

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, AUGUST 20, 2018

MISSION STATEMENT

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

MAYOR DAVID A. CONDON

COUNCIL PRESIDENT BEN STUCKART

COUNCIL MEMBER BREEAN BEGGS

COUNCIL MEMBER MIKE FAGAN

COUNCIL MEMBER CANDACE MUMM

COUNCIL MEMBER KATE BURKE

COUNCIL MEMBER LORI KINNEAR

COUNCIL MEMBER KAREN STRATTON

CITY COUNCIL CHAMBERS
CITY HALL

808 W. SPOKANE FALLS BLVD.
SPOKANE, WA 99201

CITY COUNCIL BRIEFING SESSION

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

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

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

ADDRESSING THE COUNCIL

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or msteinolfson@spokanecity.org. Persons who are deaf or hard of hearing may contact Human Resources through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

If you have questions, please call the Agenda Hotline at 625-6350.

BRIEFING SESSION

(3:30 p.m.)

(Council Chambers Lower Level of City Hall)

(No Public Testimony Taken)

Council Reports

Staff Reports

Committee Reports

Advance Agenda Review

Current Agenda Review

ADMINISTRATIVE SESSION

Roll Call of Council

CONSENT AGENDA

REPORTS, CONTRACTS AND CLAIMS

RECOMMENDATION

- | | | |
|--|---------|------------------------------|
| 1. Encumbrance of funds for the last year of West Thomson Reuters (St. Paul, MN) contract for online legal research—increase of \$50,306.38.
Mike Ormsby | Approve | OPR 2016-0839 |
| 2. Public Works Trust Fund Loan Agreement to repair the coating systems of the Sunset Reservoir—\$1,412,000. Repayment period will be for a term of 20 years at 1.66% interest.
Mark Papich | Approve | OPR 2018-0505
ENG 2016079 |
| 3. Low Bid of Cameron-Reilly, LLC (Spokane Valley, WA) for Centennial Trail Mission Avenue Gap Phase 1 - REBID—\$513,385. An administrative reserve of \$51,338.50, which is 10% of the contract price, will be set aside. (Logan Neighborhood)
Dan Buller | Approve | OPR 2018-0506
ENG 2014095 |
| 4. Personal Service Agreement with the University District Public Development Authority relating to the update of the 2004 University District Strategic Master Plan—\$83,333.
Andrew Worlock | Approve | OPR 2018-0507 |

- | | | |
|---|------------------------------------|---------------|
| 5. Agreement with SCRAM for home monitoring equipment software and training to support municipal probation's jail alternatives program—\$175,000.
Howard Delaney | Approve | OPR 2018-0508 |
| 6. Twenty-year Lease Agreement with Ulupalakua Ranch, Inc., regarding City-owned property that has been deemed not needed for public right of way purposes and will not be needed for public purposes in the foreseeable future —\$39,046.55 revenue.
Dave Steele | Approve | OPR 2018-0509 |
| 7. Report of the Mayor of pending: | Approve &
Authorize
Payments | CPR 2018-0002 |
| 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 \$_____. | | CPR 2018-0003 |
| b. Payroll claims of previously approved obligations through _____, 2018: \$_____. | | |
| 8. City Council Meeting Minutes: _____, 2018. | Approve
All | CPR 2018-0013 |

EXECUTIVE SESSION

(Closed Session of Council)

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

CITY COUNCIL SESSION

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

(Council Briefing Center)

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

LEGISLATIVE SESSION

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

WORDS OF INSPIRATION

PLEDGE OF ALLEGIANCE

ROLL CALL OF COUNCIL

ANNOUNCEMENTS

(Announcements regarding Changes to the City Council Agenda)

NO BOARDS AND COMMISSIONS APPOINTMENTS

ADMINISTRATIVE REPORT

COUNCIL COMMITTEE REPORTS

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

OPEN FORUM

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

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

LEGISLATIVE AGENDA

SPECIAL BUDGET ORDINANCE

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinance C35672 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 C35672 Fire/EMS Fund
FROM: Homeland Security, \$50,000;
TO: Machinery/Equipment, same amount.

(This action increases the budget for the Assistance to Firefighters Grant to allow remaining 2018 grant expenses to be incurred.)

Brian Schaeffer

NO EMERGENCY ORDINANCES

RESOLUTIONS

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2018-0072 Setting a hearing before the City Council for September 24, 2018 for the vacation of multiple City right-of-ways for the Washington State Department of Transportation North Spokane Corridor project.
Eldon Brown

FINAL READING ORDINANCES

(Require Four Affirmative, Recorded Roll Call Votes)

- ORD C35668 Creating a Sustainability Action Commission, describing its composition, and stating its goals, duties, and functions; and enacting a new chapter 4.36 to the Spokane Municipal Code.
Council Members Beggs & Burke and Council President Stuckart

FIRST READING ORDINANCES

(No Public Testimony Will Be Taken)

- ORD C35673 Relating to animal control and amending SMC sections 10.03.020 and 10.03.033.
Tim Szambelan

FURTHER ACTION DEFERRED

NO SPECIAL CONSIDERATIONS

NO HEARINGS

Motion to Approve Advance Agenda for August 20, 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 August 20, 2018, Regular Legislative Session of the City Council is adjourned to August 27, 2018.

NOTES

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

08/20/2018

Date Rec'd

8/1/2018

Clerk's File #

OPR 2016-0839

Renews #Submitting Dept

CITY ATTORNEY

Cross Ref #Contact Name/Phone

MIKE ORMSBY 6287

Project #Contact E-Mail

MORMSBY@SPOKANECITY.ORG

Bid #Agenda Item Type

Contract Item

Requisition #Agenda Item Name

0500 ENCUMBER FUNDS FOR WESTLAW CONTRACT

Agenda Wording

Legal entered into a 3 year contract with Westlaw in 2016. The terms of the contract provide for a certain number of user licenses and also provided for an annual contract escalator. Legal needs to encumber funds for the last year of this contract.

Summary (Background)

In addition to licenses for attorneys in the City Attorney and Prosecutor's Office, this contract now also provides licenses for the Hearing Examiner, OPOC and the City Council Office. The Contract cost escalation provision (and the additional licenses) pushes the total contract amount for 2019 above the Small Contract threshold amount for the first time. This is a request for approval to enter into this contract amount which will also include licenses for use for three other departments.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Expense \$ 50,306.38

0500-33200-15300-53102

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

PICCOLO, MIKE

Study SessionDivision DirectorOtherFinanceDistribution ListLegal

DALTON, PAT

sdhansen@spokanecity.org

For the Mayor

SANDERS, THERESA

ywang@spokanecity.org

Additional ApprovalsPurchasing

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

08/20/2018

<u>Date Rec'd</u>	7/30/2018
<u>Clerk's File #</u>	OPR 2018-0505
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	2016079
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	INTEGRATED CAPITAL MANAGEMENT
<u>Contact Name/Phone</u>	MARK PAPICH 625-6310
<u>Contact E-Mail</u>	MPAPICH@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	4250 - PUBLIC WORKS TRUST FUND LOAN AGREEMENT - SUNSET TANK COATING

Agenda Wording

Requesting Council approval of the Public Works Trust Fund Loan Agreement to repair the coating systems of the Sunset Reservoir. The \$1,412,000.00 loan re-payment period will be for a term of 20 years at 1.66% interest.

Summary (Background)

The Sunset Reservoir located at 4390 South Assembly Road, is adjacent to Indian Canyon Golf Course. The existing coating systems on the inside and outside of the tank are in need of repair. To preserve the life and value of the asset, the rehabilitation needs to occur. The rehabilitation will include sandblasting and recoating the interior and cleaning and recoating of the exterior.

<u>Fiscal Impact</u>	Grant related? YES	<u>Budget Account</u>
	Public Works? YES	
Revenue	\$ 1,412,000.00	# 4250 98864 94000 56501 15770
Select	\$	#
Select	\$	#
Select	\$	#
<u>Approvals</u>	<u>Council Notifications</u>	
<u>Dept Head</u>	DAVIS, MARCIA	<u>Study Session</u>
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u> PIES 7-23-18
<u>Finance</u>	ALBIN-MOORE, ANGELA	<u>Distribution List</u>
<u>Legal</u>	ODLE, MARI	mpapich@spokanecity.org
<u>For the Mayor</u>	SANDERS, THERESA	icmaccounting@spokanecity.org
<u>Additional Approvals</u>		mdoval@spokanecity.org
<u>Purchasing</u>		eraea@spokanecity.org
<u>GRANTS & CONTRACT MGMT</u>	BROWN, SKYLER	

Briefing Paper

PIES

Division & Department:	Public Works Division / Integrated Capital Management
Subject:	Sunset Reservoir Rehabilitation – Public Works Trust Fund Loan
Date:	7/23/18
Contact (email & phone):	mpapich@spokanecity.org
City Council Sponsor:	
Executive Sponsor:	
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)	Six Year Water Program number WAT-2015-147
Strategic Initiative:	
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Council approval of the Public Works Trust Fund loan agreement for coating Sunset Tank
Background/History: The tank is located at 4390 S Assembly Road, adjacent to Indian Canyon Golf Course. The existing coating systems on the inside and outside of the tank are in need of repair. To preserve the life and value of the asset, the rehabilitation needs to occur. The rehabilitation will include sandblasting and recoating the interior and cleaning and recoating of the exterior.	
Executive Summary: <ul style="list-style-type: none"> Public Works Trust Fund loan agreement for Sunset Tank Coating \$1,412,000. The loan term is 20 years at 1.66% interest. 	
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: Other budget impacts: n/a	
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:	

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

08/20/2018

<u>Date Rec'd</u>	8/6/2018
<u>Clerk's File #</u>	OPR 2018-0506
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	2014095
<u>Bid #</u>	
<u>Requisition #</u>	CR 19585

<u>Submitting Dept</u>	ENGINEERING SERVICES
<u>Contact Name/Phone</u>	DAN BULLER 625-6391
<u>Contact E-Mail</u>	DBULLER@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	0350 - LOW BID AWARD - CAMERON-REILLY LLC

Agenda Wording

Low Bid of Cameron-Reilly LLC (Spokane Valley, WA) for Centennial Trail Mission Avenue Gap Phase 1 - REBID - \$513,385.00. An administrative reserve of \$51,338.50, which is 10% of the contract price, will be set aside. (Logan Neighborhood Council)

Summary (Background)

On August 6, 2018 bids were opened for the above project. The low bid was from Cameron-Reilly LLC in the amount of \$513,385.00, which is \$42,051.50 or 7.5% under the Engineer's Estimate; one other bid was received as follows: Toghotthele Corporation - \$520,560.53.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? YES	
Expense \$ 543,566.82		# 3200 95092 95300 56501 99999
Expense \$ 21,156.68		# 1380 24101 95300 56501 99999
Select \$		#
Select \$		#

<u>Approvals</u>	<u>Council Notifications</u>
<u>Dept Head</u>	<u>Study Session</u>
<u>Division Director</u>	<u>Other</u> Public Works 5-8-17
<u>Finance</u>	<u>Distribution List</u>
<u>Legal</u>	eraea@spokanecity.org
<u>For the Mayor</u>	publicworksaccounting@spokanecity.org
Additional Approvals	mdoval@spokanecity.org
<u>Purchasing</u>	htrautman@spokanecity.org
	kgoodman@spokanecity.org

BRIEFING PAPER
Public Works Committee
Engineering Services
May 8, 2017

Subject:

Centennial Trail Gap at Mission Avenue Phase I Project (2014095)

Background:

This project will upgrade the Centennial Trail in the vicinity of Mission Park, along the Avista frontage of Mission Avenue and through the crossing of Mission Avenue. This crossing of Mission Avenue was labeled a “gap” in the Centennial Trail in the 2007 Alta Planning study of the Centennial Trail. A subsequent study of this gap provided feasible options to improve upon the trail in phases for the eventual accomplishment of a Class 1 Trail.

