other terms and conditions hereof.

Section 3. Limits on Permission

A. Should the City determine Grantee is using the Franchise beyond its purpose set forth in Section 2B above, or functioning as a cable operator or performing other business functions beyond the scope of permission extended in the Public right-of-way, the City reserves the right to cancel this Franchise and require Grantee to follow any applicable requirements to obtain a cable franchise or other franchise from the City.

B. Permission granted is in the nature of a quitclaim of any interest or authority the City has to make the grant, without warranty of authority by the City to the Grantee. It does not extend beyond the right-of-way, to areas such as buildings or private areas not reserved for general utility access. Grantee is solely responsible to make its own arrangements for any access needed to such places. Permission granted is nonexclusive. Grantee stipulates that the City may grant similar permission to others, provided that any such use by others does not unreasonably interfere with Grantee's use and placement of its Facilities in any right-of-way. The City additionally reserves the right to engage in any lawful municipal function, whether or not including any line of business engaged in by Grantee.

C. The grant of permission from the City does not extend to municipal buildings or other municipally owned or leased structures or premises held in a proprietary or ownership capacity. For such locations, Grantee should make specific written lease arrangements directly with the municipal department

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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controlling such building or other structure or area, all arrangements to be approved in accord with applicable requirements.

Section 4. Effective Date, Term

This Franchise is effective as of the effective date of the Ordinance ("Effective Date"); PROVIDED, that it shall not be effective unless and until the written acceptance of this ordinance by the Grantee, signed by its proper officers, shall be filed with the City Clerk within thirty (30) days of enactment. It expires at midnight ten (10) years thereafter (the "Initial Term"). Following the expiration of the Initial Term, this Franchise shall be automatically renewed for two (2) additional five (5) year periods (each a "Renewal Term"), unless Grantee provides to the City written notice of intention not to renew at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, as applicable. This does not affect the City's right to revoke the Franchise for cause, abandonment, or because of breach of any material promise, condition or stipulation stated herein.

Section 5. General Provisions

A. Grantee is and will remain in good standing as a limited liability company registered to do business in the State of Washington, and pay all taxes or fees applicable thereto. Grantee will maintain a public telephone number 24 hours a day, seven days a week for the City's access, personally staffed at least during normal business hours. The Grantee will notify the City within five business days if Grantee's contact information changes.

B. Grantee will coordinate its activities with other utilities and users of permitted areas to avoid unnecessary cutting, damage or disturbance to the Public right-of-way and other permitted areas, and to conduct its planning, design, installation, construction and repair operations to maximize the life and usefulness of the paving and Municipal infrastructure. Grantee agrees that its uses in Franchised areas are fully subordinate to Municipal infrastructure needs and uses, the general public travel and access uses and the public convenience, except as may be otherwise required by law. Grantee promises to minimize or avoid any hazard, danger or inconvenience to Municipal infrastructure needs and uses, public travel, and the public convenience.

C. If required by applicable laws, Grantee will maintain membership with the Inland Empire Utility Coordinating Council (IEUCC) or other similar or successor organization designated to coordinate underground fixture locations

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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and installations. Grantee is familiar with Ch. 19.122 RCW, Washington State's "Underground Utilities" statute. Grantee will familiarize itself with local procedures, custom and practice relating to the one-call locator service program, and will see to it that its contractors or others working in the right-of-way on Grantee's behalf are similarly well informed.

Section 6. Plans; Locate, Relocate

A. Grantee's plans for construction or installation shall be submitted to the Administering officer as requested under such advance notification as the Administering officer may reasonably require, with a copy of such plans to the City's MIS ITSD Director, Developer Service Director, City Engineer, and any other information requested by the City. Grantee promises that all its installations shall be placed in the standard location for buried telecommunications fiber cable not to be less than (30) thirty inches below the paved surface and as determined by local regulation, custom and practice in effect on the date that permits or authorizations are issued for the applicable Facilities, or as designated by the Administering officer. In the event that cable is needed to be installed above ground, all above ground pedestals or other above ground structures besides telephone poles and related guy wire supports are subject to separate review and approval by the Administering officer, in addition to other Franchise requirements; provided, however, that such approval shall not be unreasonably withheld, conditioned, or delayed. If the location of the Grantee's facility is already occupied by City utilities, the Grantee is required to submit new plans showing the location that the Grantee will now be occupying. Grantee will not be considered to have breached the Franchise or acted in such a way as to terminate the Franchise if it reduces the amount of right-of-way occupied.

B. The City reserves the right to change, regrade, relocate, or vacate the Public right-of-way and/or skywalk over the right-of-way. If Grantee is required to relocate its cable, relocation costs incurred by Grantee will be reimbursed by the City and/or any other entity requiring the relocation or funding the project that is requiring the relocation, subject to the conditions set forth in Section 6. The City agrees to give Grantee preliminary notice of any such request ("initial notice date"). Grantee must submit design plans within sixty (60) days of an initial notice date, with relocation to be accomplished within one hundred and eighty (180) days of the initial notice date or thirty days of the City's final approval of Grantee's design plan, whichever is later. In addition, the City agrees to work with Grantee to give additional advance notice as may be reasonable under the circumstances or to extend additional time, considering the nature and

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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size of the project and other factors. Upon expiration of the time limits specified, Grantee will relocate, remove, or reroute its Facilities, as ordered by the Administering officer. This provision prevails over others in the event of conflict or ambiguity. In case of emergency, the City will provide notice as soon as reasonably practicable, giving reasonable consideration also for Grantee's needs.

C. Under the provisions of RCW 35.99.060, the Administering officer may require Grantee to relocate its Facilities within the right-of-way, when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of public welfare, health, or safety. The same terms and timelines as exists in Section 6(B) shall apply for the relocation contemplated in this Section 6(C).

D. Grantee shall complete the relocation by the date specified by the Administering officer, unless extended by said official after a showing by Grantee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements. As provided in RCW 35.99.60, Grantee may not seek reimbursement for its relocation expenses from the City except for City requested relocations:

1. Where Grantee has paid for the relocation cost of the same Facilities in the right-of-way at the request of the City within the past five (5) years, Grantee's share of the cost of relocation will be paid by the City when the City is requesting the relocation;

2. Where aerial to underground relocation of authorized Facilities in the right-of-way is required by the City, where Grantee has any ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the City requiring relocation; and

3. Where the City requests relocation in the right-of-way solely for aesthetic purposes, unless otherwise agreed to by the parties.

4. The parties agree that "relocation" refers to a permanent movement of Facilities required of Grantee by the City, and not a temporary or incidental movement of Facilities, such as a raising of lines to accommodate house moving and the like, or other revisions Grantee would accomplish without regard to Municipal request.

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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E. As provided by RCW 35.99.060, where a project is primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. Grantee understands however that the City has no obligation to collect such reimbursement and enforcement of any such rights shall be solely by Grantee. Upon stipulation of all parties, the Administering officer may arbitrate any dispute referenced in this subsection E or refer the matter to the Hearings Examiner, provided, costs of the same as may be assessed by the City shall be borne by the participants. Grantee is not otherwise precluded from recovering costs associated with relocation, consistent with applicable state or federal law, where it does not directly or indirectly create additional liability or expense to the City.

F. The Administering officer may require the relocation, adjustment or securing of Facilities at Grantee's expense at any location in the event of an unforeseen emergency that creates an immediate threat to the public safety, health, or welfare. Where the City determines to abandon or vacate any right-of-way or other permitted area, it is the Grantee's responsibility to resolve any question of Grantee's continued occupancy or use of such areas directly with the owner of such areas.

G. Grantee may be subject to SMC 17C.355A Wireless Communication Facilities. The Grantee is subject to all applicable zoning laws and requirements in effect on the date that the permits or authorizations are issued for the applicable Facilities, as permitted by law when installing Facilities in the Public right of way.

H. Grantee may be required to obtain a master lease agreement for attachment of telecommunications equipment or other facilities in the Public right of way.

I. The City has the right to charge the Grantee site specific charges for placement of new facilities in the right of way on structures owned by the City pursuant to RCW 35.21.860.

J. The Grantee will work with the City to provide access to conduit or other equipment the Grantee is placing in the public right of way when feasible.

Section 7. Grantee to Restore Affected Areas

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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Subject to Section 6 as it may apply, whenever Grantee damages or disturbs any location in or near the right-of-way or other permitted area, Grantee will promptly restore the same to original or better condition at its expense, as reasonably required by the Administering officer. Grantee will restore and patch all surfaces cut in accord with the City's generally applicable Pavement Cut Policy, on file with the Administering officer to maintain and preserve the useful life thereof. Any damage or disturbance to facilities, fixtures or equipment of the City or others shall be promptly repaired. Pavement restorations shall be maintained in good condition and repair by Grantee until such time as the area is resurfaced or reconstructed. If Grantee fails or delays for more than thirty (30) days after receipt of written notice from the City or the Administering officer in performing any obligation here or elsewhere in the Franchise following receipt of written notice of such failure or delay, the City may proceed to correct the problem and bill Grantee for the expense, upon such reasonable notice as determined by the Administering officer under the circumstances. Grantee will reimburse City within thirty (30) days following receipt of an invoice together with reasonably supporting documentation evidencing such expense.

Section 8. Information, Good engineering, Inspections

A. Not more than once annually, Grantee will supply information reasonably requested by the Administering officer such as installation inventory, location of existing or planned Facilities, maps, plans, operational data, and as-built drawings of Grantee's installations or other information reasonably related to Grantee's Facilities, unless the information is confidential and/or proprietary. The information shall be in format compatible with City operations. Grantee is responsible for defending any public record requests as it may desire.

B. Grantee property and Facilities shall be constructed, operated and maintained according to good engineering practice. In connection with the civil works of Grantee's system, such as trenching, paving, compaction and locations, Grantee promises to comply with the American Public Works Association Standard Specifications, the edition being that in current use by the City, together with the City Standard Plans and City's Supplemental Specifications thereto, all as now or hereafter amended, excluding existing non-conforming uses and other changes to the Specifications which do not apply to previously-constructed improvements and/or wireless communications facilities. Grantee promises its system shall comply with the applicable federal, state and local laws, and the National Electric Safety Code and Washington Electrical Construction Code, where applicable. Grantee will familiarize itself with the City of Spokane's Specifications and other right-of-way installation and location requirements, on

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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file with the Administering officer and make reasonable effort to be familiar with updates or changes thereto.

Section 9. Limited Access, No Obstruction, Accommodation

A. The City reserves the right to limit or exclude Grantee's access to a specific route, Public right-of-way or other location when, in the reasonable judgment of the Administering officer, there is inadequate space, a pavement cutting moratorium, subject to the requirements of applicable law, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reasonable cause determined by the Administering officer, provided, it shall do so consistent with the Federal Telecommunications Act of 1996 and RCW 35.99.050 as applicable.

B. Grantee must raise any concerns under the aforementioned laws or other applicable laws which it believes limit the City's authority or Grantee's obligations to the City pertaining to this Franchise at the time such issue is first known or should have been reasonably known by Grantee.

C. Grantee will not interfere with Municipal infrastructure uses of the right-of-way or other permitted areas. Grantee shall maintain a minimum underground horizontal separation of five (5) feet from City water facilities and ten (10) feet from above-ground City water facilities including sewer and storm water facilities unless modified in writing; PROVIDED, that for development in new areas, the City, together with Grantee and other utility purveyors or authorized users of the right-of-way, will develop and follow the Administering officer's reasonable determination of a consensus for guidelines and procedures for determining specific utility locations, subject additionally to this Franchise. Subject to Section 6, the City may require Grantee to make reasonable accommodation for public or third party needs in the construction of Grantee Facilities in the right-of-way as, in the reasonable judgment of the Administering officer, are necessary to preserve the condition of, or reduce the interference with, such right-of-way, and a reasonable apportionment of any expenses of any such accommodation; PROVIDED, that this Franchise creates no third party beneficial interests. Notwithstanding the foregoing, it remains the responsibility of the Grantee to anticipate and avoid conflicts with other right-of-way occupants or users, other utilities, franchisees, or permittees existing within the right-of-way as of the date of this Ordinance. The City assumes no responsibility for such conflicts.

Section 10. Undergrounding

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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The City reserves the right to develop a general policy on undergrounding and to require Grantee's participation therein, in coordination the City's underground program for other utility service providers, as a condition of Grantee's new installation or major maintenance or restoration construction activities of overhead facilities under this Franchise; provided, however, the City's right to require undergrounding of Grantee's Facilities shall exclude antennas, equipment cabinets, cabling and other equipment that must be above-ground to operate. The purpose of this section is to recognize and preserve the City's control over uses of the Public right-of-way, consistent with the Municipal policy favoring undergrounding of overhead lines for aesthetic reasons.

Section 11. Facilities for City Use

A. Except as covered by mutual agreement, whenever Grantee constructs, relocates or places ducts or conduits in the Public right-of-way as part of the Facilities, Grantee will provide the City where technically feasible, judged by objective engineering standards, with additional duct or conduit and related structures necessary to access the conduit at its actual incremental out-of-pocket costs plus 10% to cover all internal costs. The parties agree to execute any documents needed to satisfy RCW 35.99.070 as it may apply. The City may review supporting third party billings to support incremental cost claims. Unless otherwise agreed, the City further agrees not to resell, lease, sublease, or grant an IRU or other right to use in any Grantee Facilities provided under this paragraph, or use such Facilities to provide communications services for hire, sale or resale, to the public or any third party which is not a governmental entity. All Facilities supplied shall be maintained to technical specifications.

B. The City is permitted to attach to aerial poles for aerial fiber cabling and required mounting hardware in situations where the existing pole agreements between Grantee and the other party would not be violated by the City's attachment use of the aerial pole.