The ultimate goal is to have a grade-separated trail that is uninterrupted by traffic on Mission Avenue. Even with the grade separation, the project also prioritized improvements at-grade with the roadway to make the trail path more clear through the busy intersection of Mission Avenue and Perry Street. A common mistake witnessed all too often is the use of the adjacent rail crossing of Mission Avenue as if it were the trail crossing.

This first phase project will enhance the trail crossing of Mission Avenue as well as separate the trail from vehicle paths on Mission Avenue and within the Mission Park parking lot. This project will also make preparations for the future phases by expanding parking in Mission Park to mitigate losses that will occur when a future bridge project phase would construct piers in the corner of the existing Witter Pool parking lot.

Public Impact:

This work will be constructed after Labor Day when use of the Centennial Trail and Mission Park decreases. Trail traffic will be rerouted as shown in the second attached exhibit.

Action:

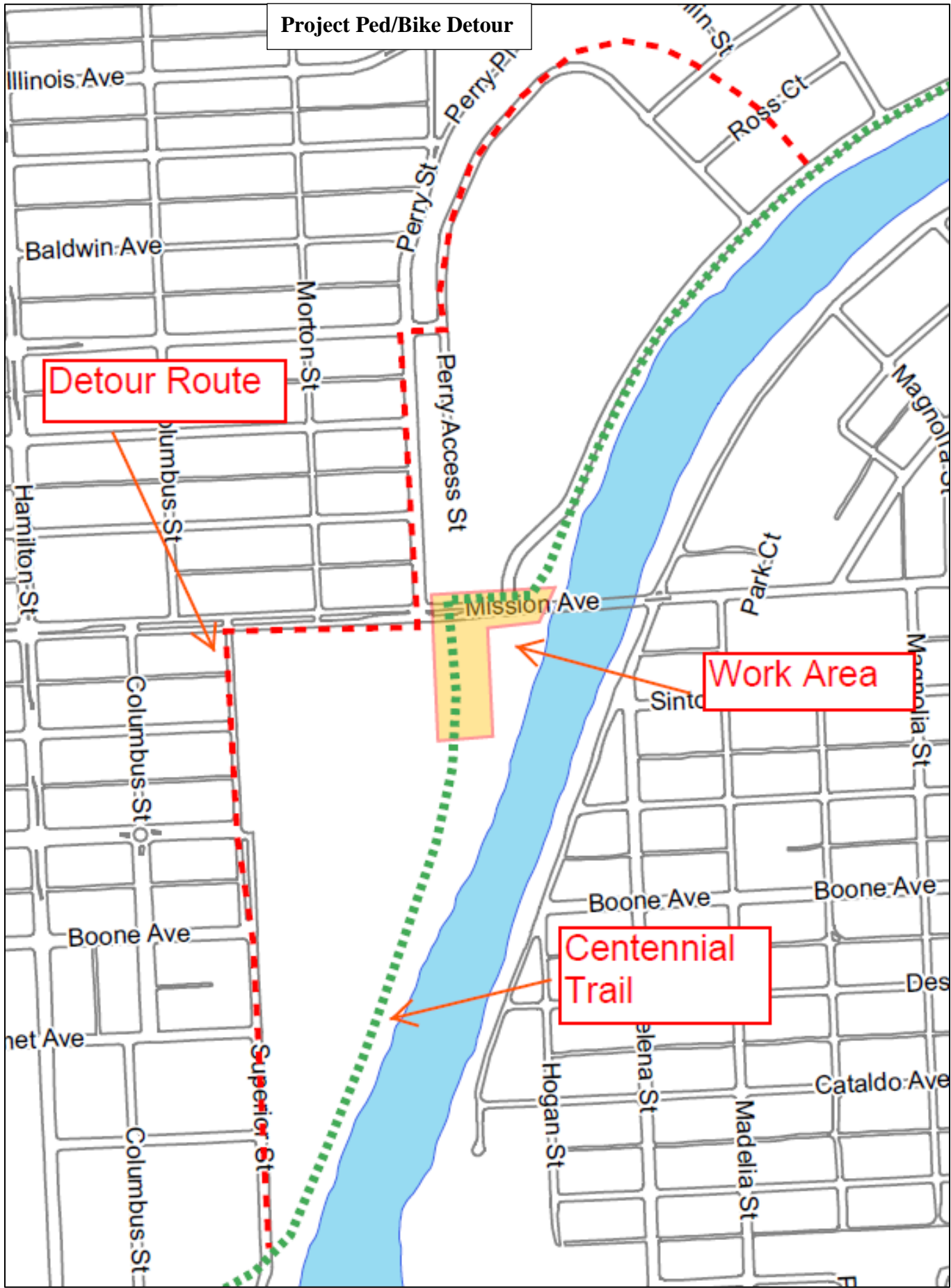
This background information is provided for council consideration. The preliminary Engineer’s Estimate for this project is approximately \$630,000. This project will advertise in mid-May with bid opening in early June. We plan to put this project on council advanced agenda shortly thereafter.

Funding

This project is federally funded, and is being matched with funds from the Friends of the Centennial Trail.



Project Ped/Bike Detour



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

Project Number: 2014095

Project Description Centennial Trail Mission Avenue Gap - Phase 1
Funding Source (REBID)

Original Date 4/4/2017 1:05:14 PM

Update Date 8/6/2018 1:45:52 PM

Preparer Rich Proszek

Addendum

Project Number: 2014095			Engineer's Estimate		Cameron-Reilly		Toghotthele Corporation			
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	ADA FEATURES SURVEYING	1 LS	*****	3,000.00	*****	2,400.00	*****	3,500.00	*****	0.00
102	REIMBURSEMENT FOR THIRD PARTY DAMAGE	1 EST	1.00	1.00	1.00	1.00	1.00	1.00	0.00	0.00
103	SPCC PLAN	1 LS	*****	800.00	*****	750.00	*****	2,500.00	*****	0.00
104	POTHOLING	1 EA	450.00	450.00	250.00	250.00	1,500.00	1,500.00	0.00	0.00
105	REFERENCE AND REESTABLISH SURVEY MONUMENT	3 EA	650.00	1,950.00	600.00	1,800.00	1,500.00	4,500.00	0.00	0.00
106	CLASSIFICATION AND PROTECTION OF SURVEY MONUMENTS	1 LS	*****	4,500.00	*****	3,500.00	*****	3,000.00	*****	0.00
107	MOBILIZATION	1 LS	*****	41,000.00	*****	34,552.50	*****	48,000.00	*****	0.00
108	PROJECT TEMPORARY TRAFFIC CONTROL	1 LS	*****	25,000.00	*****	35,000.00	*****	25,000.00	*****	0.00
109	SPECIAL SIGNS	45 SF	20.00	900.00	20.00	900.00	55.00	2,475.00	0.00	0.00
110	SEQUENTIAL ARROW SIGN	2700 HR	5.00	13,500.00	1.00	2,700.00	6.00	16,200.00	0.00	0.00
111	PORTABLE CHANGEABLE MESSAGE SIGN	400 HR	10.00	4,000.00	10.00	4,000.00	12.00	4,800.00	0.00	0.00
112	TYPE III BARRICADE	8 EA	100.00	800.00	100.00	800.00	1,028.50	8,228.00	0.00	0.00
113	CLEARING AND GRUBBING	1 LS	*****	5,300.00	*****	7,500.00	*****	6,000.00	*****	0.00
114	MATERIAL ON HAND, TREE PROTECTION	1 LS	*****	1,100.00	*****	750.00	*****	2,000.00	*****	0.00

<i>Project Number:</i> 2014095			<i>Engineer's Estimate</i>		Cameron-Reilly		Toghotthele Corporation			
<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	REMOVAL OF STRUCTURE AND OBSTRUCTION	1 LS	*****	3,200.00	*****	4,000.00	*****	3,500.00	*****	0.00
116	RELOCATION OF SITE FIXTURES	1 LS	*****	3,000.00	*****	2,700.00	*****	4,500.00	*****	0.00
117	REMOVE EXISTING CURB	1090 LF	15.00	16,350.00	13.00	14,170.00	5.00	5,450.00	0.00	0.00
118	REMOVE EXISTING CURB AND GUTTER	14 LF	21.00	294.00	20.00	280.00	30.00	420.00	0.00	0.00
119	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	665 SY	20.00	13,300.00	15.00	9,975.00	10.00	6,650.00	0.00	0.00
120	REMOVE MANHOLE, CATCH BASIN OR DRYWELL	2 EA	1,000.00	2,000.00	900.00	1,800.00	1,550.00	3,100.00	0.00	0.00
121	REMOVE CURB/GRATE INLET	2 EA	850.00	1,700.00	300.00	600.00	150.00	300.00	0.00	0.00
122	SAWCUTTING CURB	14 EA	40.00	560.00	50.00	700.00	100.00	1,400.00	0.00	0.00
123	SAWCUTTING RIGID PAVEMENT	460 LFI	1.50	690.00	1.00	460.00	3.50	1,610.00	0.00	0.00
124	SAWCUTTING FLEXIBLE PAVEMENT	11290 LFI	0.75	8,467.50	0.75	8,467.50	0.85	9,596.50	0.00	0.00
125	REMOVE UNSUITABLE FOUNDATION MATERIAL	10 CY	50.00	500.00	75.00	750.00	80.00	800.00	0.00	0.00
126	REPLACE UNSUITABLE FOUNDATION MATERIAL	10 CY	75.00	750.00	75.00	750.00	80.00	800.00	0.00	0.00
127	PREPARATION OF UNTREATED ROADWAY, PARKING LOT	385 SY	5.00	1,925.00	10.00	3,850.00	15.00	5,775.00	0.00	0.00
128	CONTROLLED DENSITY FILL	10 CY	200.00	2,000.00	200.00	2,000.00	110.00	1,100.00	0.00	0.00
129	CRUSHED SURFACING TOP COURSE	65 CY	70.00	4,550.00	100.00	6,500.00	46.00	2,990.00	0.00	0.00
130	CRUSHED SURFACING BASE COURSE	43 CY	80.00	3,440.00	100.00	4,300.00	50.00	2,150.00	0.00	0.00
131	CSTC FOR SIDEWALK AND DRIVEWAYS	80 CY	150.00	12,000.00	125.00	10,000.00	45.00	3,600.00	0.00	0.00
132	BALLAST	13 CY	60.00	780.00	100.00	1,300.00	75.00	975.00	0.00	0.00
133	HMA CL. 1/2 IN. PG 64-28, 3 INCH THICK	385 SY	20.00	7,700.00	33.00	12,705.00	26.00	10,010.00	0.00	0.00

<i>Project Number:</i> 2014095			<i>Engineer's Estimate</i>		Cameron-Reilly		Toghotthele Corporation			
<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 FOR PAVEMENT REPAIR CL. 1/2 IN. PG 70-28, 6 INCH THICK	273 SY	45.00	12,285.00	85.00	23,205.00	45.00	12,285.00	0.00	0.00
135	HMA CL. 1/2 IN. PG 64-28, 2 INCH THICK	65 SY	15.00	975.00	62.00	4,030.00	25.00	1,625.00	0.00	0.00
136	SOIL RESIDUAL HERBICIDE	385 SY	0.80	308.00	1.00	385.00	1.00	385.00	0.00	0.00
137	PAVEMENT REPAIR EXCAVATION INCL. HAUL	338 SY	35.00	11,830.00	35.00	11,830.00	34.00	11,492.00	0.00	0.00
138	PARKING LOT AND TRAIL EXCAVATION INCL. HAUL	423 SY	35.00	14,805.00	7.50	3,172.50	15.00	6,345.00	0.00	0.00
139	GRATE INLET TYPE 3	1 EA	2,600.00	2,600.00	2,000.00	2,000.00	500.00	500.00	0.00	0.00
140	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN ASPHALT	2 EA	580.00	1,160.00	700.00	1,400.00	375.00	750.00	0.00	0.00
141	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN CONCRETE	2 EA	580.00	1,160.00	700.00	1,400.00	500.00	1,000.00	0.00	0.00
142	CATCH BASIN TYPE 1	1 EA	2,900.00	2,900.00	3,000.00	3,000.00	1,750.00	1,750.00	0.00	0.00
143	CATCH BASIN WSDOT TYPE 1	1 EA	2,900.00	2,900.00	3,000.00	3,000.00	1,800.00	1,800.00	0.00	0.00
144	CLEANING EXISTING DRAINAGE STRUCTURE	5 EA	350.00	1,750.00	350.00	1,750.00	1,000.00	5,000.00	0.00	0.00
145	REMOVE UNSUITABLE PIPE FOUNDATION MATERIAL	10 CY	80.00	800.00	100.00	1,000.00	90.00	900.00	0.00	0.00
146	REPLACE UNSUITABLE PIPE FOUNDATION MATERIAL	10 CY	65.00	650.00	100.00	1,000.00	50.00	500.00	0.00	0.00
147	TRENCH SAFETY SYSTEM	1 LS	*****	600.00	*****	1.00	*****	3,500.00	*****	0.00
148	CATCH BASIN DUCTILE IRON SEWER PIPE 8 IN. DIAM.	13 LF	75.00	975.00	100.00	1,300.00	150.00	1,950.00	0.00	0.00
149	CONNECT 8 IN. DIAM. SEWER PIPE TO EXISTING SEWER PIPE	2 EA	780.00	1,560.00	750.00	1,500.00	750.00	1,500.00	0.00	0.00
150	TEMPORARY ADJACENT UTILITY SUPPORT	1 LS	*****	500.00	*****	1,000.00	*****	2,000.00	*****	0.00
151	ESC LEAD	1 LS	*****	1,000.00	*****	750.00	*****	1,500.00	*****	0.00

<i>Project Number:</i> 2014095			<i>Engineer's Estimate</i>		Cameron-Reilly		Toghotthele Corporation			
<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	INLET PROTECTION	5 EA	100.00	500.00	100.00	500.00	250.00	1,250.00	0.00	0.00
153	STREET CLEANING	16 HR	160.00	2,560.00	275.00	4,400.00	225.00	3,600.00	0.00	0.00
154	TOPSOIL TYPE A, 2 INCH THICK	786 SY	25.00	19,650.00	6.50	5,109.00	5.50	4,323.00	0.00	0.00
155	SOD INSTALLATION	786 SY	15.00	11,790.00	10.00	7,860.00	7.50	5,895.00	0.00	0.00
156	CEMENT CONCRETE MOW STRIP	168 LF	23.00	3,864.00	25.00	4,200.00	15.00	2,520.00	0.00	0.00
157	CONSTRUCT BIO-INFILTRATION SWALE	423 SY	12.00	5,076.00	10.00	4,230.00	10.00	4,230.00	0.00	0.00
158	2FT - 4FT BOULDERS	65 EA	105.00	6,825.00	100.00	6,500.00	550.00	35,750.00	0.00	0.00
159	ADJUST EXISTING IRRIGATION SYSTEM	1 LS	*****	16,000.00	*****	13,000.00	*****	2,500.00	*****	0.00
160	MODIFY SOD IRRIGATION	1 LS	*****	7,400.00	*****	27,500.00	*****	5,000.00	*****	0.00
161	IRRIGATION SYSTEM - DRIP	1 LS	*****	11,000.00	*****	1.00	*****	7,000.00	*****	0.00
162	4 INCH PVC IRRIGATION SLEEVE	62 LF	7.50	465.00	20.00	1,240.00	40.00	2,480.00	0.00	0.00
163	CEMENT CONCRETE CURB	1230 LF	40.00	49,200.00	35.00	43,050.00	22.00	27,060.00	0.00	0.00
164	PRECAST PARKING BUMPER	27 EA	116.00	3,132.00	110.00	2,970.00	160.00	4,320.00	0.00	0.00
165	CEMENT CONCRETE DRIVEWAY	139 SY	80.00	11,120.00	80.00	11,120.00	70.00	9,730.00	0.00	0.00
166	CEMENT CONCRETE DRIVEWAY TRANSITION	20 SY	80.00	1,600.00	80.00	1,600.00	80.00	1,600.00	0.00	0.00
167	CHANNELIZING DEVICES	2 EA	200.00	400.00	300.00	600.00	1,500.00	3,000.00	0.00	0.00
168	CEMENT CONC. SIDEWALK	1044 SY	75.00	78,300.00	60.00	62,640.00	64.00	66,816.00	0.00	0.00
169	RAMP DETECTABLE WARNING	120 SF	23.00	2,760.00	20.00	2,400.00	40.00	4,800.00	0.00	0.00
170	TRAFFIC SIGNAL SYSTEM RETROFIT, MISSION AVE. AND PERRY ST.	1 LS	*****	18,000.00	*****	11,500.00	*****	28,720.00	*****	0.00

<i>Project Number:</i> 2014095			<i>Engineer's Estimate</i>		Cameron-Reilly		Toghotthele Corporation			
<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					
171	SIGNING, PERMANENT, CONTRACTOR MANUFACTURED SIGNS	1 LS	*****	9,500.00	*****	9,000.00	*****	9,500.00	*****	0.00
172	REMOVAL OF EXISTING PAVEMENT MARKINGS	547 SF	5.00	2,735.00	7.50	4,102.50	6.45	3,528.15	0.00	0.00
173	REMOVAL OF EXISTING WORD AND SYMBOL MARKINGS	4 EA	75.00	300.00	110.00	440.00	160.00	640.00	0.00	0.00
174	PAVEMENT MARKING - DURABLE HEAT APPLIED	627 SF	14.00	8,778.00	13.00	8,151.00	12.44	7,799.88	0.00	0.00
175	PAVEMENT MARKING - PAINT	448 SF	2.00	896.00	4.00	1,792.00	4.00	1,792.00	0.00	0.00
176	WORD AND SYMBOL MARKINGS - DURABLE HEAT APPLIED	12 EA	300.00	3,600.00	130.00	1,560.00	130.00	1,560.00	0.00	0.00
177	WORD AND SYMBOL MARKINGS - PAINT	3 EA	100.00	300.00	100.00	300.00	110.00	330.00	0.00	0.00
178	REINFORCED DOWELED CURB	172 LF	21.00	3,612.00	20.00	3,440.00	32.00	5,504.00	0.00	0.00
179	CONCRETE TRAFFIC ISLAND 24 IN. WIDE	27 LF	37.00	999.00	50.00	1,350.00	80.00	2,160.00	0.00	0.00
180	TRAFFIC ISLAND CONCRETE	43 SY	63.00	2,709.00	65.00	2,795.00	180.00	7,740.00	0.00	0.00
181	MOVEABLE BOLLARD	3 EA	1,600.00	4,800.00	1,500.00	4,500.00	1,500.00	4,500.00	0.00	0.00
182	FIXED BOLLARD	3 EA	1,100.00	3,300.00	1,200.00	3,600.00	900.00	2,700.00	0.00	0.00
183	DUMPSTER BAY	1 LS	*****	20,000.00	*****	20,000.00	*****	5,000.00	*****	0.00
<i>Schedule Totals</i>				555,436.50		513,385.00		520,560.53		0.00

Project Number

2014095

Centennial Trail Mission Avenue Gap - Phase 1 (REBID)

	SCHEDULE SUMMARY								
	Sched 1	Sched 2	Sched 3	Sched 4	Sched 5	Sched 6	Sched 7	Sched 8	Total
Engineer's Est	555,436.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	555,436.50
Cameron-Reilly	513,385.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	513,385.00
Toghotthele Corporatio	520,560.53	0.00	0.00	0.00	0.00	0.00	0.00	0.00	520,560.53

Low Bid Contractor: Cameron-Reilly

	Contractor's Bid	Engineer's Estimate	% Variance	
Schedule 01	\$513,385.00	\$555,436.50	7.57	% Under Estimate
Bid Totals	\$513,385.00	\$555,436.50	7.57	% Under Estimate

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

08/20/2018

Date Rec'd

8/3/2018

Clerk's File #

OPR 2018-0507

Renews #Submitting Dept

PLANNING

Cross Ref #Contact Name/PhoneANDREW 625-6991
WORLOCKProject #Contact E-Mail

AWORLOCK@SPOKANECITY.ORG

Bid #Agenda Item Type

Contract Item

Requisition #

CR 19600

Agenda Item Name

0650 - PERSONAL SERVICE AGREEMENT WITH THE UDPDA

Agenda Wording

A personal service agreement between the City of Spokane and the University District Public Development Authority, relating to the update to the 2004 University District Strategic Master Plan.