C. Grantee agrees to notify the City ITSD Director, Developer Service Director, and City Engineer at least sixty (60) days prior to opening a trench or placing overhead lines at any location to allow the parties to implement paragraph B herein as those provisions may apply. As to all matters encompassed in this Section, the parties further agree to do anything required by law to maintain the effectiveness of such arrangements and to negotiate in

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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good faith any matters not otherwise fully resolved. Each party acknowledges receipt of good and adequate consideration for all matters encompassed in this Section.

Section 12. Liability; No duty

A. Grantee waives all claims, direct or indirect, for loss or liability, whether for property damage, bodily injury or otherwise, against the City arising out of Grantee's enjoyment of Franchise or permit privileges. This waiver does not apply to negligent or intentional acts of the City outside a governmental or regulatory capacity, such as granting this franchise or permits. Except to the extent caused by the negligent or intentional acts of the City, Grantee will indemnify and hold the City, its boards, officers, agents and employees ("City") harmless from any and all claims, accidents, losses, or liabilities arising from or by reason of any intentional or negligent act, occurrence or omission of the Grantee, whether singularly or jointly with others, its representatives, permittees, employees or contractors, in the construction, operation, use, or maintenance of any of the Grantee's property or Facilities, and/or enjoyment of any privileges granted by this Franchise, or because of Grantee's performance or failure to perform any Franchise obligations.

B. Grantee accepts that access to any franchised area is furnished "as is". The City has made no assessment or guarantee as to its suitability for Grantee needs or compatibility of Grantee uses with other needs. Grantee waives immunity under Title 51 RCW in any cases involving the City of Spokane relating solely to indemnity claims made by the City directly against Grantee for claims made against the City by Grantee's employees and affirms that the City and Grantee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply. This waiver has been mutually negotiated.

C. It is not the intent of this Ordinance to acknowledge, create, or expand any duty or liability of the City for any purpose. Any City duty nonetheless deemed created shall be a duty to the general public and not to any specific party, group, or entity.

Section 13. Insurance

A. Grantee shall furnish satisfactory evidence of commercial general liability insurance and maintain the same in good standing, with limits of one

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate, with the City of Spokane included as an additional insured as their interest may appear under this Agreement. Grantor's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Grantee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Grantor, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Grantor, its employees, agents or independent contractors; and, (iii) not exceed Grantee's indemnification obligation under this Agreement, if any.

B. Grantee's required insurance shall be primary and non-contributory with any insurance or program of self-insurance that may be maintained by the City. On or before June 1st of each year and at the time of granting this Franchise, as a condition of Franchise validity, Grantee shall file with the City Clerk, with copy to the City Risk Manager, proof of continued insurance coverage, in the amounts required in this Section, through a Certificate of Insurance, including the blanket additional insured endorsement indicating City coverage required herein. Notwithstanding the foregoing, Grantee may self-insure any required coverage.

Section 14. Taxes, fees

A. No Franchise fee is assessed for telecommunications service providers in accord with the prohibition of state law (RCW 35.21.860). If the prohibition of telecommunications service provider franchise fees is removed or modified to allow a franchise fee, the parties agree to negotiate this provision as a material term on which agreement is required for continuation of this franchise, PROVIDED, the City must give one hundred eighty (180) days' notice to invoke this provision and any franchise fee under it shall be prospective in nature.

B. Nothing in this Franchise shall otherwise limit the City's power to tax or recover any lawful expenses in connection with this Franchise. Grantee agrees to pay all taxes as due and any lawful expenses within ninety (90) days of billing pursuant to this Franchise. Failure to pay within ninety (90) days after demand by the City and exhaustion of any applicable remedies is a material breach of this Franchise.

Section 15. Franchise Administration

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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Questions of application or interpretation of this Franchise are determined by the Administering officer or a court of competent jurisdiction. Said officer may issue enforcement orders, upon due notice as deemed proper, promulgate rules and procedures as deemed necessary and grant exceptions, which shall be revocable. Nothing in the Franchise limits the City's police or regulatory power in general or over its right-of-way or other franchised areas. For the performance of all franchise obligations, time is of the essence. All City acts under this Franchise are discretionary guided by considerations of the public health, safety, esthetics and convenience.

Section 16. Additional

A. Grantee may assign this Franchise or any of its rights under this Franchise or delegate any of its duties under this Franchise, with the prior written consent of the City, which consent will not be unreasonably withheld, conditioned or delayed, provided, however, that Grantee may assign this Franchise or any of its rights under this Franchise or delegate any of its duties under this Franchise to (i) any entity that it controls, is under common control with or is controlled by or (ii) any entity that is the survivor of a merger, consolidation or other business combination or that acquires all or substantially all of the assets of Grantee. The City may not assign this Franchise or any of its rights under this Franchise or delegate any of its duties under this Franchise, without the prior written consent of Grantee. Any assignment or delegation in violation of this Section is null and void.

No capital stock may ever be issued based on any permission to use or occupy the right-of-way or other permitted areas or the value thereof. The City will provide written notice of any condemnation or annexation actions that would affect Grantee's rights. In any condemnation proceeding brought by the City, Grantee shall not be entitled to receive any return thereon, except for its value.

B. This Franchise may be revoked by the City Council by resolution because of any material breach, after giving at least thirty (30) days' written notice to Grantee and opportunity to cure. Similarly, Grantee may elect to terminate this Franchise because of any material breach of the City's obligations, after giving at least thirty (30) days' written notice to the City and opportunity to cure. Except as otherwise provided for in this Franchise, and upon written notice, the defaulting party will have thirty (30) days to cure defaults under the terms of this Franchise. Neither party is in default of this Franchise if the party provided written notice commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default. If any

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

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default exists after the applicable cure period, the non-defaulting party may, without prejudice to any other rights or remedies at law or in equity or under this Franchise, terminate this Franchise.

No forbearance by the City of any term or condition of this Franchise shall ever comprise a waiver or estoppel of the City's right to enforce said term or condition. Grantee may surrender its Franchise to the City upon sixty (60) days written notice to the Administering officer, subject to acceptance by the City, by a resolution of the City Council.

C. Upon termination, surrender or expiration of the Franchise, Grantee may be required to remove all its Facilities as ordered by the Administering officer or otherwise abandon the cable in place, first removing all electronics, if any, rendering the same safe. In the event removal is required, Grantee shall remove the Facilities within one hundred twenty (120) days of receipt of written notice from City. Grantee will have no further obligations under this Franchise.

D. Grantee understands that this Franchise applies to itself as well as all third party users, assigns, successors or any other entity enjoying de facto Franchise privileges derived from permission extended to Grantee herein and Grantee shall assure that any contracts with such users, assigns, successors or entities so provide. Additionally, Grantee accepts full responsibility with said users, assigns, successors, or entities, jointly and severally, to the City for full performance of all Franchise obligations.

E. This Franchise is governed by the laws of the State of Washington, and venue for any litigation arising out of or in connection with privileges extended herein is stipulated to be in Spokane County.

F. (Force Majeure) Except as otherwise provided in this Franchise, neither party hereto will be in default under this Franchise if and to the extent that any failure or delay in a party's performance of one or more of its obligations hereunder, is caused by any of the following conditions, and such party's performance is excused and extended during the period of any such delay: act of God (such as, flood, back water caused by flood, tornado, earthquake, and unforeseeably severe weather); fire; government codes, ordinances, laws, rules, regulations or restrictions not in effect at the time of execution of this Franchise (collectively, "Regulations"); war or civil disorder; or vandalism, or any other events beyond the reasonable control of the party seeking relief under this Section, provided that the party claiming relief under this Section promptly notifies the other in writing of the existence of the event

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

Page 16 of 17

relied on and the cessation or termination of the event. The party claiming relief under this Section must exercise reasonable efforts to minimize the time for any such delay.

Both parties hereto acknowledge that events under this Section may occur which are incapable of being cured so as to allow the parties to enjoy the full benefit of their rights under the Franchise. If a party is unable to conduct its business due to an event of force majeure as described in this Section, and the force majeure occurs and remains uncured after sixty (60) days, the party not claiming inability to perform under force majeure may, at its option, terminate this Franchise without further obligation.

G. (Authority to Sign) Each party hereto hereby represents and warrants to the other that the person or entity signing this Franchise on behalf of such party is duly authorized to execute and deliver this Franchise and to legally bind the party on whose behalf this Franchise is signed to all of the terms, covenants and conditions contained in this Franchise.

Passed the City Council _____, 2018.

M A Y O R

Attest: _____
City Clerk

Approved as to form:

Assistant City Attorney

New Cingular Wireless PCS, LLC
TELECOMMUNICATIONS (NONCABLE) FRANCHISE

Page 17 of 17

ACCEPTANCE OF CITY FRANCHISE

Ordinance No. _____, effective _____, 2018.

I, _____, am the _____ of AT&T Mobility Corporation (as manager of New Cingular Wireless PCS, LLC) and am an authorized representative to accept the above referenced City Franchise ordinance on behalf of New Cingular Wireless PCS, LLC.

I certify that this Franchise and all terms and conditions thereof are accepted without qualification or reservation.

DATED this _____ day of _____, 2018.

Witness: _____

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

06/04/2018

<u>Date Rec'd</u>	5/21/2018
<u>Clerk's File #</u>	ORD C35629
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	CITY COUNCIL
<u>Contact Name/Phone</u>	BREEAN BEGGS 6714
<u>Contact E-Mail</u>	BBEGGS@SPOKANECITY.ORG
<u>Agenda Item Type</u>	First Reading Ordinance
<u>Agenda Item Name</u>	0320 AUTOMATED TRAFFIC SAFETY CAMERAS

Agenda Wording

An ordinance relating to automated traffic safety camera systems; amending section 16A.64.260 of the Spokane Municipal Code.

Summary (Background)

This ordinance updates the authorization to use traffic safety cameras from Nov. 12, 2018, to Nov. 12, 2023.

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

<u>Approvals</u>	<u>Council Notifications</u>
<u>Dept Head</u>	<u>Study Session</u>
<u>Division Director</u>	<u>Other</u>
<u>Finance</u>	<u>Distribution List</u>
<u>Legal</u>	
<u>For the Mayor</u>	
Additional Approvals	
<u>Purchasing</u>	
<u>CITY COUNCIL</u>	

ORDINANCE C35629

An ordinance relating to automated traffic safety camera systems; amending section 16A.64.260 of the Spokane Municipal Code.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That section 16A.64.260 of the Spokane Municipal Code is amended to read as follows:

16A.64.260 Termination of Authorization for Use of Automated Traffic Safety Cameras

The authorization granted in SMC 16A.64.220 to use automated traffic safety cameras for issuance of notices of infraction for violations regarding obedience to traffic control devices shall expire on November 12, ((2018)) 2023, unless the city council takes legislative action to extend the authorization.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

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

06/04/2018

Date Rec'd

5/16/2018

Clerk's File #

ORD C35630

Renews #Submitting Dept

CITY COUNCIL

Cross Ref #Contact Name/Phone

BREEAN BEGGS 6714

Project #Contact E-Mail

BBEGGS@SPOKANECITY.ORG

Bid #Agenda Item Type

First Reading Ordinance

Requisition #Agenda Item Name

0320 WATER INTERTIE ORDINANCE

Agenda Wording

An ordinance relating to future and renewed water intertie agreements; enacting a new Chapter 13.045 to the Spokane Municipal Code.

Summary (Background)

Discussions around upcoming new and renewal intertie agreements brought up concerns from the public regarding sustainable water access for the people of Spokane as well as for our natural resources (river, fish, etc.). This ordinance will codify guidelines for intertie agreements with a focus on sustainable water usage and emergency water access for people in surrounding communities.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? YES

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

MCCLATCHEY, BRIAN

Study SessionDivision DirectorOther

Urban Dev 5/14/18

Finance

BUSTOS, KIM

Distribution ListLegal

SCHOEDEL, ELIZABETH

For the Mayor

DUNIVANT, TIMOTHY

Additional Approvals

PurchasingCITY COUNCIL

MCCLATCHEY, BRIAN

ORDINANCE NO. C 35630

An ordinance relating to future and renewed water intertie agreements; enacting a new Chapter 13.045 to the Spokane Municipal Code.