Summary (Background)

The UDPDA proposes to update to the 2004 University District Strategic Master Plan. The update will consolidate and contextualize the vision for the district and identify character traits and development scenarios for three focus areas. Additional attention will be given to the south area to prepare for sub area planning later this fall and winter. The update is to be funded via a portion of the one-time supplemental funding budgeted by the City in March of 2018 to support the City's PDAs.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Expense \$ 83,333

0750-36230-58700-54201-20801

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

KINDER, DAWN

Study SessionDivision Director

TRAUTMAN, HEATHER

OtherUrban Experience
8/13/18Finance

ORLOB, KIMBERLY

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CITY OF SPOKANE

PERSONAL SERVICE AGREEMENT

University District Strategic Master Plan Update

THIS AGREEMENT is by and between the CITY OF SPOKANE, a Washington State municipal corporation, as ("City"), and the University District Public Development Authority, an entity created pursuant to chapter 35.21 RCW, having offices for the transaction of business at 120 N. Pine Street, Suite 232, Spokane, WA 99202, hereinafter referred to as "Authority," and jointly hereinafter referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, the City of Spokane is a State of Washington first class charter city organized and existing under the Constitution and laws of the State of Washington; and

WHEREAS, the City is authorized by RCW 35.21.730 to create public development authorities to (i) administer and execute federal grants or programs, (ii) receive and administer private funds, goods or services for any lawful public purpose; (iii) improve governmental efficiency and services, (iv) improve the general living conditions in the urban areas in and around the City and (v) perform any lawful public purpose or public function; and

WHEREAS, the City Council approved Ordinance No. C-34933 on November 5, 2012, creating the University District Public Development Authority, authorized its charter and bylaws and established its Board of Directors to govern the affairs of the Authority; and,

WHEREAS, Ordinance No. C-35565 entitled "An ordinance adopting the Annual Budget of the City of Spokane for 2018" was passed by the City Council on December 11, 2017; and,

WHEREAS, on March 5, 2018, the City Council passed Ordinance No. C-35599 amending Ordinance No. C-35565 to budget one-time supplemental funding to support the City's Public Development Authorities in the total amount of \$250,000; and

WHEREAS, it is the desire of the City to enter into this agreement with the Authority to undertake planning activities within the University District including but not limited to updating the 2004 University District Strategic Master Plan and related documents; and

WHEREAS, the parties have entered into this agreement in consideration of the mutual benefits to be derived and to coordinate their efforts through the structure provided by this agreement.

NOW, THEREFORE, The parties agree as follows:

1. SCOPE OF WORK.

The Authority shall perform the following Work or services relating to updating the 2004 University District Strategic Master Plan for the City:

See Scope of Work attached hereto as "Exhibit A."

The Authority represents the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the region, in effect at the time those services are performed.

2. CONTRACT TERM. This Agreement is effective on the _____ day of _____ 2018 and shall end on the _____ day of _____, 2018.

3. COMPENSATION. The City shall pay the Authority a maximum amount not to exceed EIGHTY THREE THOUSAND, THREE HUNDRED, THIRTY THREE DOLLARS AND NO/100, (\$83,333.00) as full compensation for the services provided for under in this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section 1 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Agreement.

4. PAYMENT. The Authority shall submit its applications for payment to Planning and Development Services Department 808 W. Spokane Falls Blvd, Spokane, Washington 99201. Payment will be made via direct deposit/ACH within thirty (30) days after receipt of the Authority's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Authority 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. TERMINATION. Either party may terminate this Agreement, with or without cause, by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Authority for all work previously authorized and performed prior to the termination date.

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

7. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the UDPDA and the UDDA provided that the City retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. All records submitted by the City to the Authority shall be safeguarded by the Authority. The Authority shall make such data, documents and files available to the City upon the City's request.

8. COMPLIANCE WITH LAWS. Each party shall comply with all federal, state, and local laws and regulations applicable to the subject matter of this Agreement.

9. **INDEPENDENT CONTRACTOR.** The parties intend that an independent contractor relationship will be created by this Agreement, no employment relationship is intended nor created.

10. **INDEMNIFICATION.** The Authority 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 Authority's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Authority 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 Authority'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 Authority, its agents or employees. The Authority specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Authority's own employees against the City and, solely for the purpose of this indemnification and defense, the Authority specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Authority 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.

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

A. 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 provide that the City, its agents, officers and employees are Additional Insureds but only with respect to the Authority's services to be provided under this Agreement; and

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Authority or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Authority 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 Authority's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the sixty (60) day cancellation clause, and the deduction or retention level. The Authority shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

12. **NONDISCRIMINATION.** No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Authority agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Authority.

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

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

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

16. 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.

17. MISCELLANEOUS PROVISIONS.

A. ASSIGNMENTS. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent. In the event of an assignment or transfer, the terms of this Agreement shall continue to be in full force and effect.

B. DISPUTES. This Agreement shall be performed under the laws of the State of Washington. Any litigation to enforce this Agreement or any of its provisions shall be brought in courts of competent jurisdiction in Spokane County, Washington.

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

D. AMENDMENTS. This Agreement may be amended at any time by mutual written agreement, and shall be memorialized with the same formality as this agreement.

**UNIVERSITY DISTRICT PUBLIC
DEVELOPMENT AUTHORITY**

By _____
Signature Date

Type or Print Name

Title

Attest:

City Clerk

Attachments to this Agreement:

Exhibit A – Scope of Work

Exhibit B – Certificate Regarding Debarment

CITY OF SPOKANE

By _____
Signature Date

Type or Print Name

Title

Approved as to form:

Assistant City Attorney

**ATTACHMENT A
SCOPE OF WORK**

The Authority shall coordinate a limited scope update to the 2004 University District Strategic Master Plan for the City. The following are the desired outcomes and projected costs:

- Distillation and synthesis of the existing visions for the University District as expressed in formally recognized elements of the Comprehensive Plan and current UDSMP as well as related and subsequent studies, reports and documents into a single, contextualized, updated vision.
- Using the updated vision, the UDSMP update will identify development attributes and character traits for each of the three key focus areas (South Area, Main Avenue/Jensen Byrd area, and the Hamilton corridor area).
- The UDSMP will identify development scenarios for each of the focus areas, with a more in-depth focus on the south University District.
- The UDSMP Update will model the preferred development scenario for the South Sub-area and assess and identify infrastructure needs and barriers to realization of the preferred development scenario (South Sub-area only).
- Create an action strategy to address and overcome barriers to development in the South Sub-area.
- Work with the City of Spokane to assist in identifying regulatory and institutional changes to facilitate the updated vision.

Task	Amount
Strategic Master Plan Update – Technical Subcontract <ul style="list-style-type: none">• Review and synthesis of past plans to confirm development vision• Analysis of current and future business and infrastructure needs and potential• Facilitate community and key stakeholder input to confirm development vision and scenarios• Identify development barriers for sub-area plan to address• Provide final report and graphic representation	\$79,900
Project Administration and Implementation <ul style="list-style-type: none">• Staff support – contract management, scheduling, facilitation• Office supplies – copies for meetings etc• Reproduce final reports and graphics	\$ 3,433
Total	\$83,333

ATTACHMENT B
CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION

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

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

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

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



Agenda Sheet for City Council Meeting of:

08/20/2018

<u>Date Rec'd</u>	8/8/2018
<u>Clerk's File #</u>	OPR 2018-0508
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	CR 19602
<u>Agenda Item Name</u>	0690 ALCOHOL MONITORING SYSTEM FOR MUNICIPAL PROBATION

Agenda Wording

Agreement with SCRAM for electronic home monitoring (EHM) equipment. Software and training to support municipal probation's jail alternatives program.

Summary (Background)

The contract is part of the phase out of probation's former EHM equipment vendor, WASPC/BI, with the latest generation of SCRAM home monitoring equipment and software. This change not only gives the city access to technically superior hardware, based on current EHM program volume, it will save the City approximately \$125,000 annually.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense \$ 175,000		# 1910-18100-23600-55120-54911
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>	<u>Council Notifications</u>	
<u>Dept Head</u>	DELANEY, HOWARD	<u>Study Session</u> 7/30/18 PSCHC
<u>Division Director</u>	STAAB, TRACY	<u>Other</u>
<u>Finance</u>		<u>Distribution List</u>
<u>Legal</u>	ODLE, MARI	hdelaney@spokanecity.org
<u>For the Mayor</u>	SANDERS, THERESA	aharte@spokanecity.org
Additional Approvals		tjones@spokanecity.org
<u>Purchasing</u>		dcoley@spokanecity.org
		kbustos@spokanecity.org



City of Spokane

CONTRACT

**Title: ALCOHOL MONITORING SYSTEM
FOR SPOKANE MUNICIPAL PROBATION
DEPARTMENT**

THIS CONTRACT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **ALCOHOL MONITORING SYSTEMS, INC.**, whose address is 1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120, as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE.** The Company shall provide an alcohol monitoring equipment and services to the Spokane Municipal Probation Department, in accordance with the Company's Master Agency Agreement and Product and Service Agreement, incorporated hereto and attached as Exhibit A. In the event of a conflict between Company's Master Agency Agreement and Product and Service Agreement and this Contract, the terms of this contract will control.
2. **CONTRACT TERM.** The Contract shall begin on September 1, 2018 and run through August 31, 2019, unless terminated sooner. This Contract may be renewed by written agreement of the parties not to exceed two (2) additional two year renewals.
3. **COMPENSATION.** The City shall pay the Company a maximum amount not to exceed **ONE HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$175,000.00)**, including applicable tax, for everything furnished and done under this Contract.
4. **PAYMENT.** The Company shall send its application for payment to Spokane Municipal Probation Department, 1100 West Mallon Avenue, Spokane, WA 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Contractor's application except as provided by state law.
5. **COMPLIANCE WITH LAWS.** Each party shall comply with all applicable federal, state, and local laws and regulations.
6. **ASSIGNMENTS.** This Contract is binding on the parties and their heirs, successors, and assigns. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent.
7. **AMENDMENTS.** This Contract may be amended at any time by mutual written agreement.

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

9. TERMINATION. Either party may terminate this Contract in accordance with the Contract documents.

10. INSURANCE. During the term of the Agreement, the Company shall maintain in force at its own expense, the following insurance coverages:

A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers; and

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 the Company's General Liability insurance policy must be a *minimum* of \$1,000,000, in order to meet the insurance coverages required under this Contract;

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

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company 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 Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the sixty (60) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. INDEMNIFICATION. The Company 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 Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company 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 Company'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 Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnity, and hold the City harmless for actions brought by the Company's

own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company 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.

This section replaces the first paragraph of Section 11 of the Master Agency Agreement.

12. 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.

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

14. STANDARD OF PERFORMANCE. The silence or omission in the Contract regarding any detail required for the proper performance of the work, means that the Company shall perform the best general practice.

15. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Company.

16. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

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

18. CONFIDENTIALITY/PUBLIC RECORDS. City will maintain the confidentiality of Company's materials and information only to the extent that is legally allowed in the State of Washington. City is bound by the State Public Records Act, RCW Ch. 42.56. That law presumptively makes all records in the possession of the City public records which are freely available upon request by anyone. In the event that City gets a valid public records request for

Company's materials or information, City will give Company notice and Company will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Company does not get a timely injunction preventing the release of the records, the City will comply with the Public Records Act and release the records.

19. GOVERNING LAW. This agreement is governed by the laws of the State of Washington.

ALCOHOL MONITORING SYSTEMS, INC.