WHEREAS, the City of Spokane is a regional water purveyor pursuant to the Spokane County Coordinated Water System, Washington State Department of Health, the City of Spokane Comprehensive planning documents and state law; and

WHEREAS, wholesale water supply exchanges between local water purveyors are anticipated by the Washington State Department of Health's Office of Drinking Water, the Spokane County Coordinated Water System, the City of Spokane Comprehensive Plan, and the City of Spokane Comprehensive Water System Plan; and

WHEREAS, state law provides that such wholesale water supply where appropriate can be used for: long-term water supply, to supplement a limited supply of water, to provide water when there is limited capacity, to provide water to meet a peak, or to assist during an emergency situation; and

WHEREAS, state law requires that a coordinated water resource and system plan for an area "shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well-being;" and

WHEREAS, neighboring water purveyors can protect the public by establishing intertie agreements to help ensure the continuous availability of a safe and reliable drinking water supply to all customers; and

WHEREAS, the City currently has intertie agreements with six water purveyors identified within the County Coordinated Water System; these agreements will need to be updated over time, and the potential for other interties exists; and

WHEREAS, the City of Spokane is the largest water purveyor with the most complex system in the region and, as such, has the ability to efficiently and effectively provide water to adjoining purveyors that is safe, reliable, and protects the national resource and environment, allowing the City to assist its smaller water system neighbors; and

WHEREAS, the City is committed to good stewardship practices for its water resources to protect not only the quantity but the quality of water in our region; the City also has identified a strategy and goal around "Smart Use of Water Resources for Economic Growth" as part of its City Council adopted Joint Administration-Council 6-Year Strategic Plan; and

WHEREAS, the City also is committed to enhancing resiliency, and through its Comprehensive Plan, encourages working with adjacent jurisdictions and other water purveyors to facilitate consistent provision of water services and coordinated responses to emergencies; and

WHEREAS, the City recognizes that it derives 100% of its water from the Spokane Valley Rathdrum Prairie Aquifer (“SVRPA”); and

WHEREAS, pumping from the SVRPA may, at certain low flow times of the year, reduce water in the form of ground (aquifer) water inputs to the Spokane River in gaining reaches; and

WHEREAS, aquifer inflow into the Spokane River is important for maintaining the health, wellbeing and viability of the Spokane River and the overall water resource; and,

WHEREAS, an increasing population and climate variability creates competition for scarce water resources that would normally flow through the Spokane River; and

WHEREAS, reducing or limiting new well development that taps into the Aquifer will preserve ground water and prevent contamination of the water supply which is a benefit of providing wholesale water supply to neighboring purveyors; and

WHEREAS, the City recognizes the importance of encouraging and implementing long term conservation measures to support and protect the water resource as well as the health of the Spokane River; where such flows support related wildlife, recreational, and economic activity associated with the River; and

WHEREAS, the City is pursuing its goal to support sufficient flows in the Spokane River during certain low flow times of the year and encourages prudent conservation measures that will provide resiliency to all water supplies in the greater Spokane region; and

WHEREAS, the City also strives to have consistent and understandable policies when dealing with neighboring jurisdictions and water purveyors.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That there is adopted a new Chapter 13.045 of the Spokane Municipal Code to read as follows:

Chapter 13.045 Intertie Agreements and Water Rights

Section 13.045.010 Purpose

The purpose of this Chapter is to codify a consistent and predictable approach to renewed, revised or new water intertie agreements to ensure ongoing conservation and protection of water resources, especially in the Spokane Valley and Rathdrum Prairie Aquifer.

Section 13.045.020 Definitions

- A. “Emergency Water Supply” means unanticipated or unexpected and sudden event requiring additional short term supply of water from the City of Spokane

under terms and conditions as specified in the Agreement between the parties as to duration and volume.

- B. "In-stream Flow Rule" means the Instream Flow rule for the Spokane River as established by Washington State Department of Ecology in Chapter 173- 557 WAC.
- C. "Supplemental Water Supply" means long term supply of water which is an addition to a wholesale water purveyor's existing water supply to provide additional water on a routine basis.

Section 13.045.030 Intertie Guidelines

All renewed, revised or new water intertie agreements shall include the following provisions:

- A. A maximum term no longer than twenty years for supplemental supply and five years for emergency supply, inclusive of renewal options;
- B. Required five year agreement reviews within any term for supplemental supply and two years for any emergency supply;
- C. Definition of maximum water flow rates and maximum annual water volumes for supplemental and emergency water supply;
- D. Provisions regarding sale of wholesale water to other water purveyors for municipal purposes, as applicable.
- E. Provisions regarding collaboration on system loss and efficiency measures within the wholesale customer's infrastructure that meets state standards;
- F. All Parties will have a written water conservation plan with specific reasonable goals and are required to implement and maintain annual water conservation, reduction of system loss in accordance with Chapter 246-290 WAC and efficiency measures with a goal of reducing the annual amount of water consumed per capita year over year especially during Summer and early Fall. The plan will include program effectiveness consultations at least every three years, including documentation of changes in total gallons and per capita use on an annual and seasonal basis;
- G. All Parties shall participate in any drought response water conservation measures triggered by weather conditions and/or Spokane River flows as may be developed and adopted by the City for all retail and wholesale customers with a methodology for reasonable notice included in the contract; and
- H. An acknowledgement by customers that the wholesale water supply may be curtailed or interrupted due to drought, low flows in the Spokane River, or shortage consistent with city code or adopted plans, and such reasonable rules or measures adopted by the water department.

Section 13.045.040 Water Charges

- A. Charges for water will be as established by the wholesale purveyor rate set out in SMC 13.04.2014.
- B. Intertie agreements shall include clear delineation of costs that are the responsibility of the customer, including capital and construction costs, and those that are the responsibility of the City of Spokane.

Section 13.045.050 Water Rights and Seasonal Flow Goals

- A. The City of Spokane shall not sell or transfer any water rights without the approving vote of City Council. The City upon approval of City Council may purchase available water rights if it would be prudent to do so for the purpose of protecting the resource for system resiliency purposes, and/or operational efficiency as provided by Chapter 35.21 RCW.
- B. The City Council will use the best available evidence and science to set written appropriate minimum seasonal river flow goals for the portion of the Spokane River flowing through the City of Spokane in respect to City operations only. Appropriate minimum flow goals set by the City Council may exceed the minimum standard as established by Washington State Department of Ecology in Chapter 173- 557 WAC. Such goals are not intended to overlap the legal jurisdiction of the State of Washington.
- C. The City is committed through its policies and environmental sustainability plan to substantially conserve water and reduce per capita consumption across the City's water distribution system as set out in the City's Water System Plan and water use efficiency goals that are established by City Council Resolution. In order to achieve the City's water use efficiency goals, the City will provide budget support for the following operational and maintenance efforts and policy framework that will improve and protect the regional delivery system's natural water resources, efficiency and effectiveness, including flows in the Spokane River:
 - 1. Conservation educational programming and technical advice;
 - 2. Implementation of conservation measures on city owned property;
 - 3. Programs supporting water conservation equipment and irrigation reduction for all customers;
 - 4. Water re-use programs;
 - 5. Seasonal irrigation efficiency and reduction measures; and
 - 6. Other innovations that will support water conservation goals and increased flows in the Spokane River.
- D. The City's policy is to adhere to its river flow goals by following its conservation measures and efficiency plans developed by the water department, which may include implementing seasonal irrigation measures in accordance with the City's policies and procedures. The City shall develop and periodically update a

comprehensive plan and clear policies and procedures applicable to all customers and classes to achieve its water conservation goals.

Section 13.045.060 Reporting

The Water Department shall provide a written report each February to the City Council that provides for the previous five years, the total number of gallons pumped by the City, the total number of gallons provided by intertie agreements, the revenue from intertie agreements collected and associated costs, the amount of money spent on conservation, the estimated number of gallons of water saved on an annual basis from new City of Spokane conservation efforts, the percentage and number of gallons lost by the water distribution system, the per capita consumption for all customers of the City's water service, and other information that will assist the Council in evaluating the goals of increasing river flows and decreasing the amount of water consumed per capita each year across the City of Spokane's water distribution system.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

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

06/04/2018

Date Rec'd

5/21/2018

Clerk's File #

ORD C35631

Renews #Submitting Dept

CITY COUNCIL

Cross Ref #Contact Name/Phone

BREEAN BEGGS 6714

Project #Contact E-Mail

BBEGGS@SPOKANECITY.ORG

Bid #Agenda Item Type

First Reading Ordinance

Requisition #Agenda Item Name

0320 LEGACY COMMERCIAL SEWER RATES

Agenda Wording

An ordinance relating to the rates of public utilities and services, amending Section 13.03.1208 of the Spokane Municipal Code.

Summary (Background)

A gap was discovered in the City's policy of offering legacy commercial sewer rates to redeveloped buildings when it was discovered that the rates were not offered when it was an entire property that was redeveloped for low income housing. Legacy rates are important to incentivize growth of low housing income on lots that currently hold dilapidated commercial structures.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? YES

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

MCDANIEL, ADAM

Study SessionDivision DirectorOther

PIES 5/21/18

Finance

BUSTOS, KIM

Distribution ListLegal

PICCOLO, MIKE

For the Mayor

DUNIVANT, TIMOTHY

Additional ApprovalsPurchasingCITY COUNCIL

MCDANIEL, ADAM

ORDINANCE NO. C 35631

An ordinance relating to the rates of public utilities and services, amending Section 13.03.1208 of the Spokane Municipal Code.

WHEREAS, the City of Spokane seeks to revitalize vacant legacy commercial buildings and recoup prior utility investments made in connection with those buildings, generate revenue in support of operations, and increase operational efficiencies; and

WHEREAS, the City has already established a successful incentive program for remodeling vacant legacy commercial buildings that provides for charging the utility commercial rate if there is only one water meter in the remodeled building; and

WHEREAS, the City desires to improve the existing incentive program by expanding it to the replacement of vacant legacy commercial buildings where the primary new use of the building is for low income housing; and

WHEREAS, supporting the replacement of vacant legacy commercial buildings will increase revenues and support efficient operations of city utilities; and

WHEREAS, replacing vacant legacy commercial buildings with low income housing will increase economic vitality and reduce crime and the need for publicly funded emergency services within the City; and

WHEREAS, low income housing projects are operationally amenable to using only one meter for domestic water service; and

WHEREAS, the property owner would be responsible for any and all costs associated with reconnecting the replacement building to the water system; and

WHEREAS, the expansion of this program to include replacement for low income housing is consistent with the City's strategic plan.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1: That SMC Section 13.03.1208 is amended to read as follows:

Section 13.03.1208 Combination Domestic/Commercial

- A. Unless the domestic units qualify for another billing category, upon application, consistent with city policy, new redeveloped domestic units located in a commercial, centers and corridor, or downtown zone previously billed commercial, in combination with commercial user facilities, where the account is metered and paid as one account ~~((to))~~ in the utilities billing ((division)) system, shall be billed at the commercial rate as provided in chapter 13.03 SMC.

- B. Effective June 1, 2018, properties which would otherwise qualify under section A, which are located in a commercial, centers and corridor, or downtown zone and were previously billed commercial, which building structures have been demolished after September 30, 2015, and are being or have been redeveloped as a Low Income Domestic Housing complex with units in combination with or without commercial user facilities, where the account is metered and paid as one account in the utilities billing system, shall be billed at the commercial rate as provided in Chapter 13.03 SMC as long as it operates as a Low Income Domestic Housing complex.
1. For purposes of this section, Low Income Domestic Housing Complex shall be defined as having units with an overall average rent that is affordable to residents at 60% or less of Area Median Income (AMI) as determined by HUD's most recent income limits for Spokane County. Overall average rent shall be calculated following the income averaging rules of the Low Income Housing Tax Credit (LIHTC) program.
- C. All costs of further installation or upgrade to existing infrastructure, including fire flow systems and sewer connections, shall be borne by the property owner, without eligibility for waiver.

Passed by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

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

06/04/2018

<u>Date Rec'd</u>	5/23/2018
<u>Clerk's File #</u>	ORD C35632
<u>Renews #</u>	

Submitting Dept	CITY COUNCIL	Cross Ref #	
Contact Name/Phone	BREEAN BEGGS 6714	Project #	
Contact E-Mail	BBEGGS@SPOKANECITY.ORG	Bid #	
Agenda Item Type	First Reading Ordinance	Requisition #	
Agenda Item Name	0320 WEB POSTING OF INTERNAL AFFAIRS INVESTIGATION REPORTS		

Agenda Wording

An ordinance providing an option for public web posting as a response to some public records requests; enacting a new chapter 03.10A of the Spokane Municipal Code.

Summary (Background)

This ordinance provides an option for public web posting as a response to public records requests for completed Internal Affairs reports, criminal investigations of officer involved deaths and shootings in their entirety, and related body camera footage

<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>	MCDANIEL, ADAM	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	Public Safety on 4/9/18
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE		
<u>For the Mayor</u>	DUNIVANT, TIMOTHY		

Additional Approvals

<u>Purchasing</u>		
<u>CITY COUNCIL</u>	MCDANIEL, ADAM	

ORDINANCE NO. C-_____

An ordinance providing an option for public web posting as a response to public records requests for completed Internal Affairs reports, criminal investigations of officer involved deaths and shootings in their entirety, and related body camera footage; enacting a new chapter 03.10A of the Spokane Municipal Code.

WHEREAS, the City of Spokane and its police department strive toward utmost transparency in the effort of enhancing the public trust; and

WHEREAS, Internal Affairs previously posted their completed investigation reports in their entirety, but terminated that practice in 2016 and instead began posting summaries of the investigations; and

WHEREAS, the police department currently publicly posts all use of force reports on the City of Spokane's website; and

WHEREAS, the Office of Police Ombudsman has requested that Internal Affairs complaints, investigations, and body camera footage be posted publicly on the City of Spokane's website; and

WHEREAS, the Police Department has access to software which it can use to speed up the process of redacting complaints and investigations; and

WHEREAS, the voters of Spokane have consistently requested enhanced transparency concerning law enforcement conduct in Spokane; and

WHEREAS, the Washington Public Records Act ("PRA") contains several exemptions for records of agency investigations, and requires the redaction of the identifying information of crime victims and of officers who have been accused of misconduct but have been determined not to have committed misconduct; and

WHEREAS, the PRA allows cities to respond to public records requests by posting responsive records on a public website and directing the requestor to that website in lieu of providing the records directly; and

WHEREAS, investigations of officer involved deaths, shootings and internal affairs complaints are matters of great public interest and regularly attract multiple requests for records for the same incident; and

WHEREAS, responding to multiple requests with one web-posting will save money and personnel resources and create more consistent responses; and

WHEREAS, the City Council has committed to providing dedicated funding for an employee to redact and post investigation reports and body camera footage to the City's website.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That there is enacted a new chapter 03.10A of the Spokane Municipal Code to read as follows:

Chapter 03.10A Internal Affairs Investigations
Section 03.10A.010 Purpose; Intent

- A. The City of Spokane intends to ensure that the Spokane Police Department and its Internal Affairs wing perform at the highest levels of transparency possible without sacrificing public safety or legally recognized privacy concerns of all community members, including public employees.
- B. The City of Spokane intends to ensure that community members who file complaints against members of the Spokane Police Department are afforded, if requested, the maximum privacy allowed under the Washington Public Records Act.
- C. The City intends to ensure that all residents have barrier-free access to the public workings of the Spokane Police Department, including:
 - 1. Internal Affairs complaints in their entirety, redacted for privacy and other public records exemptions;
 - 2. Internal Affairs investigations in their entirety, redacted for privacy and other public records exemptions;
 - 3. Officer involved shooting investigations in their entirety, redacted for privacy and other public records exemptions;
 - 4. Officer involved death investigations in their entirety, redacted for privacy and other public records exemptions; and,
 - 5. Video from on-duty officer-worn body cameras directly related to any encounter by a law enforcement officer that leads to the investigation of an internal affairs complaints, an officer involved shooting or officer involved death, redacted for privacy and other public records exemptions, including the provisions of RCW 42.56.240(14(e); and,
 - 6. Use of Force Reports.

Section 03.10A.020 Web Publication of Responses to Public Records Requests

- A. If requested by a person or entity making a public records request in lieu of providing the records directly, the Spokane Police Department will post to the City of Spokane's website:
1. Internal Affairs complaints in their entirety, redacted for privacy and other exemptions authorized by the Public Records Act, RCW 42.56;
 2. Internal Affairs investigations in their entirety, redacted for privacy and other exemptions authorized by the Public Records Act, RCW 42.56;
 3. Use of Force reports in their entirety, redacted for privacy and other exemptions authorized by the Public Records Act, RCW 42.56;
 4. Officer involved shooting investigations in their entirety, redacted for privacy and other exemptions authorized by the Public Records Act, RCW 42.56;
 5. Officer involved death investigations in their entirety, redacted for privacy and other exemptions authorized by the Public Records Act, RCW 42.56; and
 6. Video from on-duty officer-worn body cameras directly related to any encounter by a law enforcement officer that leads to the investigation of an internal affairs complaint, an officer involved shooting or officer involved death, redacted for privacy and other public records exemptions, including the provisions of RCW 42.56.240(14)(e).
- B. A requestor who chooses web publication in lieu of being provided records directly shall not be charged for the production of public records to the City of Spokane website except as otherwise provided for in this chapter.
- C. All persons who file a complaint against a member of the Spokane Police Department will be asked at the time they make their complaint if they want their identifying information to remain confidential to the degree legally permissible by the Public Records Act at RCW 42.56 and such a preference will be recorded with the complaint to assist in processing public records requests with appropriate notification and redaction.
- D. Any person who files a complaint with the Office of Police Ombudsman against a member of the Spokane Police Department may request at the time they file their complaint that any public records requests involving their complaint not be posted to the City of Spokane's website and that request will be noted when it is transferred to IA and be honored as an exception to the web publication requirements of this chapter, but will not otherwise impact the production in response to a relevant public records request. Such a request does not prevent the Department from posting a summary of the person's complaint and any related investigation.
- E. All Use of Force reports involving members of the Spokane Police Department shall be posted to the City of Spokane's website.

- F. The requirements in this chapter of offering web posting in response to public records requests shall only apply to records regarding events that occurred after December 31, 2015.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

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

06/04/2018

<u>Date Rec'd</u>	5/21/2018
<u>Clerk's File #</u>	ORD C35633
<u>Renews #</u>	

Submitting Dept	PLANNING	Cross Ref #	
Contact Name/Phone	TERI STRIPES 625-6597	Project #	
Contact E-Mail	TSTRIPES@SPOKANECITY.ORG	Bid #	
Agenda Item Type	First Reading Ordinance	Requisition #	
Agenda Item Name	0650 - ORDINANCE RELATING TO URBAN UTILITY INSTALLATION PROGRAM		

Agenda Wording

Urban Utility Installation Program established to provide funding to mitigate the cost of the installation of new or upgrades to city-owned public utility infrastructures in the city right-of-way which is associated with the redevelopment of existing

Summary (Background)

The Urban Utility Installation Incentive Pilot, created in 2015 was used in partnership with private sector development/investment. Public dollars were invested in ROW improvements of City infrastructure, so the private investor had the infrastructure available to modernize the building-meeting life safety code requirements. The outcome of this private/public venture is more modern properties being better used.

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

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

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	TRAUTMAN, HEATHER	<u>Study Session</u>	
<u>Division Director</u>	KINDER, DAWN	<u>Other</u>	Urban Experience
<u>Finance</u>	HUGHES, MICHELLE	Distribution List	
<u>Legal</u>	RICHMAN, JAMES	dkinder@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	kbecker@spokanecity.org	
Additional Approvals		htrautman@spokanecity.org	
<u>Purchasing</u>		aworlock@spokanecity.org	
<u>CITY COUNCIL</u>	MCDANIEL, ADAM	ebrown@spokanecity.org	
		tstripes@spokanecity.org	
		smsimmons@spokanecity.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

structures or in-fill development with new structures on properties in the approved Target Investment Areas, centers and corridors, as well as Historically Used Commercial Structures, Neighborhood Retail, and listed Historic Properties targeted for in-fill development.

Summary (Background)

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

sbishop@spokanecity.org

eschoedel@spokanecity.org

Briefing Paper

Urban Experience Committee

Division & Department:	Planning Economic Development Team
Subject:	Urban Utility Installation Program Update
Date:	5/14/2018
Author (email & phone):	Department Director, Heather Trautman and Teri Stripes x6597
City Council Sponsor:	Ben Stuckart/Karen Stratton
Executive Sponsor:	Gavin Cooley
Committee(s) Impacted:	Urban Experience and Innovative Infrastructure
Type of Agenda item:	<input type="checkbox"/> Consent X Discussion X Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget , Comp Plan, Policy, Charter, Strategic Plan)	Strategic Key Advancement of: Strategies and Tactics: <ul style="list-style-type: none"> • Invest in Key Neighborhoods and Business Centers; esp PDA's • Advance Downtown as Region's Largest and Strongest Center • Invest in Key Public Amenities and Facilities • Increase Housing Quality and Diversity • Maximize Public Assets Expected Outcomes: <ul style="list-style-type: none"> • Property values growing faster than historic averages • We have created an environment to promote mixed income neighborhoods with a diverse range of housing options for all buyers • Total public/private investment and job growth is higher in targeted areas compared with the region Comprehensive Plan, Charter 7 Economic Development: ED 2 LAND AVAILABILITY FOR ECONOMIC ACTIVITIES Goal: Ensure that an adequate supply of useable industrial and commercial <ul style="list-style-type: none"> • Property is available for economic development activities. ED 6 INFRASTRUCTURE Goal: Implement infrastructure maintenance and improvement programs that support new and existing business and that reinforce Spokane's position as a regional center. ED 7 REGULATORY ENVIRONMENT AND TAX STRUCTURE Goal: Create a regulatory environment and tax structure that encourage investment, nurture economic activity, and promote a good business climate. <ul style="list-style-type: none"> • ED 7.4 Tax Incentives for Land Improvement <i>Support a tax structure that encourages business investment and construction where infrastructure exists, especially in centers or other target areas for development.</i> • ED 7.5 Tax Incentives for Renovation

	<i>Use tax incentives and investments to encourage revitalization, modernization, or rehabilitation of deteriorated residential and commercial properties and buildings for new economic activity.</i>
Strategic Initiative:	See above Alignment with Urban Edge
Deadline:	ORD Adoption by May 21, 2018
Outcome: (deliverables, delivery duties, milestones to meet)	Measurable Changes in Utility Use, Utility Tax Revenue, and Property Value will be measured and reported upon annually in the Economic Development Teams Incentive and Target Area vitality report.
<p><u>Background/History:</u> <i>Provide brief history e.g. this is the 3rd and final 5 year extension of the contract which was put in place in 2007.</i></p> <p>The Urban Utility Installation Incentive Pilot, created in 2015 was used in partnership with private sector development/investment. Public dollars were invested in ROW improvements of City infrastructure, so the private investor had the infrastructure available to modernize the building—meeting life safety code requirements. The outcome of this private/public venture is more modern properties being better used.</p>	
<p><u>Executive Summary:</u></p> <p>A Project Team of subject matter experts led by: Gavin Cooley, Scott Simmons, and Jonathan Mallahan and then Dawn Kinder set out to review the incentive's effectiveness and make recommendations on its continuation.</p> <p>Outcomes following the last Urban Experience Committee Briefing 11/13/2017:</p> <ul style="list-style-type: none"> • Administration and Council identified the first \$500,000 for implementation through the development of the Strategic Plan and onetime funding, • The team has devised an implementation strategy to minimize costs and increase certainty • May 2018 present an amended ORD for Council consideration and adoption—draft attached <ul style="list-style-type: none"> ○ An Administrative Policy and Council Resolution with ORD amendments in May. The program will be administered by the Planning Economic Development team and will include: <ul style="list-style-type: none"> ▪ A pre application similar to projects of City Wide Significance (CWS) ▪ Developer type agreement, again similar to CWS ▪ Post construction reimbursement to the developer, similar to CWS <p>Requires no City procurement/bidding: allows the developer to utilize one contractor, adhere to their timeline, assures project completion, and doesn't require contract amendments due to overruns or change orders.</p> 	
<p><u>Budget Impact:</u></p> <p>Approved in current year budget? X Yes <input checked="" type="checkbox"/> No</p> <p>Annual/Reoccurring expenditure? X Yes <input checked="" type="checkbox"/> No</p> <p>If new, specify funding source: Strategic Plan identified the first \$500,000 in Utility Strategic Investments. Ongoing funding will be identified annually during the budget process per the ORD.</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><u>Operations Impact:</u></p> <p>Consistent with current operations/policy? X Yes <input checked="" type="checkbox"/> No</p> <p>Requires change in current operations/policy? X Yes <input checked="" type="checkbox"/> No</p> <p>Specify changes required: ORD amendment</p> <p>Known challenges/barriers:</p>	

ORDINANCE NO. C - _____

An ordinance relating to Urban Utility Installation Program; amending SMC section 8.10.230.

WHEREAS, the Pilot Urban Utility Installation Project has shown a benefit to utility rate payers; and

WHEREAS, the Pilot Project demonstrated a better utilization of existing infrastructure; and

WHEREAS, the Pilot project has allowed redeveloping properties to modernize—meeting current life safety building and fire code requirements; - - Now, Therefore,

The City of Spokane does ordain:

Section 1. That SMC section 8.10.230 is amended to read as follows:

A. ~~((Pilot))~~ Urban Utility Installation ~~((Project))~~ Program

There is created a ~~((Pilot))~~ Urban Utility Installation ~~((Project))~~ Program established to provide funding to ~~((the City's utilities departments))~~ mitigate the cost of the installation of new or upgrades to city-owned public utility infrastructures in the city right-of-way which is associated with the redevelopment of existing structures or in-fill development with new structures on properties in the ~~((downtown core and in other))~~ approved Target Investment Areas, centers and corridors, as well as Historically Used Commercial Structures, Neighborhood Retail, and listed Historic Properties targeted for in-fill ~~((identified in the Urban Utility Installation Area map))~~ development.

B. Project Eligibility Criteria

1. ~~((The City will coordinate with abutting property owners to install new or upgrade existing public utilities infrastructure located in the city right of way. Projects will be evaluated based on objective criteria which includes but is not limited to, the timing and extent of the redevelopment project, project financial resources, increased demand for public utility services, projected utility revenue to the city, and the impact and efficiency of the existing infrastructure. The city administration shall develop criteria consistent with this section for the awarding of project monies which shall be approved by resolution by City Council.))~~ Projects must have a commercial or multi-family use post redevelopment.
2. ~~((Priorities for funding shall include, but are not limited to, the following:~~
 - a. ~~Re-use of buildings (historic preservation);~~

- b. ~~Density & infill mix of housing,~~
 - c. ~~Affordable housing within a development,~~
 - d. ~~Mix use of commercial and retail, and~~
 - e. ~~Increased demand on public utility services.))~~ Projects must be located in a Target Investment Area, designated center & corridor zoned area, or be a Historically Used Commercial structure, a Neighborhood Retail Zoned Property, and/or a listed Historic Property.
3. The property owners shall submit an application for the Urban Utility Installation funding. The application will collect the necessary project details for evaluation.
 4. Vacant undeveloped properties (no buildings) within qualifying areas can receive water and sewer right-of-way installation assistance of up to a maximum of ten thousand dollars (\$10,000).
 5. The rehabilitation of an existing building (occupied or vacant) within qualifying areas can receive water and sewer right-of-way installation assistance of up to a maximum of twenty five thousand dollars (\$25,000).
 6. Qualifying water and sewer right-of-way installation assistance can increase up to a maximum of forty thousand dollars (\$40,000), when other improvements meet additional City Strategic priorities such as Historically Listed Properties, as well as stormwater and/or conservation priorities.

~~((C. — Urban Utility Installation Area))~~

~~((The projects to be funded by Pilot Urban Utility Installation Project shall be located in the Urban Utility Installation Area, which is established in the map set forth in Attachment A, which may be amended by the city council to include other centers and corridors targeted for in-fill development.))~~

~~((D))~~C. Application Process

The applicant shall make application ~~((for project funding to the Utilities Department))~~ on a form supplied by the ~~((department))~~ Planning Department as defined by Administrative Policy. The Urban Utility Installation Program application will be reviewed for completeness and eligibility. The application shall include, but not limited to, information regarding the redevelopment project ~~((financial funding and any other relevant financial information requested by the planning and development department director))~~ location, parcel numbers, address, and property owner contact. The information required on the application and provided by the applicant shall demonstrate how the project satisfies the project criteria set forth in this section and the administrative policies.