CITY OF SPOKANE

By  8/7/18
Signature Date

By _____
Signature Date

Mike Machens
Type or Print Name

Type or Print Name

CFO
Title

Title

602-959-944
Firm's UBI #

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments that are part of this Agreement:

Exhibit A – Master Agency Agreement and Product and Service Agreement
Exhibit – Certificate Regarding Debarment

18-133

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

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

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

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

<u>Alcohol Monitoring Systems, Inc</u> Name of Subrecipient / Contractor / Consultant (Type or Print)	<u>Alcohol Monitoring</u> Program Title (Type or Print)
<u>Mike Machens</u> Name of Certifying Official (Type or Print)	<u>[Signature]</u> Signature
<u>CEO</u> Title of Certifying Official (Type or Print)	<u>8/7/18</u> Date (Type or Print)



1241 West Mineral Avenue, Suite 200
Littleton, CO 80120

**EXHIBIT A
TO
CITY OF SPOKANE CONTRACT
MASTER AGENCY AGREEMENT**

AGENCY:	<u>SPOKANE MUNICIPAL PROBATION</u>	TELEPHONE:	<u>509-625-4400</u>
ADDRESS:	<u>1100 W. Mallon Ave.</u>	INITIAL CONTRACT TERM:	<u>36 Months</u>
	<u>Spokane, WA 99201</u>		

This **AGENCY PRODUCTS AND SERVICES AGREEMENT** (the "Agreement"), is entered into as of the Effective Date by and between **ALCOHOL MONITORING SYSTEMS, INC. ("AMS")**, a Delaware corporation located at 1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120, and the Agency listed above. This Agreement incorporates by reference any and all **Schedules** executed by the parties. Capitalized terms not otherwise defined in this Agreement are those as defined in the attached Schedule(s). Should there be a conflict between the terms in this Agreement and those of any Schedule, the terms in the Schedule will prevail. The effective date of the Agreement is the date last signed by AMS (Effective Date").

1 GENERAL SCOPE OF AGREEMENT. AMS sells and rents Equipment and provides supporting Services specific to monitoring Clients who are required to or opt to wear such Equipment. AMS desires to sell or rent and Agency desires to order such Equipment and the supporting Services as specified in this Agreement and the attached Schedules in the Territory described on the applicable Schedule.

2 DEFINITIONS

"Clients" means individuals who are required or choose to wear the Equipment.

"Effective Date" means the date this Agreement is signed by AMS.

"Equipment" means the hardware identified in the applicable Schedule.

"Monitoring Services" means the remote collection, compilation and reporting of data from the Equipment.

"Monitoring Software" means AMS' proprietary, web-based software applications, depending on the Equipment or Service contracted for, which track and store Client data and other features as may be added from time to time.

"Parts" means peripheral hardware necessary for the support of the Equipment such as, but not limited, to batteries, straps and back-plates.

"Products" means collectively the Equipment and the Parts.

"Rental Equipment" means Equipment rented by AMS to Agency.

"RMA" means a Return Material Authorization issued by AMS.

"Services" means collectively the; (i) the Monitoring Services; (ii) provision of training and certification necessary for Partner to use Products; (iii) provision of technical support and telephone assistance; (iv) scheduled Equipment (v) maintenance; (vi) disaster recovery and backup services for Client data stored using the Monitoring Software; and (v) provision of such other Services and support functions as may be agreed to in writing by the parties and made part of this Agreement.

"Territory" means the geographic area type as defined on each Schedule in which Agency may provide the Products and Services to Clients.

"Third Party Contractor" means Agency's third party subcontractors to whom Agency is subcontracting any of Agency's work or responsibilities under this Agreement.

3 GENERAL BUSINESS TERMS

3.1 Payment Terms.

3.1.1 Purchased Products. Products will be invoiced at the time of shipment. The price of the Products does not include applicable taxes and is due and payable in U.S. dollars within ten (10) days of date of invoice.

3.1.2 Rental Equipment. Rental Equipment Fees will be invoiced monthly to Agency by AMS based on the specific pricing option for the Rental Equipment on or before the tenth (10th) day of each month and shall be paid by Agency to AMS within thirty (30) days from the date of such invoice.

3.1.3 Monitoring Service and Other Fees. Service fees will be invoiced by AMS on a monthly basis as incurred and shall be paid by Agency within thirty (30) days from the date of such invoice. Other fees include, but are not limited to, fees for the following: Court appearances whereby AMS is requested by Agency to be a witness in a court case; manual check-in for inactive Equipment; repair or replacement not covered by the Maintenance and Repair Policy under Section 7 and Equipment returned to AMS without an RMA. Unless set forth on an applicable Schedule, fees will be charged at AMS' then prevailing rates.

3.1.4 Currency; Invoiced Taxes. All fees are payable in U.S. Dollars. In addition, Agency is responsible for the timely payment of all taxes invoiced by AMS related to the purchase price for Products, Rental Equipment Fees, Services and any other fees set forth on the Schedule(s).

3.2. Ordering; Freight Terms; Order Cancellation and Reschedule.

3.2.1 Orders. AMS may provide Agency with AMS' standard order form to use for when Agency places orders under this Agreement. Agency may use its own purchase order form in addition to the AMS order form. All terms on any Agency purchase order shall not alter or amend the terms of this Agreement and any additional or varying terms contained in such instrument are expressly rejected.

3.2.2 Freight Terms. Products ordered by Agency shall be shipped to Agency's designated facility, AMS paying ground freight, and AMS bearing the risk of loss of damage until Products are delivered to Agency's dock, at which time any visible damage to the outermost packaging must be noted on the Bill of Lading. AMS shall determine the type of packaging, mode of transportation for all shipments including for returns. Any returns must be accompanied by an RMA. Orders expedited at Agency's request will be shipped FOB Origin, with all freight costs to be paid by the Agency.

3.2.3 Order Cancellation and Reschedule. Orders for Products, once accepted by AMS, are non-cancelable, and Products are non-returnable, except in accordance with the Maintenance and Repair Policy set forth in this Agreement or the terms, if any, in the applicable Schedule. Upon AMS agreement, Agency can reschedule orders one time upon thirty (30) days written notice prior to the shipment date. Any such rescheduled delivery date must be within thirty (30) days of the original delivery date.

3.3 Taxes. Agency shall be solely responsible for all taxes related to Products or Services provided to it by AMS under this Agreement including, by way of example and not limitation, sales, use, property, excise, value added, and gross receipts irrespective of whether the Products are purchased or rented. If Agency is exempt from taxes of any kind Agency will provide appropriate exemption documentation for all such taxes applicable to the transactions contemplated by this Agreement.

3.4 Failure to Make Payments and Suspension of Services. Late paid invoices will be subject to interest, accruing from the due date at the rate of either one-and-one-half percent (1.5%) per month or the highest rate specified by applicable statute, whichever is lower. In addition, if Agency fails to pay any amount when due under this Agreement, AMS will provide written notice to Agency of such failure. If Agency does not pay any outstanding amount due within five (5) business days of the date of such notice, AMS may do any of the following: (i) reject orders from Agency for additional Products or withhold delivery of Products already ordered but not yet shipped; (ii) suspend access to the Services until Agency pays all outstanding amounts in full; and (iii) proceed with termination of this Agreement and any applicable Schedules in accordance with the terms in Section 9.3 of this Agreement.

3.5 Title to Equipment; Rental Equipment.

3.5.1 Title to Equipment. Title to purchase Equipment transfers to Agency upon delivery to the freight carrier. Title to any Rental Equipment shall remain with AMS, unless such Equipment is later purchased by the Agency.

3.5.2 Rental Equipment. Agency may rent Equipment from AMS in quantities agreed to by the parties. Agency will not encumber or dispose of any Rental Equipment. Agency will inventory Rental Equipment in a location that is used and operated by Agency authorized personnel only. All Rental Equipment maintained in Agency's inventory location will be handled in accordance with industry standard practices for prevention of loss or physical damage, including that which may be caused by electronic static discharge and environmental concerns. Agency will be responsible to and reimburse AMS for all loss to AMS resulting from damage, theft, destruction or any other loss whatsoever of Rental Equipment received by Agency. In the event of the loss or damage to any of the Rental Equipment, Agency agrees to pay AMS the Replacement Fee amounts specified on the relevant Schedule. AMS reserves the right, at its sole option, to reduce Agency's inventory of Rental Equipment, if Agency does not remit the Replacement Fee within thirty (30) days from the date of receipt of AMS' invoice. Agency will cooperate with AMS in the preparation and filing of any documents considered necessary by AMS to preserve AMS' title and ownership rights to the Rental Equipment. Upon reasonable notice, AMS reserves the right to audit Rental Equipment inventory on a quarterly basis. At all times throughout the Term, Agency will procure and maintain risk insurance to specifically cover loss or damage to Rental Equipment while in Agency's possession up to the equivalent of the Replacement Fee for the Rental Equipment. At the end of

the rental period, Agency must obtain an RMA and ship returned Rental Equipment to AMS with freight to be paid by Agency and risk of loss or damage to remain with Agency until delivery to AMS.

4 USE RESTRICTIONS; FIRMWARE LICENSE; OWNERSHIP; LIMITED LICENSE; DISCLAIMER

4.1 Use Restrictions; No Modification. Agency shall not do any of the following acts: (i) wilfully tamper with the security of the Monitoring Software or Equipment; (ii) access data on the Monitoring Software not intended for Agency; (iii) log into an unauthorized server or account on the Monitoring Software; (iv) attempt to probe, scan or test the vulnerability of the Monitoring Software or to breach the security or authentication measures without proper authorization; (v) wilfully render any part of Monitoring Software unusable; (vi) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Monitoring Software; (vii) modify, translate, or create derivative works based on the Monitoring Software; (viii) rent, lease, distribute, license, sublicense, sell, resell, assign, or otherwise commercially exploit the Monitoring Software or make the Monitoring Software available to a third party other than as contemplated in this Agreement; (ix) use the Monitoring Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; (x) publish or disclose to third parties any evaluation of the Monitoring Software without AMS' or its third party supplier's prior written consent; (xi) remove, modify, obscure any copyright, trademark, patent or other proprietary notice that appears on the Monitoring Software; or (xii) create any link to the Monitoring Software or frame or mirror any content contained or accessible from the Monitoring Software. Except as expressly provided in this Agreement, no right or license is granted hereunder, by implication, estoppel or otherwise.

4.2 Firmware License. The Products contain firmware developed and owned by AMS or its third party supplier. Agency is hereby granted a limited, non-exclusive, non-transferable, royalty-free license, for the Term, as defined in Section 9.1 below, to use the firmware in the Products. Use of the Parts may be subject to third party license agreements. AMS and its third party suppliers shall retain all rights to the firmware contained in the Products. Any applicable license shall be deemed to be in effect upon delivery of the Products.

4.3 Ownership; Limited License. Agency acknowledges that all right, title and interest in any software or firmware provided under this Agreement and all modifications and enhancements thereof, including all rights under copyright and patent and other intellectual property rights, belong to and are retained solely by AMS or its third party suppliers. This Agreement provides Agency only the rights expressly granted in this Agreement. Further, if Agency suggests any new features or functionality for the Equipment, Monitoring Software or Parts that AMS or its third party suppliers subsequently incorporate into the Products or Monitoring Software, any such new features or functionality shall be the sole and exclusive property of AMS or its third party suppliers and shall be free from any confidentiality restrictions that might otherwise be imposed upon AMS pursuant to Section 8 below.