~~((E))~~D. Initiation and Completion of Projects

Once a project is approved, the City shall ~~((determine when to initiate and complete projects for the installation of new or upgrades to existing city-owned public utility infrastructures in the city right-of-way. Funding for the specific projects shall be allocated to the applicable utilities department pursuant to the City's existing financial transfer procedures))~~ notify the applicant and enter into a contract with the applicant. Upon completion of the project, as outlined in the contract the applicant will seek and be reimbursed eligible costs. This process will be defined by Administrative Policy and the contract.

((F)) E. Funding

Funding for the Urban Utility Installation Program for qualifying projects shall be allocated from the applicable Utility Operating Expenditure and approved in the City's annual budget process pursuant to the City's existing financial transfer procedures.

1. ~~((Increases in utility revenue associated with the installation of new or upgrades to existing public utility infrastructures installed pursuant to this section, including utility hook up fees and charges, shall be allocated to the Pilot Urban Utility Installation Project.))~~ The city administration shall update the city council annually on the Urban Utility Installation Program including the number of applications, the status of approved and completed projects and the amount of increased property taxes, utility revenue and utility tax benefit.
2. ~~((Individual project funding shall not exceed forty thousand dollars (\$40,000).))~~ The amount of utility revenue generated as a result of this program will be evaluated annually to determine the success of the Urban Utility Installation Program. The Urban Utility Installation Program will sunset after ten years and must be renewed at that time.
3. ~~((As a pilot program, the amount of utility revenue generated will be evaluated over the course of five years to determine the success of the Project. The program will sunset after five years and must be renewed at that time.))~~

((G)) E. Administrative Policy.

The city administration shall develop policies and procedures to implement the provisions of this section, which shall be approved by resolution of the city council. Such policies and procedures must be consistent with and shall not conflict with the provisions of this section. The policies and procedures may include provisions developing the criteria necessary to award project funding.

((H))

~~((The city administration shall update the city council at least twice a year on the Pilot Urban Utility Installation Project program including the number of~~

~~applications, the status of approved and completed projects and the amount of increased property taxes.))~~

Date Passed: Monday, September 15, 2014

Effective Date: Saturday, November 1, 2014

ORD C _____ Section 1

PASSED BY THE CITY COUNCIL ON _____, 2018.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

CITY OF SPOKANE ADMINISTRATIVE POLICY AND PROCEDURE	ADMIN
TITLE: URBAN UTILITY INSTALLATION PROGRAM POLICY EFFECTIVE DATE: REVISION EFFECTIVE DATE: N/A	

1.0 GENERAL

1.1 The purpose of this policy is to provide uniform operating rules and procedures for the consideration and award of financial reimbursement to development and investment project(s) constructed in the public right-of-way under the City of Spokane Urban Utility Installation Program SMC 08.10.230.

1.2 TABLE OF CONTENTS

- 1.0 GENERAL
- 2.0 DEPARTMENTS/DIVISIONS AFFECTED
- 3.0 REFERENCES
- 4.0 DEFINITIONS
- 5.0 POLICY
- 6.0 PROCEDURE
- 7.0 RESPONSIBILITIES
- 8.0 APPENDICES

2.0 DEPARTMENTS/DIVISIONS AFFECTED

This Policy shall apply to all City Departments.

3.0 REFERENCES

City Council Resolution _____
City Council Ordinance _____
Spokane Municipal Code SMC 08.10.230

4.0 DEFINITIONS

- 4.1 “City” refers to the City of Spokane.
- 4.2 “Director” means Director of Business and Development Services, or designee.

- 4.3 “Qualified Project” means an infrastructure public improvement which has received an initial determination and/or entered into a contract with the City for reimbursement by the Urban Utility Installation program as applicable under the program.
- 4.4 “Public improvements” means installation of new or upgrades to city-owned public utility infrastructures located within the city right-of-way.
- 4.5 “Public improvement costs” means the costs of permits, construction, reconstruction, rehabilitation, improvement, and installation of new or upgrades to city-owned public utility infrastructures located within the city right-of-way.
- 4.6 “Private development” means land or property development undertaken on private property; plot of land, etc. and not located within the city right-of-way.

5.0 POLICY

- 5.1 Projects must have a commercial or multi-family use post redevelopment.
- 5.2 Projects must be located in a Target Investment Area and/or in a designated Center & Corridor Zoned area, or be a Historically Used Commercial structure, a Neighborhood Retail Zoned Property, and/or a listed Historic Property.
- 5.3 Vacant undeveloped properties (i.e. no buildings) located within qualifying areas may be eligible to receive water and sewer right-of-way installation assistance and reimbursement of up to a maximum of ten thousand dollars (\$10,000).
- 5.4 The rehabilitation of an existing building (i.e. occupied or vacant) located within qualifying areas may be eligible to receive water and sewer right-of-way installation assistance and reimbursement of up to a maximum of twenty five thousand dollars (\$25,000).
- 5.5 For those properties which qualify, water and sewer right-of-way installation assistance may be eligible to increase up to a total of forty thousand dollars (\$40,000), when other improvements meet additional City Strategic priorities such as Historically Listed Properties, as well as stormwater and/or conservation priorities.
- 5.6 Any financial assistance and reimbursement awarded to individual projects under this program is limited to those investments made within the public right-of-way..

6.0 PROCEDURE

- 6.1 Potential applicants shall complete and submit to the City Planning Department the Pre-Eligibility Application, included in as Attachment A.
 - 6.1.1 A completed Pre-Eligibility Application is one that fully answers all questions listed on the Application.
- 6.2 The completed Pre-Eligibility Application will be reviewed by Planning Economic Development Staff, and, if approved, the applicant will be notified they are eligible to enter into a Contract with the City.
- 6.3 The Planning Director will make the final decision on funding the project. No individual project funded by the City shall exceed the qualifying limits defined in SMC 08.10.230.
- 6.4 Projects which meet all criteria in SMC 08.10.230 shall be funded in the order in which the application was received until the City reaches the annual limit on the funding as defined in the City's adopted budget.
- 6.5 Upon approval of the Pre-Eligibility Application, the applicant will be required to enter in to a contract with the City, which outlines the applicant's obligations and requirements regarding reimbursement following construction completion.

7.0 RESPONSIBILITIES

- 7.1 The City of Spokane Planning Department and Economic Development Staff shall administer this Policy.
 - 7.1.1 Economic Development Staff will be responsible for receiving and processing applications as well as making recommendations to the Director for approving applications which meet the criteria.
 - 7.1.2 Economic Development Staff will be responsible for providing updates to the Director of Public Works and Utilities and the City Council annually regarding the projects and program funding needs.

8.0 APPENDICES

- Attachment A: Urban Utility Installation Pre-Eligibility Application
- Attachment B: Contract Template
- Attachment C: Reimbursement Agreement Template

APPROVED BY:

City Attorney

Date

Director

Date

City Administrator

Date

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

06/04/2018

<u>Date Rec'd</u>	5/18/2018
<u>Clerk's File #</u>	ORD C35634
<u>Renews #</u>	

<u>Submitting Dept</u>	CITY COUNCIL	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	KAREN 6291	<u>Project #</u>	
<u>Contact E-Mail</u>	KSTRATTON@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	First Reading Ordinance	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0320 BUDGET CONTROLS ORDINANCE		

Agenda Wording

An ordinance relating to budget controls; amending section 03.07.230; enacting new sections 03.07.340, 03.07.350, 03.07.360, and 03.07.370 of the Spokane Municipal Code.

Summary (Background)

This ordinance: ends the future use of employment service contracts, requires that all City of Spokane employment opportunities be adopted in the annual budget or by special budget ordinance before advertisement. Creates exception for temp/seasonal and project employees, and requires all vacant positions be budgeted at the Step 1 level.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Select \$		#
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	MCDANIEL, ADAM	<u>Study Session</u>
<u>Division Director</u>		<u>Other</u> Finance & Administration
<u>Finance</u>	DUNIVANT, TIMOTHY	Distribution List
<u>Legal</u>	PICCOLO, MIKE	tdunivant@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	cmarchand@spokanecity.org
<u>Additional Approvals</u>		
<u>Purchasing</u>		
<u>CITY COUNCIL</u>	MCDANIEL, ADAM	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The ordinance requires financial justification when an employee is hired at a level higher than Step 1 or is promoted to a step beyond the employee's next successive step in the current range, prohibits the base salary of any City employee from being more than 4 times the median household income of the city of Spokane unless making four times city of Spokane MHI as of January 1, 2018, prohibits out-of-classification pay for Division Directors or Department Heads unless working out-of-classification as the City Administrator, and automatically expires vacant line-item positions that have not been filled within sixty days of budget or special budget ordinance approval. The expired funds go automatically to the department's reserves.

Fiscal Impact

Budget Account

Select \$

#

Select \$

#

Distribution List

ORDINANCE NO. C35634

An ordinance relating to budget controls; amending section 03.07.230; enacting new sections 03.07.340, 03.07.350, 03.07.360, and 03.07.370 of the Spokane Municipal Code.

Section 1. That section 03.07.230 of the Spokane Municipal Code is amended to read as follows:

Section 03.07.230 Nonrepresented Employee Personal Service Contracts

- A. All ~~((new, amended or renegotiated personal service contracts or))~~ letters of appointment for nonrepresented employees shall either be subject to final approval by the ~~((city council))~~ City Council or negotiated within the parameters set forth by the ~~((city council))~~ City Council by ordinance ~~((or within existing personnel procedures adopted by the city council))~~. All new, amended or renegotiated ~~((personal service contracts or))~~ letters of appointment for nonrepresented employees shall contain as a condition of employment that the nonrepresented employee shall be subject to the Code of Ethics, chapter ~~((1.04))~~ 01.04A, SMC.
- B. The City of Spokane shall not enter into any new personal service contracts upon the effective date of this chapter.

Section 2. That there is adopted a new section 03.07.340 of the Spokane Municipal Code to read as follows:

Section 03.07.340 Budget Approval Prior to City Employment Advertisement

- A. All City employment opportunities shall be approved as a detailed line item in the annual budget or by a special budget ordinance prior to being advertised for applicants.
- B. This section shall not apply to City of Spokane temporary or seasonal employment opportunities.

Section 3. That there is adopted a new section 03.07.350 of the Spokane Municipal Code to read as follows:

Section 03.07.350 Salary Grades and Steps

- A. All vacant positions shall be budgeted at the lowest step in the salary grade based on the range listed in the job description created by Human Resources or Civil Service.

- B. The City Council shall be provided a financial justification at the appropriate Council committee whenever a vacant position will be filled at a higher step than the lowest step in the salary grade or whenever an employee is promoted to a step beyond the employee's next successive step in the current range.
- C. At no time shall the base salary of any City employee be more than four (4) times the median household income of the city of Spokane. This provision shall not retroactively apply to any City employee who has a base salary of more than four (4) times the median household income of the city of Spokane as of January 1, 2018.

Section 4. That there is adopted a new section 03.07.360 of the Spokane Municipal Code to read as follows:

Section 03.07.360 Out-of-Classification Assignments

- A. When an employee is called upon to fill a temporary vacancy in a higher level classification and that employee performs the full range of duties of that higher level position, the employee shall be paid the appropriate step of the salary range of the higher level position.
- B. Division directors and department heads shall not be eligible for out-of-classification pay unless filling a temporary vacancy in the position of City Administrator.

Section 5. That there is adopted a new section 03.07.370 of the Spokane Municipal Code to read as follows:

Section 03.07.370 Vacant Positions

- A. All funds allocated to a nonrepresented vacant position adopted in the annual budget or by special budget ordinance shall expire if not filled within sixty (60) days of the vacancy.
- B. The funds allocated to expired vacant nonrepresented positions shall be transferred to that department's reserves.
- C. The expired vacant nonrepresented position may be restored by special budget ordinance adopted by the City Council pursuant to Section 19 of the City Charter.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date



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

Date Rec'd	10/6/2017
Clerk's File #	OPR 2017-0726
Renews #	

Submitting Dept	WATER & HYDROELECTRIC SERVICES	Cross Ref #	
Contact Name/Phone	DAN KEGLEY EXT. 7821	Project #	
Contact E-Mail	DKEGLEY@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	4100 - MEDICAL LAKE WATER SUPPLY INTERTIE AGREEMENT		

Agenda Wording

Intertie agreement with the City of Medical Lake to supply water in the event of shortages and emergency needs.

Summary (Background)

The City of Medical Lake requested an emergency intertie with the City of Spokane in 2009. This intertie will provide supplemental water in drought conditions during a stressed aquifer and in case of emergencies. Medical Lake will be responsible for all costs of construction and for appurtenance maintenance past the point of delivery. Usage cannot exceed 800 gallons per minute without a new agreement. Revenue estimate based on four months supplemental use and a thirty day emergency.

Fiscal Impact	Grant related? NO	Budget Account
	Public Works? NO	
Revenue	\$ 100,000.00	# 4100-42410-34052-34328-99999
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	KEGLEY, DANIEL	<u>Study Session</u>	
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u>	PWC 9/25/2017
<u>Finance</u>	CLINE, ANGELA	<u>Distribution List</u>	
<u>Legal</u>	SCHOEDEL, ELIZABETH	dkegley@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	jsakamoto@spokanecity.org	
<u>Additional Approvals</u>		sjohnson@spokanecity.org	
<u>Purchasing</u>		acline@spokanecity.org	

BRIEFING PAPER
Public Works
Water Department
September 25, 2017

Subject

Intertie agreement with the City of Medical Lake to supply water to address supplemental needs and meet demands during emergencies.

Background

In 2009, the City of Medical Lake approached the Water Department to request an emergency intertie with the City of Spokane. The intertie would provide supplemental water during drought conditions in a stressed aquifer and also provide an additional amount that could to be provided in emergency situations.

Impact

The City of Spokane would install needed water quality monitoring equipment and would have the option of installing a flow control valve to regulate the amount of water delivered. Medical Lake would be responsible for establishing the point of connection and all installation and maintenance beyond the point of delivery as outline in exhibit A.