4.4 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, AMS DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. AMS SHALL HAVE NO LIABILITY WHATSOEVER AS A RESULT OF THE EQUIPMENT BEING LOCATED IN AN AREA NOT COVERED BY APPROPRIATE WIRELESS COVERAGE (IF APPLICABLE), OR IF THE EQUIPMENT FAILS TO ESTABLISH A CONNECTION WITH THE MONITORING SOFTWARE OR THE MONITORING SERVICES ARE DISABLED DUE TO NETWORK RELATED ISSUES. Without limiting the express warranties set forth in this Agreement, AMS does not warrant that the Services will meet Agency's requirements or that access to and use of the Monitoring Services will be uninterrupted or free of errors. AMS cannot and does not guarantee the privacy, security, authenticity and non-corruption of any information transmitted through, or stored in any system connected to, the Internet. Neither AMS nor its third party suppliers shall be responsible for any delays, errors, failures to perform, or disruptions in the Monitoring Services caused by or resulting from any act, omission or condition beyond AMS' or its third party supplier's reasonable control.

5 SERVICE TERMS

5.1 Service Scope. AMS will provide Agency with the Services and support functions per the terms in this Agreement. Unless otherwise expressly agreed to by the parties, AMS is not obligated to and will not provide Services for any Equipment not obtained directly from AMS.

5.2 Monitoring Service Availability. AMS shall use commercially reasonable efforts to make the Monitoring Services available for twenty-four (24) hours a day, seven (7) days a week. Agency agrees that from time to time the Monitoring Services may be inaccessible or inoperable for reasons beyond the reasonable control of AMS, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which AMS may undertake; or (iii) interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other similar failures. Agency will not be entitled to any setoff, discount, refund or other credit as a result of unavailability of the Monitoring Services unless expressly provided in this Agreement...

5.3 Monitoring Software Security. AMS shall use commercially reasonable efforts to prevent unauthorized access to restricted areas of the Monitoring Software and any databases or other sensitive material. AMS reserves the right to deactivate or suspend access to the Monitoring Software by a user if such user is found or reasonably suspected to be using his/her access

to facilitate illegal, abusive or unethical activities. Such activities include pornography, obscenity, violations of law or privacy, hacking, computer viruses, or any harassing or harmful materials or uses. Agency agrees to hold AMS harmless from any claims resulting from such use.

5.4 Access to Monitoring Software. Agency agrees to limit requests for access to the Monitoring Software to Agency personnel who are authorized to enroll Clients, set notification options and otherwise access the information residing within the Monitoring Software. AMS will provide to Agency user names, passwords and other information necessary to access the Monitoring Software. Agency is responsible for keeping its user names and passwords protected as Confidential Information as defined in and per the terms of Section 8 of this Agreement and for any communications or transactions made using its user names and passwords. Agency personnel are responsible for changing their respective user names and passwords if they believe that either have been stolen or might otherwise be misused. Agency shall provide written notice to AMS within ten (10) days if any previously authorized personnel status changes such that access should no longer be allowed, including but not limited to termination or resignation of any Agency personnel who had access to the Monitoring Software. These requirements are subject to change based on periodic review by AMS of its information security needs.

5.5 Equipment and Utilities. Agency is responsible and shall bear the costs associated with providing and maintaining internet access and all necessary telecommunications equipment, software and other materials necessary for accessing the Monitoring Software. Agency agrees to notify AMS of any changes in the foregoing, including any system configuration changes or any hardware or software upgrades, which may affect Agency's ability to access the Monitoring Software.

5.6 Equipment Maintenance. AMS and Agency shall establish a routine maintenance program designed to keep the Equipment in good repair, working order and condition in accordance with AMS' then-published specifications, including establishing a schedule that will ensure the return of the Equipment to AMS at approximately annual intervals. Unless otherwise agreed, Agency shall be responsible for collecting any Equipment from Clients that is scheduled for maintenance and (ii) shipping it to AMS having first obtained a RMA number from AMS. Such maintenance program shall not cover Equipment damaged or rendered inoperative for any cause not due to defects covered by the service and repair policy in the Agreement. Agency shall not, without prior approval from AMS, send to AMS for maintenance any Equipment not then scheduled for maintenance. Equipment returned to AMS for any reason, including rental returns, damages, and scheduled repairs, that are not accompanied with a properly issued RMA may be assessed a returned administrative charge.

5.7 Training and Certification. AMS will provide Agency personnel with on-line, training and certification in the use of the Products at AMS' current training rates as quoted by AMS to Agency.

5.8 Additional or Changes to Services. From time-to-time, AMS may revise the scope of the Services, subcontract or delegate to a third party some or all of the provision of the Services, or make substitutions, additions, modifications and improvements to Monitoring Software and/or Services. Additionally, as a part of these changed Services, AMS also may determine, at its sole option, to discontinue providing Services hereunder for specific versions of the Products upon a minimum of one (1) year prior notice to Agency.

6. AGENCY RESPONSIBILITIES.

6.1 Equipment. Agency shall be solely responsible for the management and supervision of the Equipment and any personnel or Clients using the Equipment and the Monitoring Software, as well as the selection and implementation of the Client enrollment, monitoring and notification options provided for the Monitoring Software. For avoidance of doubt, Agency is solely responsible for the management of the Clients, including the response to any Client violations reported by AMS or its third party providers. AMS is not responsible or liable for Agency's failure to properly fulfill its foregoing responsibilities.

6.2 Agreements with Clients. Agency shall obtain the necessary written consent from any Client authorizing the tracking and/or monitoring of the Equipment by AMS or its subcontractors. Agency is solely responsible for notifying Clients in writing of any restrictions or limitations on the use of the Equipment of which it is made aware by AMS. These mandatory restrictions and prohibitions to be communicated to Clients are available on the Monitoring Software platform in the form of a "Participant Agreement". This Participant Agreement is not intended to cover all possible requirements of the relationship between Agency and its Clients and should be reviewed by Agency's legal advisors prior to use. Agency agrees to indemnify and hold AMS harmless from any claim resulting from the failure of Agency to notify Clients of the restrictions and prohibitions on use of the Equipment and to obtain Client's written consent authorizing the tracking and or monitoring of the Equipment by AMS or its subcontractors.

6.3 Third Party Call Center Support. If Agency determines that it will establish and use a third party call center to monitor and receive alerts from the Monitoring Software, then Agency will notify AMS and shall ensure that personnel certified by AMS will operate the call center. Agency shall be responsible for all acts and omissions of the third party call center personnel granted access to Monitoring Software as if they were employees of Agency.

7 MAINTENANCE AND REPAIR

7.1 Maintenance and Repair Policy. Provided Agency; (i) pays to AMS the Service fee(s) for Equipment; and (ii) installs the Equipment in accordance with AMS' instructions, for all Equipment manufactured by and ordered directly from AMS, AMS will provide the necessary maintenance and repair for such Equipment at AMS' expense to enable it to function with the Monitoring Software in a manner substantially in accordance with the performance parameters specified in the documentation for the specific Equipment. For any Parts manufactured by third parties and sold by AMS, any service or repair commitment for that Part shall be solely as described in the relevant Schedule for that Part. Products returned to AMS under warranty must be returned within thirty (30) days of issuance of the RMA. Agency must return damaged or defective Products to AMS, freight prepaid, and Agency is responsible for the risk of loss or damage during shipment for both shipment of damaged Product units back to AMS and the cost of return shipment of replaced or repaired Products back to Agency.

7.2 Maintenance and Repair Policy Exclusions. The above policy does not cover Equipment that is obtained from sources outside of AMS or is defective due to (i) improper use or installation, damage, accident, abuse or alteration; (ii) failure to comply with the operating and maintenance instructions set forth in the documentation for the specific Equipment; (iii) servicing of the Equipment by anyone not authorized by AMS; (iv) failure of Agency to obtain reasonable and necessary maintenance of the Equipment as contemplated under the Agreement; (v) use of Parts in the repair of the Equipment that have not been approved in writing by AMS for use in the Equipment; or (vi) use in connection with a third party product other than that as approved in writing by AMS.

7.3 Sole Remedy. In the event of a breach of the above Maintenance and Repair policy, Agency's sole remedy shall be, at AMS' option, the repair or replacement of the defective Equipment or Part by AMS.

7.4 Product Changes; Retrofit Activities. AMS shall have the right at any time (i) to change the design or specifications of any Equipment without notice and without obligation to make the same or any similar change on any Equipment previously purchased by Agency; and (ii) to retrofit or replace (during routine maintenance or otherwise) any Equipment to incorporate any upgrades or updates then available. However, nothing herein shall obligate AMS to provide Agency with all new models of Equipment at no additional cost, and AMS may charge a fee for Equipment model upgrades in certain circumstances including, but not limited to, a new line of products or a change in underlying technology or technological advancements requiring significant changes to an existing Equipment model. Regarding the foregoing, in any case where AMS charges a fee for an Equipment model upgrade, it will provide no less than six (6) months' notice to Agency prior to discontinuing the sale or rental of the discontinued Equipment model. In addition, AMS will continue to offer repair and/or replacement services for the discontinued Equipment models under the Maintenance and Repair Policy referenced in this Section 7 for no less than three (3) years after the date of notice of Equipment discontinuation as provided by AMS to Agency.

8 CONFIDENTIAL INFORMATION

8.1 Confidential Information. In connection with this Agreement a party ("Discloser") may furnish to the other party ("Recipient") software, user and training manuals, data, Client information, designs, drawings, tracings, plans, layouts, specifications, samples, equipment and other information provided by or on behalf of Discloser to Recipient, that should reasonably have been understood by Recipient, because of (i) legends or other markings, or (ii) the circumstance of disclosure or the nature of the information itself, to be proprietary and confidential to Discloser or to a third party ("Confidential Information"). Confidential Information specifically includes all information accessed by Agency via the Monitoring Software. Confidential Information may be disclosed in written or other tangible form (including digital or other electronic media) or by oral, visual or other means. Each party agrees not to disclose to the other party any confidential or proprietary information of third parties unless authorized to do so. The parties each agree to treat this Agreement, including all exhibits hereto, as Confidential Information of each party.

8.2 Nondisclosure. It is agreed that, after receipt of Confidential Information of the other party, Recipient shall: (i) restrict the dissemination of such Confidential Information to those employees who need to use the Confidential Information in the performance of this Agreement, and (ii) to use no less than a reasonable standard of care in safeguarding against unauthorized disclosure of such Confidential Information. Recipient agrees to have an appropriate nondisclosure agreement signed by each of its employees, agents and contractors who may be exposed to Discloser's Confidential Information.

8.3 Exceptions from Confidential Information. Confidential Information shall not include information that: (i) is or becomes part of the public domain without violation of this Agreement by Recipient, (ii) is already in Recipient's possession free of any restriction on use or disclosure, (iii) becomes available to Recipient from a third party provided that such party was free from restriction on disclosure of the information or (iv) has been independently developed by Recipient.