Summary

Medical Lake will be responsible for all costs associated with construction of the intertie which includes: the General Facility Charge, tap, meter, backflow assembly, and vault. Also, they will be responsible to maintain all appurtenances past the point of delivery. The City of Spokane will be responsible for meter maintenance and all infrastructures prior to the point of delivery. In total Medical Lake could not exceed 800 gallons per minute in total without a new agreement.

Action

Recommend approval

Funding

Funding for the flow control valve and water quality monitoring equipment will be by Water Department funds.

Spokane City Clerk File No. _____
Medical Lake City Clerk File No. _____

WATER SUPPLY AGREEMENT BETWEEN MEDICAL LAKE and the CITY OF SPOKANE

THIS WATER SUPPLY AGREEMENT (“Agreement”) is entered into by THE CITY OF SPOKANE (“Spokane”), a municipal corporation of the State of Washington and First Class Charter City, with a principal place of business located at 808 West Spokane Falls Boulevard, Spokane, Washington, 99201, and the CITY OF MEDICAL LAKE (“Medical Lake”), a municipal corporation of the State of Washington and Optional Municipal Code City, with a principal place of business located at 124 S Lefevre, Medical Lake, Washington, each a “Party” and collectively the “Parties.”

RECITALS

- A. Spokane owns and operates a Chapter 70.119A Group A Public Water System (“Spokane Water System”) that supplies and distributes potable water to its own resident customers.
- B. The Spokane Water System currently has the water resources, capital facilities and infrastructure, and funding to regionally supply and distribute treated domestic water to wholesale purveyors and numerous retail customers outside the Spokane’s corporate limits, and has done so historically.
- C. Spokane owns and operates a series of wells pursuant to a series of water rights that are authorized to provide wholesale water within a regional wholesale service area, as approved in its Water System Plan (“Spokane Water System Plan”), promulgated in accordance with Chapter 43.20 RCW and entitled “City of Spokane, Comprehensive Water System Plan,” Volumes 1 and 2, dated January 12th, 2017 adopted and approved by the City of Spokane City Council by Resolution dated March 2015 and approved by the State Department of Health (“State DOH”), as said document may be amended, revised, or updated from time to time.
- D. In accordance with the planning and goals set forth in its Spokane Water System Plan, Spokane seeks to fulfill and implement its role as regional water supplier by including the City of Medical Lake as a wholesale water customer.
- E. Medical Lake, owner of its own Chapter 70.119A Group A Public Water System (“Medical Lake Water System”), seeks to supplement and stabilize its existing water supply portfolio by interconnecting to the Spokane Water System to ease Medical Lake’s service demand stress on its water supply during peak daily and seasonal timeframes.

- F. Medical Lake approached Spokane to negotiate business term parameters whereby Spokane would supply Medical Lake with drinking water to supplement Medical Lake's existing water resource portfolio.
- G. The Parties now seek to reduce their business negotiations to a formal, legally binding agreement outlining their respective rights and responsibilities.
- H. The Parties acknowledge that numerous state and local regulatory approvals will be required in addition to design and construction completion before Spokane provides and Medical Lake accepts water delivery under this Agreement.
- I. The Parties desire to form a mutually beneficial stewardship relationship to manage the water resources. The Parties agree to cooperate with each other to the greatest extent feasible to secure state and local regulatory approvals, revise respective comprehensive water plans and implement the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein, and the mutual promises and benefits exchanged by the parties herein, the Parties do hereby agree as follows:

1. Term.

- 1.1. This Agreement shall take effect on the date that both Parties have duly executed the Agreement. This Agreement shall remain in full force and effect for a period of twenty (20) years, unless earlier terminated (in whole or in part) ("Term"). The Parties agree to review and modify as necessary at five (5) year intervals.
- 1.2. The provisions of section 1.1 notwithstanding, the Term of this Agreement may be extended by written agreement of the Parties and by a duly executed Amendment to this Agreement. Extensions may be in five (5) year intervals or as agreed by the Parties.
- 1.3. Future Connection/Increased Capacity. Any additional capacity or terms beyond those contained in this Agreement will be through a written executed amendment to this Agreement.
- 1.4. All obligations incurred during the Term shall survive expiration or termination of the Agreement.
- 1.5. Either Party may provide notice of Termination upon six(6) months written notice to the other party.

2. Regulatory Approvals. The Parties acknowledge and agree that the following regulatory approvals and property rights are necessary before water deliveries may begin.

- 2.1. Spokane must obtain the following state and local approvals regarding this Agreement:

- 2.1.1. State Department of Health; and

- 2.1.2. State Department of Ecology.

Spokane will bear all initial costs of obtaining this regulatory approval. Spokane will keep Medical Lake informed of status, will advise Medical Lake when these approvals have been obtained, and will provide copies of these approvals to Medical Lake promptly after they have been obtained.

- 2.2. Medical Lake must obtain the following state and local approvals regarding this Agreement:

- 2.2.1. State Department of Health; and

- 2.2.2. State Department of Ecology.

Medical Lake will bear all initial costs of obtaining these regulatory approvals. Medical Lake will keep Spokane informed of status, will advise Spokane when these approvals have been obtained, and will provide copies of these approvals to Spokane promptly after they have been obtained.

- 2.3. The Parties shall collaborate on obtaining any approvals necessary from Spokane County and shall bear their own initial costs of obtaining any such approval.

- 2.4. If unanticipated permits, regulatory approvals, or property or access rights (collectively, with the approvals described in Section 2, "Regulatory Approvals") are necessary, the Parties will meet and confer in good faith to allocate costs and responsibility for the same.

3. Construction, Funding, and Responsibility for Improvements.

- 3.1. Medical Lake shall apply and pay for all Spokane Application(s) for Connection required to deliver wholesale water pursuant to this Agreement in accordance with Title 13, Chapter 13.04, Section 13.04.0502, and Applications for Connection Spokane Municipal Code ("Application for Connection"). Medical Lake shall also pay a Water General Facilities Charge as outlined in Title 13 Chapter 13.04, Section 13.04.2042 E-1.

- 3.1.1. Medical Lake shall purchase a backflow prevention device or assembly consistent with Chapter 246.290 WAC, from and approved by Spokane, designed and tested to counteract back pressure and back siphonage ("Medical Lake Backflow Prevention Device"). Medical Lake shall have

the Medical Lake Backflow Prevention Device tested by a certified Backflow Assembly Tester, approved by the Water Department for compliance with Legal Requirements. A copy of each year's test along with a certification that the backflow assembly complies with Legal Requirements and is in good working condition shall be provided to Spokane each year.

- 3.1.2. Medical Lake shall purchase from Spokane a tap ("Tap") and initial master meter ("Initial Master Meter") in accordance with Spokane Municipal Code Title 13, Chapter 13.04, Section 13.04.0602 A, including, any initial testing and/or inspection fees required by Spokane.
- 3.1.3. Medical Lake shall purchase/construct a vault of adequate dimension to accommodate the initial master meter, the backflow assembly and the flow regulating valve.
- 3.1.3 Spokane will design and construct a Flow Control Valve. Said design and construction shall be at the sole discretion of Spokane. Spokane shall bear all costs associated with the design and construction of the Flow Control Valve.
- 3.1.4 Spokane shall install the Medical Lake Backflow Prevention Device, the Initial Master Meter, the Flow Regulating Valve, the Tap, and perform the initial backflow assembly test.
- 3.2. The Parties agree that additional improvements are required to effectuate the terms of this Agreement. The Improvements' general location and layout are shown and described on Exhibit "A". The Parties shall design and construct their respective improvements in a manner that is consistent with the provisions of all applicable local, state, and federal law, permits, regulatory approvals, manufacturers' specifications and in a good and workman-like manner.
- 3.3. The Parties agree to allocate cost for the additional improvements' design and construction as follows.
 - 3.3.1. Medical Lake agrees to full and complete responsibility for the design and construction of the following Improvements ("Medical Lake Improvements"). All costs associated with the Medical Lake Improvements shall be borne by Medical Lake.
 - 3.3.1.1. Medical Lake shall submit to Spokane for review, revision, and approval of designs, specifications, and construction schedule for all Medical Lake Improvements ("Medical Lake Plans") required to effectuate the delivery of wholesale water pursuant to this Agreement except as otherwise provided by Section 3.4. Such plans shall include, without limit, the limits of excavation for and placement of any

vault(s). Subject to the requirements set forth in Section 3.1, the Medical Lake Improvements shall also include the Application for Connection, the Tap, and the Initial Master Meter. Medical Lake shall not commence construction of the Medical Lake Improvements until Medical Lake has received from Spokane approved Medical Lake Plans (as such documents may be revised by Spokane) and Spokane's written authorization to proceed with construction ("Notice to Proceed").

3.4. Spokane agrees to full and complete responsibility for the following improvements ("Spokane Improvements"). All costs of the Spokane Improvements shall be borne by Spokane.

3.4.1. Except as provided in Section 3.1, Spokane shall tap the Spokane transmission line necessary to deliver wholesale water pursuant to this Agreement.

3.4.2. Spokane shall timely review the Medical Lake Plans, and will not unreasonably withhold its approval of the Medical Lake Plans.

3.4.3. Spokane shall design and construct water quality monitoring equipment as shown, described, and specified in Exhibit B ("Spokane WQ Monitoring Equipment").

3.5. The "Point of Delivery" shall be that specifically identified point between transmission mains of the Parties to this Agreement where water will be transferred from one Party's system to the facilities of the other Party. The Point of Delivery is identified and described on Exhibit A.

3.6. The Parties agree that: (1) after design and construction of the Medical Lake Improvements are complete, Medical Lake will assume full and complete ownership, operation, maintenance (including testing and monitoring), and insurance responsibilities, including the costs thereof, for the Medical Lake Improvements and associated facilities consistent with water system standards and applicable laws, regulations, rules, provisions, interpretations, orders, injunctions, decrees, rulings, awards, and decisions of governmental entities, orders of governmental entities ("Legal Requirements"); and (2) after design and construction of the Spokane Improvements are complete, Spokane will assume full and complete ownership, operation, maintenance (including testing and monitoring), and insurance responsibilities, including the costs thereof, for the Spokane Improvements and associated facilities consistent with water system standards Legal Requirements except as provided in Section 3.6.1. The aforementioned sentence notwithstanding, the Parties further agree as follows:

3.6.1. Spokane shall operate and maintain the Initial Master Meter, including, without limit, any additional replacement meters.

3.6.2. Spokane shall own, operate, and maintain the Spokane WQ Monitoring Equipment. Spokane shall, in its sole discretion and at its sole expense, routinely monitor water quality using the Spokane WQ Monitoring Equipment in accordance with the Spokane Water Quality Monitoring Protocol set forth in Exhibit B.

3.6.3. If Spokane elects to construct a Spokane Flow Control Valve, Spokane shall own, operate, and maintain it.

4. **Water Delivery.** Following completion of the Spokane Improvements and Medical Lake Improvements, receipt of all Regulatory Approvals, and any other preconditions to water delivery provided in this Agreement (“Initial Delivery Date”), Spokane agrees to sell and make available to Medical Lake, and Medical Lake agrees to accept delivery of and pay for wholesale water as follows.

4.1. The wholesale water sold to Medical Lake by Spokane pursuant to this Agreement shall be water available from Spokane’s water rights. Spokane has reviewed Medical Lake’s service area as described in its approved Comprehensive Water Plan (“Medical Lake Service Area”). Spokane determines that Medical Lake may beneficially use Spokane’s water delivered pursuant to this Agreement within the Medical Lake Service Area. Medical Lake confirms the water received from Spokane is being used by Medical Lake consistent with Spokane’s water system plan. Medical Lake shall ensure any future plan amendments will comply with both Comprehensive Water System Plans and all applicable laws.

4.2. All water supplied by Spokane for use or sale by Medical Lake shall be upon the express condition that after water passes the Point of Delivery, it becomes the property and exclusive responsibility of Medical Lake. Spokane shall not be liable for any degradation of water quality, for acts of sabotage or vandalism, or for other events and resulting damages that may occur beyond the Point of Delivery and within the Medical Lake Improvements and Medical Lake Water System.

4.3. The quality of wholesale water made available to Medical Lake pursuant to this Agreement shall be of the same standard and quality as normally delivered to Spokane’s other customers and shall be in compliance with all applicable state and federal drinking water laws, regulations and standards at the Point of Delivery. Medical Lake shall be responsible for maintaining compliance with all applicable state and federal drinking water laws, regulations and standards past the Point of Delivery and within the Medical Lake Improvements and Medical Lake Water System.

4.4. From the Initial Delivery Date until the date that Spokane ceases making wholesale water sales, Spokane shall make available to Medical Lake at the Point of Delivery wholesale water in the amount not to exceed 200 gallons per minute

(GPM) for supplemental use and at a pressure meeting Legal Requirements as described in Paragraph 3.6. Requests for emergency use and amount are provided or in Section 4.8.

4.5. Spokane shall record the amounts of monthly wholesale water deliveries made to Medical Lake at the Initial Master Meter (or any replacement meter thereof).

4.5.1. Spokane will read the meter and keep records of the monthly and annual total water accepted by Medical Lake.

4.5.2. The Initial Master Meter (or any replacement meter thereof) shall at all times be accessible to Spokane personnel. If it becomes necessary for Medical Lake to place the meter under lock and key, Medical Lake shall furnish Spokane with a copy of the key.

4.6. Should Spokane determine that Medical Lake is receiving deliveries of wholesale water at the Point of Delivery in excess of the amounts set forth in section 4.4 herein, Spokane shall notify Medical Lake of the excess deliveries, and Medical Lake shall promptly take the steps necessary to reduce its deliveries accordingly. If Medical Lake has not taken action within twenty-four (24) hours of receiving notice from Spokane pursuant to Section 4.4, Spokane may take any action it deems necessary to reduce the deliveries to a level equal to Medical Lake's scheduled amounts, and charge Medical Lake for any excess deliveries made after the expiration of the twenty-four hour notice period.

4.7. Spokane's delivery of wholesale water and Medical Lake's acceptance of such delivery shall be governed by the terms of this Agreement. No future wholesale service connections shall be permissible without a subsequent and separate written agreement between the Parties. Neither Party shall be obligated to agree to or execute any agreement or permit with the other Party to construct additional wholesale service connection(s). Medical Lake shall ensure any future Water Service Plan amendments comply with both Medical Lake and Spokane's Comprehensive Water System Plans and all applicable laws.

4.8. In the event Medical Lake notifies Spokane of an emergency situation whereby they need additional capacity of water for a limited time, after consultation with the Director of Spokane's Water and Hydroelectric Department, Spokane agrees to make available to Medical Lake at the Point of Delivery wholesale water in an additional amount not to exceed six hundred (600) gallons per minute of emergency wholesale water at a pressure meeting Legal Requirements, as described Paragraph 3.6.

5. Rates, Future Capital Projects, Invoicing, and Payment.

5.1. Commencing with the month in which deliveries of wholesale water to Medical Lake pursuant to Section 4 begin, and for each month thereafter during the Term,

Medical Lake shall pay to Spokane a service fee composed of the following elements:

5.1.1.1. The amount of wholesale water delivered in such a month, as measured at the Initial Master Meter, times Outside City Rate to Other Purveyors, plus any other fees, taxes, or charges billed to other Spokane wholesale customers pursuant to the Spokane Municipal Code.

5.1.1.1.1. The term “Outside City Rate to Other Purveyors” means that rate and outside Spokane commercial monthly service charge as set forth in Title 13, Chapter 13.04, Section 13.04.2014 of the Spokane Municipal Code, or its succeeding provision(s) as such may be revised or amended through time. This rate may be periodically adjusted and shall be applicable as set forth in the rate schedule as adopted by the Public Utility Board and Spokane City Council.

5.2. Future Connection/Increased Capacity. Any additional capacity or terms beyond those contained in this Agreement, will be negotiated between the Parties and may include assessed capital fees to meet the increase in capacity prior to expansion.

5.3. Spokane shall during the Term prepare and forward to Medical Lake an invoice for the payment of any and all amounts due Spokane pursuant to this Agreement for the preceding month in accordance with Spokane’s normal business practices. Each such invoice shall set forth the payment due from Medical Lake to Spokane. Medical Lake may request from Spokane, and Spokane shall promptly provide to Medical Lake, any documentation or other information that Medical Lake may reasonably require to understand the nature of the costs contained in any invoice issued pursuant to this Section 5.

5.4. Payment of any and all invoices forwarded to Medical Lake by Spokane pursuant to this Section 5 shall be due and payable by Medical Lake on or before the Due Date, with payment to be made by wire transfer or such other means as may be agreed to in writing by the parties.

5.4.1. The term “Due Date” shall mean the date by which payment of any invoice issued pursuant to this Section of the Agreement is due to Spokane, which date shall be the close of business on the thirtieth (30th) day after an invoice is issued, provided, however, that if such thirtieth day falls on a Saturday, Sunday, or legal holiday observed by Spokane, the Due Date shall be extended until the close of business of the next regular business day of Spokane.

- 5.5. If any or the entire bill is in dispute, Medical Lake shall pay the amount as billed and the provisions of Section 11, Dispute Resolution, shall apply.
- 5.6. If Medical Lake disputes all or any portion of an invoice issued by Spokane pursuant to this Section 5, Medical Lake shall pay such invoice in full, and shall indicate in writing to Spokane the portions of the invoice that Medical Lake disputes and the reasons therefore. The Parties shall make a good faith effort to resolve such dispute. If such efforts are unsuccessful, either Spokane or Medical Lake may seek resolution of the dispute pursuant to Section 11.
- 5.7. Medical Lake hereby covenants and agrees that it shall establish, maintain, and collect rates or charges for water and other services, facilities, and commodities sold, furnished or supplied by it to its members which shall be adequate to provide revenues sufficient to enable Medical Lake to make the payments required to be made pursuant to the terms of this Agreement, and to pay all other charges and obligations payable from or constituting a charge or lien upon such revenues.

6. Conservation and Efficiency.

- 6.1. The Parties agree and acknowledge that wise stewardship of water resources through maintaining each system's operational efficiency is critically important. The Parties agree to adopt conservation plans, to be updated on an annual basis or as otherwise required by Legal Requirements, and shall coordinate regional supply scheduling and other operational programs that promote efficient use of water supplies, facilities, and financial staff resources.
- 6.2. To accomplish these goals, the Parties agree:
 - 6.2.1. To prepare and exchange conservation plans on an annual basis, at a minimum;
 - 6.2.2. To track and collect data on at least a monthly basis for each Party's operational components and to exchange the same on at least an annual basis;
 - 6.2.3. To collectively analyze the data collected pursuant to this Section and to identify potential efficiency measures that will implemented by Medical Lake under the state-mandated Water Use Efficiency requirements as required by WAC 256-290-810, or as may be subsequently revised or modified in the future.

7. Delivery Interruptions, Default and Rights of Termination.

- 7.1. The Spokane Water System shall be operated and maintained in a manner consistent with water system standards and Legal Requirements in order to

provide reliability of service to Medical Lake. However, Medical Lake understands and agrees that Spokane can make no warranty or guarantee as to pressure, quantity, or continuity of service.

- 7.2. Spokane shall have no obligation whatsoever to guarantee delivery of wholesale water pursuant to this Agreement. Medical Lake agrees that it has only a contractual right to wholesale water as set forth in Section 4 of this Agreement, and further agrees that Medical Lake has no claim or right to a supply of water from Spokane or to any water right upon the expiration or termination of this Agreement on any basis whatsoever.
- 7.3. Notwithstanding any other provisions of this Agreement, neither Spokane nor Medical Lake shall be liable to the other for indirect, incidental, special, exemplary, punitive, or consequential damages, including but not limited to damages for lost profits, revenues or benefits, loss of property use, the cost of capital, or the cost of purchased or replacement water, even if such party has been advised of the possibility or existence of such damages.
- 7.4. The Parties agree and acknowledge that Spokane shall not be liable for any losses, damages, or claims due to, caused by, relating to, or arising from events enumerated in this Section 7.4.

7.4.1. Emergency

7.4.1.1. In the event that Spokane determines, in its sole discretion, that there is a General Emergency, Spokane shall provide oral notice to Medical Lake and may temporarily interrupt or reduce deliveries of water to Medical Lake if the Spokane determines, in its sole discretion, that such interruptions and reductions are necessary or reasonable in case of such a General Emergency. Medical Lake shall assist and support Spokane to meet such a General Emergency condition, including, without limit, implementing emergency conservation measures as directed by Spokane. General Emergencies may include, but are not limited to, failure of or accidents involving Spokane's Water System infrastructure or equipment, uncontrollable forces, unforeseen or unavoidable events, legal restrictions or limitation, and/or regulatory restrictions or limitations.

7.4.1.2. In the event that Spokane determines, in its sole discretion, to institute a water rationing or water use restriction program, Spokane will institute necessary or reasonable reductions to deliveries of wholesale water made to Medical Lake pursuant to this Agreement. Such rationing or use restriction measures may be based on the specifics of the water distribution system and availability of the resource, in accordance with optimization of Spokane's water system.

7.4.2. Non-Emergency

7.4.2.1. Except in cases of emergency under Section 7.4.1, and in order that Medical Lake's operations will not be unreasonably interfered with, Spokane shall give Medical Lake seven (7) calendar days notice of any other interruptions or reduction in service, the reason therefore, and the probable duration thereof, including any interruptions or reduction in services that will be caused by the installation of equipment, repairs, replacements, investigations, inspections or other maintenance performed by the Spokane on its water system or those parts of the system supplying Medical Lake pursuant to this Agreement.

7.4.3. Regulatory

7.4.3.1. Medical Lake understands and agrees that the operation of this Agreement, and the water available from Spokane's water rights are subject to Legal Requirements as defined in section 3.6 and the proceedings, litigation, orders, rulings of courts of competent jurisdiction ("Judicial Requirements") regarding the Agreement and Spokane's water rights. Medical Lake understands and agrees that Spokane must comply with all such Legal Requirements and Judicial Requirements and that such Legal Requirements and Judicial Requirements may affect, limit, diminish or remove the ability of Spokane to fulfill its wholesale water deliveries under this Agreement.

7.4.3.2. The Parties expressly acknowledge and agree that the inability or preclusion of the City of Spokane to perform, in whole or material part, this Agreement caused by an order or directive of governmental authority or a court with jurisdiction shall constitute a force majeure or change in law event hereunder and Spokane can terminate this Agreement.

7.4.3.3. If Spokane is materially limited or prohibited from performance of this Agreement, in whole or in part, Spokane may terminate this Agreement by providing Medical Lake as much advance written notice as is mandated by Legal Requirements or Judicial Requirements under the circumstance, or six (6) months, whichever is longer, from the date of the written notice.

7.5. Medical Lake Events of Default and Spokane's Rights of Termination.

7.5.1. If Medical Lake fails to make any payment in full when due under this Agreement for a period of sixty (60) days or more after the Due Date, Spokane shall make written demand upon Medical Lake to make payment within ten (10) days of the date of such written demand. If the failure to pay is not cured with the ten (10) day time period, Medical Lake shall be deemed

to be in default of this Agreement, and then Spokane may terminate this Agreement by providing Medical Lake with written notice not less than six (6) months prior to the date of termination set forth in such written notice.

7.5.2. If Spokane determines, in its sole discretion, that Medical Lake has materially breached the terms of this Agreement, and fails to cure such a material breach within a period of sixty (60) days after Spokane provides Medical Lake written notice of the same, then Medical Lake shall be deemed to be in default of this Agreement, and then Spokane may terminate this Agreement by providing Medical Lake with written notice.

8. **Force Majeure.** Neither Medical Lake nor Spokane shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations due to conditions beyond their reasonable control including acts of God, fire, flood, earthquake, other natural disaster, acts of war, insurrection or riot, or change in the law or directive of governmental authority. If a Party is unable to perform in whole or in part because of such condition, the Party shall diligently and promptly take reasonable steps to allow it to perform.
9. **Indemnification by Spokane.** To the fullest extent permitted by law, Spokane hereby releases and agrees to indemnify, defend and hold harmless each of the Medical Lake Indemnified Parties (defined below) from and against any claim, liability, loss, expense (including but not limited to attorneys' fees and expenses), damage, demand, lawsuit, cause of action, order, strict liability claim, penalty, fine, administrative law action and/or cost of every kind and character (collectively, "Claim/Liability"), arising out of or in any way incident to the design or construction of the Spokane Improvements if due to the negligence, gross negligence, or intentional act or omission by Spokane, including in each case (but not limited to) any Claim/Liability on account of defective work, breach of contract, personal injuries, death, damage to property, damage to the environment, or infringement of any patent, trademark, copyright or other property right, regardless of whether such harm is to Spokane, its employees or officers, the Medical Lake Indemnified Parties, or any other person or entity. "Medical Lake Indemnified Parties" means, individually and collectively, Medical Lake, its officers, shareholders, and members of each of the foregoing entities. Notwithstanding any provision in this Agreement to the contrary, the Spokane's duties under this Section 9 shall survive the termination, revocation, or expiration of this Agreement.
10. **Indemnification by Medical Lake.** To the fullest extent permitted by law, Medical Lake hereby releases and agrees to indemnify, defend and hold harmless each of the Spokane Indemnified Parties (defined below) from and against any Claim/Liability arising out of or in any way incident to the use by Medical Lake of the water supplied by Spokane hereunder, or arising out of or in any way incident to the design or construction of the Medical Lake Improvements if due to the negligence, gross negligence, or intentional act or omission by Medical Lake, including in each case (but not limited to) any Claim/Liability on account of defective work, negligence,

breach of contract, personal injuries, death, damage to property, damage to the environment, or infringement of any patent, trademark, copyright or other property right, regardless of whether such harm is to Medical Lake, its members or officers, the Spokane Indemnified Parties, or any other person or entity. “Spokane Indemnified Parties” means, individually and collectively, Spokane, its elected officials, officers, employees, and agents. Notwithstanding anything in this Agreement to the contrary, Medical Lake’s duties under this Section 10 shall survive the termination, revocation, or expiration of this Agreement.

11. Dispute Resolution.

- 11.1. Except as otherwise provided in this Agreement, any and all disputes arising under this Agreement shall be resolved pursuant to this Section 11.
- 11.2. The Parties shall make good faith efforts to resolve by informal discussion any dispute arising under this Agreement.
- 11.3. If at any time during the good faith efforts to resolve any dispute arising under this Agreement either of the Parties determines that such informal discussions will not result in a resolution of the issue(s) in dispute, such dispute, upon the mutual agreement of the parties, may be submitted for resolution by mediation.
- 11.4. Disputes not resolved by Section 11.2, 11.3, or 11.4, as the case may be, shall be resolved in court per Section 12.11.
- 11.5. Except as otherwise provided by this Agreement, the Parties shall continue to fulfill their respective duties under this Agreement pending resolution of any dispute.