8.4 Required Disclosures. If Recipient is required by legal proceeding discovery request, "open records" or equivalent request, investigative demand, subpoena, court or government order to disclose Confidential Information, Recipient may disclose such Confidential Information provided that: (i) the disclosure is limited to the extent and purpose legally required; and (ii) prior to any disclosure, Recipient shall immediately notify Discloser in writing of the existence, terms and conditions of the required disclosure and, at Discloser's request and expense, cooperate in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

9 TERM AND TERMINATION

9.1 Term. This Agreement shall commence from the Effective Date and shall continue for the period specified on page one (the "Initial Term") unless earlier terminated in accordance with the provisions of this Agreement. After the Initial Term expires, this Agreement can be extended by mutual written agreement of the parties for additional terms (each a "Renewal Term"). The Initial Term, together with any Renewal Term, is referred to as the "Term".

9.2 Termination for Convenience. This Agreement may be terminated for convenience at any time upon thirty (30) days prior written notice by one party to the other.

9.3 Termination for Breach. Either party may terminate this Agreement; (i) if a voluntary or involuntary petition in bankruptcy, receivership, assignment for the benefit of creditors or other similar insolvency action is filed or levied against the other party and not discharged within sixty (60) days after the filing or levied thereof; (ii) by written notice by the non-breaching party, if the other party fails to cure any nonpayment of money owed to the other party under this Agreement within thirty (30) days of such notice; (iii) by written notice by the non-breaching party, if the other party fails to cure any material breach of this Agreement (other than non-payments described in clause (ii) above) within sixty (60) days of such notice (it is understood; however, that a violation of law, breach of confidentiality or misuse of access grants that cannot be cured shall be grounds for immediate termination); or (iv) immediately, by written notice by the non-breaching party, upon the second commission of a previously remedied material breach under clause (iii) above.

9.4 Termination for Non-Appropriation of Funds. In the event that Agency is unable to continue to make payments required hereunder due to a failure of the responsible governmental entity to make available funding to the level and in the amount required to remain in compliance with Agency's financial obligations; hereunder, then upon the occurrence of such a non-appropriation event and on the date that the requisite funding ceases to be available to the Agency, Agency may terminate this Agreement, without further financial obligation or liability to AMS other than to pay for Products and Services previously delivered to Agency or performed for Agency.

9.5 Survival. This Section, any indemnity obligations of either party, and Sections 4.3, 4.4, 6, 8, 11, 12.1 and 12.2 shall survive termination of this Agreement.

10 EFFECT OF TERMINATION

10.1 Payments; Return of Equipment. Upon any termination of this Agreement or any Schedule incorporated by reference herein, Agency shall provide AMS with all outstanding payments due and, within ten (10) days of the termination, return to AMS all Equipment not owned by Agency or, if so directed by AMS, to AMS' third party supplier. Upon termination of this Agreement, each party shall deliver or destroy all Confidential Information of the other party which is in its possession, care or control within thirty (30) days of termination except for backup and archived Client data.

11 ALLOCATION OF LIABILITY

Each party agrees, to the extent allowed by law, to defend, indemnify and hold the other party and its officers, directors, shareholders, employees and third party suppliers (collectively, the "Indemnified Parties") harmless from and against all losses, damages and expenses, including reasonable attorneys' fees, in connection with any claims against the Indemnified Parties arising out of or related to the negligence or willful misconduct of the other party's employees or agents. Further, Agency shall indemnify and hold harmless AMS and its officers, directors, shareholders, employees and third party suppliers against the acts of any Client assigned to wear the Equipment, including claims for personal, injury property damage or death. An indemnifying party shall have the foregoing obligation only if the other party provides: (i) a prompt written request for indemnification and defense in such claim or action; (ii) sole control of the defense and settlement thereof; and (iii) all available information, assistance and authority reasonably necessary to settle and defend any such claim or action.

EXCEPT AS ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL A PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, (OR USE THEREOF), OR BUSINESS INTERRUPTION ARISING OUT OF ANY ACTS OR FAILURES TO ACT, WHETHER SUCH DAMAGES ARE LABELED IN STRICT LIABILITY, TORT, CONTRACT OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

AMS HAS NO RESPONSIBILITY OR LIABILITY FOR ACTS THAT MAY BE COMMITTED BY INDIVIDUALS WHILE THEY ARE CLIENTS. EXCEPT AS LIMITED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL THE TOTAL LIABILITY OF AMS FOR ALL CLAIMS OF ANY KIND WHATSOEVER, AND UNDER ANY THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY AGENCY TO AMS DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EARLIEST EVENT GIVING RISE TO THE CLAIM.

The limitations set forth in this Section 11 shall apply even if any exclusive remedy in this Agreement fails of its essential purpose. The allocation of liability in this Section 11 represents the agreed and bargained for understanding of the parties and each party's compensation hereunder reflects such allocations.

12 MISCELLANEOUS PROVISIONS

12.1 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to its conflicts of laws provisions. AMS and Agency hereby irrevocably consent to jurisdiction, service of process and venue in the City and County of Denver, Colorado.

12.2 Arbitration. Disputes arising under this Agreement that cannot be resolved informally by the parties through good faith negotiations shall be resolved by arbitration before a sole arbitrator appointed and operating pursuant to the Federal Arbitration Act and Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted in the City and County of Denver, Colorado. The written decision of the arbitrator shall be final, binding and convertible to a court judgment in any appropriate jurisdiction. Each party shall bear its own expenses with respect to such arbitration and shall share equally in the expenses of the arbitrator and the fees of the American Arbitration Association.

12.3 Injunctive Relief. Notwithstanding anything above to the contrary, either party at any time may apply to a court having jurisdiction thereof for a temporary restraining order, preliminary injunction or other appropriate order where such relief may be necessary to protect its interests (including, without limitation, any breach of the obligations under Sections 4 and/or 8), without any showing or proving of any actual damages and without posting a bond or other security.

12.4 Non-Discrimination and Business Code of Conduct.

12.4.1 Non-discrimination. To the extent not exempt, the parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

12.5 Records Retention and Audit Rights. Agency will retain all records relating to the Agreement or any Schedule for a period of seven (7) years after termination of the Agreement or applicable Schedule. During the Term, upon ten (10) days prior written notice, and not more than once per year (unless circumstances warrant additional audits as described below), AMS may audit Agency's procedures and records that relate to the obligations under this Agreement. Notwithstanding the foregoing, the parties agree that AMS may conduct an audit at any time, in the event of (i) audits required by governmental or regulatory authorities or (ii) investigations of a breach of this Agreement.

12.6 Assignment. Except as expressing permitted herein, neither party may transfer or assign this Agreement, in whole or in part, without the written consent of the other party and any such attempt at transfer or assignment shall be void. Notwithstanding the foregoing, AMS may transfer or assign this Agreement to an entity that is an affiliate of AMS or, in the event of a sale of all or substantially all of its assets or equity, each without the consent of Agency. This Agreement shall extend to and be binding upon any successors and permitted assigns of the parties.

12.7 No Agency; Independent Contractor. The use of the term "Agency" in this Agreement is solely for convenience and is not intended to make either party an agent of the other party. This Agreement does not constitute and shall not be construed as constituting an agency, distributorship or joint venture business arrangement between the parties. AMS is to be and shall remain an independent contractor with respect to Products provided or Services performed under this Agreement. AMS may subcontract the performance of any of its obligations under this Agreement. However, such subcontracting will not relieve AMS of its obligations under this Agreement.

12.8 Force Majeure. Except for the obligation to make payments as provided herein, neither party shall be in default under this Agreement by reason of its delay in the performance of, or failure to perform, any of its obligations under this Agreement, if, and to the extent that, such delay or failure is caused by strikes, wars, natural disasters, acts of the public enemy, government restrictions or acts of terrorism. Upon claiming any excuse or delay under this Section, such party shall promptly notify the other party, use reasonable efforts to remove the cause and continue its performance under this Agreement whenever the cause is removed.

12.9 Notices. All notices, requests, demands or communications required or permitted hereunder shall be in writing, delivered personally or by electronic mail, facsimile or overnight delivery service at the respective addresses set forth herein (or at such other addresses as shall be given in writing by either party to the other). All notices, requests, demands or communications shall be deemed effective upon receipt for personal delivery, or on the business day following the date of sending by electronic mail, facsimile or overnight delivery service.

12.10 Waiver; Severability. Any waiver of any default or breach of this Agreement shall be effective only if in writing and signed by an authorized representative of the party providing the waiver. No such waiver shall be deemed to be a waiver of any other or subsequent breach or default. If any provision of this Agreement is held to be invalid, the remaining portions of this Agreement shall remain in full force.

12.11 Publicity. AMS shall have the right to issue news releases, press releases or other communications regarding this Agreement to potential investors and customers. However, AMS shall not disclose any names of Clients without the prior written approval of the Client and Agency.

12.12 Headings. Headings used in this Agreement are for convenience of reference only and shall not be construed as altering the meaning of this Agreement or any of its parts.

12.13 Execution. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that signatures on this Agreement, as well as any other documents to be executed under this Agreement, may be delivered by facsimile or email and signed using a portable document format or an electronic signature in lieu of an original signature, and the parties agree to treat such signatures as original signatures and agree to be bound by this provision.


12.14 Entire Agreement. This Agreement constitutes the entire understanding of the parties, and supersedes all prior or contemporaneous written and oral agreements, representations or negotiations with respect to the subject matter hereof. This Agreement may not be modified or amended except in writing and signed by both parties.

IN WITNESS WHEREOF, the parties' hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last signed by AMS.

SPOKANE MUNICIPAL PROBATION

ALCOHOL MONITORING SYSTEMS, INC.

By: _____
Name: _____
Title: _____
Date: _____
By: _____
Name: _____
Title: _____
Date: _____
Attest: _____
Clerk of Agency

By: 
Name: Mike Machens
Title: CFO

Signed by AMS and effective as of: 8/7/18
Effective Date

**PRODUCT AND SERVICE SCHEDULE
TO
MASTER AGENCY AGREEMENT**

AGENCY: SPOKANE MUNICIPAL PROBATION

This **PRODUCT AND SERVICES SCHEDULE** ("Schedule") to the **MASTER AGENCY AGREEMENT** (the "Agreement") is entered into on the date last signed by AMS by and between Alcohol Monitoring Systems, Inc. ("AMS") and the Agency identified above. This Schedule is incorporated by reference into the Agreement effective _____ executed by the parties. Unless otherwise defined herein, capitalized terms in this Schedule are those as defined in the Agreement. This Schedule is effective on the date signed by AMS.

AMS hereby desires to provide Agency with the Equipment and sell the Agency supporting Services and Agency desires to order such Equipment and purchase such Services as defined in this Schedule during the Term.