12. Miscellaneous Provisions.

- 12.1. Access to Records.
 - 12.1.1. Medical Lake’s Access to Spokane Records. Upon reasonable prior notice to Spokane, Medical Lake, or any consultant of Medical Lake, shall be given access during normal business hours to the books, records, and accounts related to this Agreement in the possession of Spokane at the location where such books, records, and accounts are located. Spokane shall not be obligated to collate, organize, or analyze the information sought by Medical Lake or by Medical Lake’s consultant.
 - 12.1.2. Spokane’s Access to Medical Lake Records. Upon reasonable prior notice to Medical Lake, Spokane, or any consultant of Spokane, shall be given access during normal business hours to the books, records, and accounts related to this Agreement in the possession of Medical Lake at the location

where such books, records, and accounts are located. Medical Lake shall not be obligated to collate, organize, or analyze the information sought by Spokane or by Spokane's consultant.

12.2. Notices.

12.2.1. All notices, requests, demands, waivers, consents and other communications required under this Agreement shall be in writing except as provided in Section 7.4.1, and shall be delivered by the following means: (i) by certified mail, return-receipt requested, (ii) by facsimile providing confirmation of completed transmission, or (ii) by such other means as may be approved in writing by the Parties. Service of any such notice, request, demand, waiver, consent, or other communication, shall be deemed to have been duly given and to have become effective upon receipt.

12.2.2. Any and all notices, demands, waivers, consents and other communications shall be forwarded to each of the Parties at the following addresses:

To Spokane: Director, City of Spokane Water Department
914 N Foothills Dr.
Spokane, WA 99207
Telephone: (509) 625-7800
Facsimile: (509) 625-7816

With a copy to: City Attorney
Office of the City Attorney
City of Spokane – City Hall
808 West Spokane Falls Boulevard
Spokane, WA 99201
Telephone: (509) 625-6225
Facsimile: (509) 625-6277

To Medical Lake: _____

With a copy to: _____

or to such other address as may be agreed to in writing by the Parties.

- 12.3. Assignment. Neither this Agreement nor any of the rights, interests or obligations created hereunder may be assigned, sold, or otherwise transferred in whole or in part by either Party without the prior written consent of the other Party.
- 12.4. No Third Party Beneficiaries. Nothing in this Agreement is intended to confer upon any person or entity, other than the Parties hereto, any rights, benefits, or obligations. No such third-party shall have any right to enforce any of the provisions of this Agreement. Unless expressly stated otherwise herein.
- 12.5. Medical Lake Water System – No Spokane Responsibility. It is understood that Spokane does not own or have any responsibilities outside of this Agreement whatsoever to maintain Medical Lake's Water System.
- 12.6. Compliance with Local, State, Federal Rule or Regulation. In the event Spokane is required to comply with any local, state, or federal rule or regulation governing its operation of its water rights and said rule or regulation requires the compliance of wholesale water customers of Spokane, Medical Lake agrees to comply.
- 12.7. Waiver. Except as otherwise provided herein or as agreed by the Parties, no provision of this Agreement may be waived except as documented or confirmed in writing. Any waiver at any time by a Party of its rights with respect to a default under this Agreement or with any other matter arising in connection therewith shall not be deemed a waiver with respect to any subsequent default or matter. Either Party may waive any notice or agree to accept a shorter notice than specified by this Agreement. Such waiver of notice or acceptance of shorter notice by a Party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required by this Agreement.
- 12.8. Entire Agreement. All prior negotiations and agreements between the Parties hereto relating to the subject matter hereof are merged into and superseded by this Agreement, and shall constitute the entire agreement between Spokane and Medical Lake concerning the sale of wholesale water to Medical Lake for use as hereinbefore provided. The rights and obligations of the Parties hereunder shall be subject to and shall be governed by this Agreement.
- 12.9. Representations and Warranties. The Parties hereby represent and warrant to one another the following:
- 12.9.1. Each party is duly authorized and validly existing under the laws of, and is authorized to exercise its powers, rights, and privileges and is in good standing in, the State of Washington, and has full power and authority to carry on its business as presently conducted and execute this Agreement and perform the transactions on its part contemplated by this Agreement.

- 12.9.2. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby have been duly authorized by the appropriate board or council, and no other act or proceeding on the part of any Party is necessary to authorize this Agreement, or the transactions contemplated hereby.
- 12.9.3. The execution, delivery, and performance by each of the Parties of this Agreement does not: (a) contravene any law; or (b) conflict with or result in a breach of or default under any material agreement or instrument to which any Party is a party or by which it is bound.
- 12.9.4. There are no actions, suits, claims, or proceedings pending, or, to the best of each Party's knowledge, threatened against either Party that is likely to impair the consummation or the transactions contemplated hereby.
- 12.9.5. This Agreement, when executed and delivered, will constitute a valid and binding obligation of each Party, and will be enforceable against each such Party in accordance with its terms.
- 12.10. Amendments. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written Amendment to this Agreement signed by the Parties.
- 12.11. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington (regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state). The Parties (i) agree that any lawsuit, judicial action, or proceeding arising out of or relating to this Agreement must be heard in the Superior Court of the State of Washington in and for the County of Spokane, or in the United States District Court for the Eastern District of Washington, (ii) waive any objection to the venue of any such suit, action, or proceeding, and (iii) irrevocably submit to the jurisdiction of any such court in any such lawsuit or judicial action or proceeding.
- 12.12. Reasonable and Good Faith Efforts. Each Party will make all reasonable and good faith efforts to coordinate with the other Party to complete the Medical Lake and Spokane Improvements, to secure the Regulatory Approvals, and accomplish tasks provided for in this Agreement in a timely manner.
- 12.13. Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced, all other terms or provisions of the Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereunder is not affected in any manner or materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement

so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereunder are consummated as originally contemplated and to the greatest extent possible.

- 12.14. Rights and Remedies Cumulative. The rights and remedies available under this Agreement or otherwise available shall be cumulative of all other rights and remedies and may be exercised successively.
- 12.15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9-25-17

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date first above written.

DATED: _____

CITY OF SPOKANE

By: _____

Title: _____

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk
City of Spokane

City Attorney
City of Spokane

DATED: _____

9-25-17

DATED: _____

CITY OF MEDICAL LAKE

By: _____

Title: _____

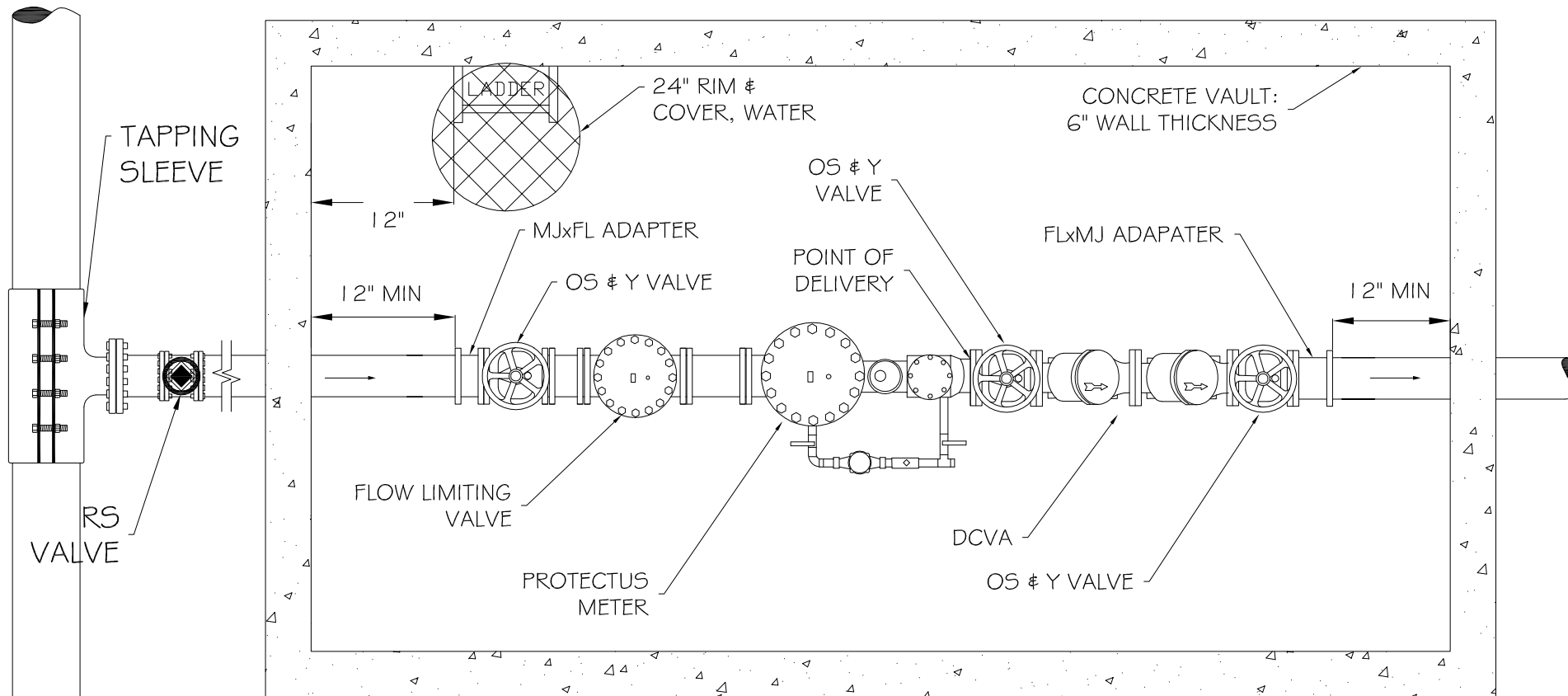
ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk
City of Medical Lake

City Attorney
City of Medical Lake

DATED: _____



NOTES:

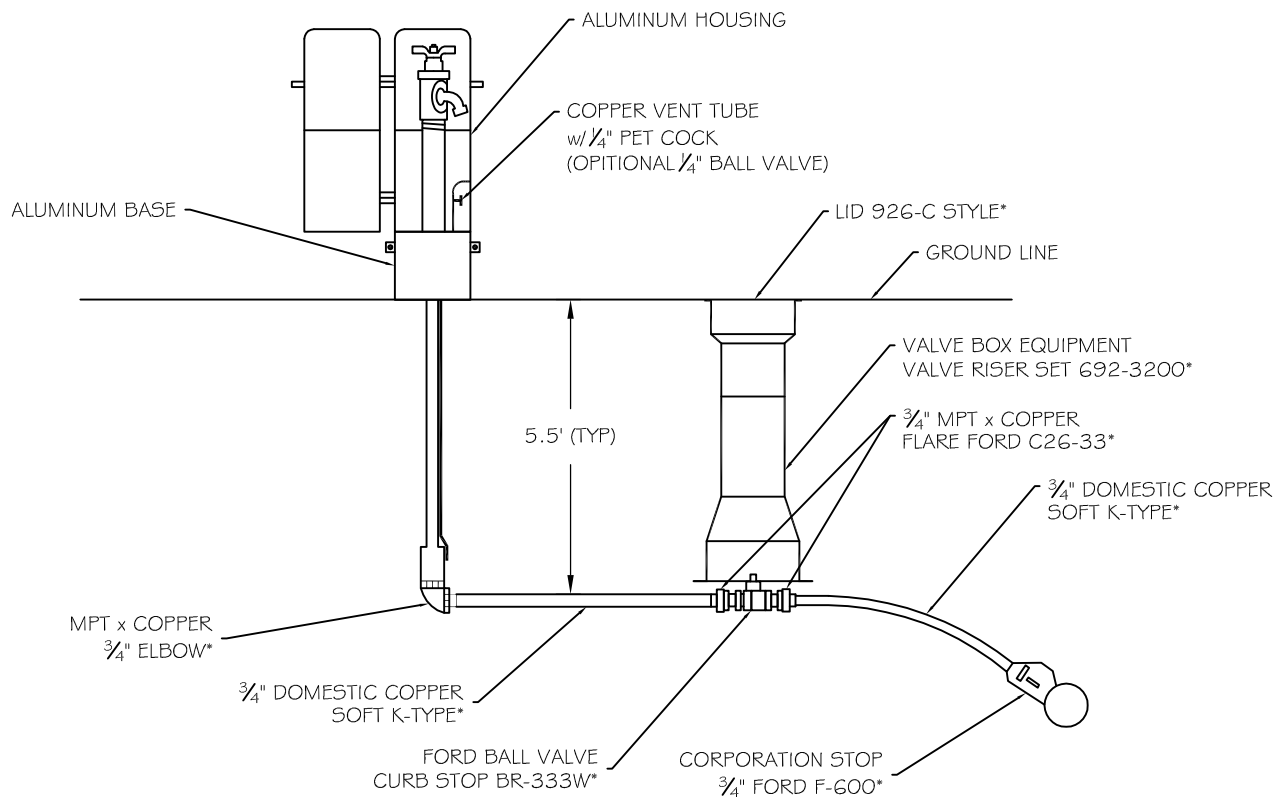
- TRAFFIC RATED LID
- OPEN BOTTOM
- DIMENSIONS BASED ON:
WATTS 709 DCVA
NEPTUNE HP PROTECTUS III METER
- EXCAVATION TO BE DONE PER L&I REGULATIONS
- VAULT SIZE DEPENDS ON SIZE OF LINE AND APPLIANCE LENGTHS. CHECK WITH COS WATER DEPARTMENT

ADOPTED: 1/2017
 REVISED: _____
 SUPERSEDES: _____
 CHECKED BY: TR
 SCALE: NTS
 DWG./REV BY: ABM

INTERTIE CONNECTION

WATER DEPARTMENT
 CITY OF SPOKANE, WASHINGTON

STANDARD
 PLAN No.



* BY OTHERS

NOTE:
LOCATION OF SAMPLING STATION
WILL BE DETERMINED BY COS WATER
DEPARTMENT

WATER QUALITY
SAMPLING STATION



WATER & HYDRO SERVICES
CITY OF SPOKANE, WASHINGTON

DRAWN BY: ABM

DATE: 9/2017

SCALE: NO SCALE