1. DEFINITIONS

- a. **"Active Equipment"** means any Equipment unit actively using the Monitoring Software.
- b. **"Additional Monitoring Services"** means, if Agency is purchasing such services, the additional Monitoring Services provided by AMS and as further defined on Attachment 1, at the pricing set forth in Attachment 1, Schedule A
- c. **"CAM Equipment"** means, if applicable per the pricing table below, an ankle bracelet device that continuously monitors alcohol levels and if configured as a kit, the base station.
- d. **"Service Fee"** as used on the Schedule(s) means the Monitoring Service fee charged by AMS to Agency per each Equipment unit, per day using the Monitoring Services.
- e. **"Equipment"** means collectively the GPS equipment, CAM equipment, various base stations, the Remote Breath Analyzer, the Radio Frequency House Arrest bracelet, Wireless Multi-connect devices and various base stations if sold separately rather than in kit configuration.
- f. **"High Priority Alerts"** are Equipment generated alerts that signal; (i) the Client violated the exclusion/inclusion zone(s), or failed to return to or leaves without proper authorization an assigned location; (ii) device and/or strap tampering; (iii) evidence of communication and/or location failure; or (iv) any other alert types required by Agency.
- g. **"GPS Equipment"** means, if applicable per the pricing table below, a device that monitors Client's geophysical location based on exclusion and inclusion zones and includes the base station if configured as a kit.
- h. **"House Arrest Equipment"** means, if applicable per the pricing table below, an electronic ankle device that monitors Client's adherence to a home arrest curfew schedule and includes the base station if configured as a kit.
- i. **"Remote Breath Equipment"** means, if applicable per the pricing table below, a device that measures alcohol levels in the breath and may have facial recognition capabilities.
- j. **"SLA"** means the Service Level Agreement Information document, which is attached to this Schedule as Attachment 1 and is only applicable if Agency is purchasing or renting Equipment with Additional Monitoring Services. Specific SLA protocols will be agreed to in a separate SLA document signed by Agency.
- k. **"Wireless Base Station"** means, if applicable per the pricing table below, an AMS device that uses cellular transmission to connect with another device, such as a GPS or CAM bracelet.
- l. **"Wireless Multi-connect Device"** means, if applicable per the pricing table below, a third-party wireless device that connects multiple electronic hardware devices, such as a CAM bracelet to a base station.

2. TERRITORY: City of Spokane in the State of Washington

3. EQUIPMENT AND SERVICE LIMITATIONS AND SPECIAL REQUIREMENTS

3.1 GENERAL EQUIPMENT LIMITATIONS

3.1 GENERAL EQUIPMENT LIMITATIONS

3.1.1 **Alcohol Detection.** The CAM Equipment is not designed to give immediate notification of alcohol detection.

3.1.2 **Tamper Efforts.** AMS makes no assurances that the any Equipment worn by a Client will detect all tamper efforts.

3.1.3 **Submergence in Water or Other Liquid.** Equipment is not designed for submergence in liquids. Certain Equipment can tolerate limited water exposure such as that encountered when showering.

3.1.4 **Failure by Agency to Adhere to Maintenance Schedules.** AMS bears no liability for Agency's failure to adhere to Equipment maintenance notifications and/or schedules related to equipment and calibration.

3.2 REMOTE BREATH EQUIPMENT LIMITATIONS

3.2.1 **Set Up.** Agency is responsible for entering and updating schedules for each Client and setting up all relevant notifications, including all methods and events. Further, Agency is responsible for establishing a program providing the necessary criteria to interpret all testing results provided by AMS. The Equipment is intended to be used to determine if a Client has consumed alcohol. It is a professional device designed to be used by trained Agency personnel in conjunction with a routine Agency-run equipment maintenance and calibration oversight program. Use by untrained personnel or without periodic maintenance or calibration may result in invalid results or incorrect interpretation of results.

3.2.2 **Breath Test Results.** AMS will not analyze or interpret testing results, reporting histories, or provide an opinion as to whether the Client has consumed alcohol. The concentration of alcohol in the blood of the Client cannot be exactly determined by using a breath alcohol-screening device. Blood alcohol concentration depends on a number of variables including, but not limited to, the amount of alcohol consumed, the rate at which it was consumed, body size, age, physical health and the rate of which the Client metabolizes alcohol. No vehicle or machinery should ever be operated after alcohol consumption, regardless of the breath test result as even small quantities of alcohol can result in driving impairment.

3.2.3 **Other Limitations.** The SCRAM Remote Breath Equipment is not waterproof and should not be immersed in or exposed in any way to liquids. Equipment damaged by Clients or by exposure to water will not be repaired and is subject to the lost/damaged Equipment unit replacement fee.

3.3 **ADDITIONAL MONITORING SERVICES – 24/7 REQUIREMENTS.** Additional Monitoring Services are supported by a separate SLA document, which must be completed for each Client. Each SLA specifies, among other things, the type, description and price of the Monitoring Services to be provided. Any modifications of the terms of the SLA shall be made solely in writing and mutually executed by the parties and any other attempt to modify the terms of the SLA shall be void. AMS is not liable for; (i) the actions or inactions of Agency or its employees, contractors and agents that result in delay or error in the Services; (ii) failure to report Client non-compliant activities to appropriate supervising authorities when potential bond, parole or probation violations have occurred; or (iii) inaccurate information provided or input into the Monitoring Software, including Client or other contact information, GPS inclusion/exclusion zone set up and offender schedule information and associated protocols.

3.4 **WIRELESS EQUIPMENT AND NETWORK LIMITATIONS.** AMS provides a choice of data network providers as a part of its Services for the Wireless Multi-connect Device and other Equipment. AMS accepts no responsibility or liability for wireless data coverage or lack thereof. No data will be transmitted when a data network that is supporting the Equipment is not available. Wireless Multi-connect Devices do not provide caller location or caller identification.

4 EQUIPMENT AND SERVICE PRICING. Pricing is in accordance with the GSA Schedule #GS-07F-0003Y

4.1 Purchased Equipment.

Equipment Type	Quantity	Price per Unit	Service Fee per Unit, per Day
CAM Kit Landline Base Station	1 - 49	\$1405.54	\$3.93
CAM Bracelet	1 - 49	\$1108.00	\$3.93
CAM Kit Wireless Base Station	1 - 49	\$1561.00	\$3.93
GPS Bracelet	1 - 49	\$604.00	\$2.57
House Arrest Kit Landline Base Station	1 - 49	\$558.59	\$1.70
House Arrest Kit Wireless Base Station	1 - 49	\$776.00	\$1.00
Remote Breath Equipment	1 - 49	\$850.00	\$2.80
CAM/House Arrest Landline Base Station	1 - 49	\$374.81	NA
CAM/House Arrest Wireless Base Station	1 - 49	\$585.00	\$1.00

4.2 Rental Equipment Price

Equipment Type	Quantity	Rental Equipment Fee, per Unit, per Day	Service Fee per Unit, per Day	Daily Service Fee per Unit (includes Rental Equipment Fee)	Shelf Fee
CAM Kit Landline Base Station	1 - 49	\$1.99	\$3.93	\$5.92	\$1.82
CAM Kit Wireless Base Station	1 - 49	\$3.20	\$3.93	\$7.13	\$1.82
GPS Bracelet	1 - 49	\$0.79	\$2.57	\$3.36	\$0.74
House Arrest Kit Landline Base Station	1 - 49	\$0.81	\$1.70	\$2.51	0.70
House Arrest Kit Wireless Base Station	1 - 49	\$0.81	\$1.70	\$2.51	\$1.21
Remote Breath Equipment	1 - 49	\$2.70	\$2.80	\$5.50	\$1.48
CAM/House Arrest Wireless Base Station Standalone	1 - 49	\$0.20	\$1.00	1.20	NA

Note: If purchasing/renting the Wireless Base Station kitted with CAM or House Arrest Equipment, the Service Fee will be invoiced at the amount for CAM or House Arrest Kit listed above, plus the Service Fee amount listed above for the CAM or House Arrest Wireless Base station as if it were purchased/rented as a standalone unit

5 **ADDITIONAL SERVICES**

Training: AMS will provide Agency personnel with training in the use of the Products. Any such training will be at no charge to Agency.

Ethernet Communication: \$0.50 per Equipment unit, per day

Calibration Kits and Associated Consumables: AMS will provide 1 calibration kit for each order with a quantity of 25 Remote Breath Equipment units.

Calibration Fee: AMS will calibrate Remote Breath Equipment for a charge of \$50 Equipment unit.

6 **SHELF FEE; SHELF ALLOWANCE; LOSS AND DAMAGE ALLOWANCE; LOST AND DAMAGE FEE:**

Shelf Fee: A Shelf Fee is only charged if there is an amount in the Rental Equipment Fee column in the table above and there is a Shelf Allowance percentage listed below.

Shelf Allowance: GPS, CAM, House Arrest, Remote Breath: 20%

Loss and Damage Allowance: 5%

Loss and Damage Fee: The replacement fee for Rental Equipment lost or damage beyond repair will be the purchase price, per unit, listed above or as follows. For Parts it will be the current replacement cost from the manufacturer. GPS refurbishment fee will be \$365.20 for those units that can be repaired

7 **SPECIAL TERMS: NA**

IN WITNESS WHEREOF, the parties' hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last signed by AMS.

THIS SCHEDULE, AND THE AGREEMENT OF WHICH IT IS A PART, IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PRIOR SCHEDULE AND ANY PROPOSALS AND UNDERSTANDINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS SCHEDULE. By execution, both signers certify that each is authorized to execute the Schedule on behalf of their respective companies.

SPOKANE MUNICIPAL PROBATION

ALCOHOL MONITORING SYSTEMS, INC.

By: _____

By: 

Name: _____

Name: Mike Machens

Title: _____

Title: CFO

Date: _____

Signed by AMS and effective as of: 8/7/18
Effective Date

**ATTACHMENT 1 – MONITORING SERVICE LEVEL AGREEMENT
TO
PRODUCT AND SERVICES SCHEDULE
TO
MASTER AGENCY AGREEMENT**

1 OVERVIEW

The following information details the alert and notification protocols that AMS will provide to Agency for those Clients using Equipment that requires Additional Monitoring Services and is incorporated by reference into the Product and Services Schedule to the Master Agency Agreement between the parties.

1.1 SERVICES

- 1.1.1 **Additional Monitoring Services.** AMS will provide Additional Monitoring Services on a 24/7, 365 day basis. The Monitoring Services are provided by AMS and not a third party. Services generally consist of outbound calls made by AMS to Probation Officers, law enforcement or Clients, telephone calling or customized Monitoring Services based on alert protocol specifications entered into the Monitoring Software.
- 1.1.2 **Contact Information and Monitoring Service Level Agreement Form.** Agency will contract AMS to configure the Monitoring Software to maintain all alert protocols and contact information.
- 1.1.3 **Alert Protocols.** Agency will contact AMS to set up alert protocols that will be documented in a separate SLA for each Customer.
- 1.1.4 **Alert Response Time.** AMS will respond to outbound alerts within 30 minutes of receiving notification of alert and will follow the protocols as configured for Agency.
- 1.1.5 **Recording.** The Monitoring Software will record inbound and outbound requests made by telephone. For quality purposes AMS will provide individual recordings of the telephone transactions upon written request.
- 1.1.6 **Reporting.** Upon written request, AMS will provide Agency with the following information:
- Number of alerts received for a specific period of time
 - Average time to respond to alerts
 - Results/notes of calls

1.2 PRICE AND PAYMENT. Additional Monitoring Service standard fees are identified on Schedule A hereto, but will be formally agreed to in the SLA, and will be invoiced by AMS on a monthly basis as incurred and shall be paid by Agency the payment terms set forth in the Agreement from the date of such invoice and the remedies under the Agreement shall apply to any non-payment.

SCHEDULE A – ADDITIONAL MONITORING SERVICE FEES
TO
ATTACHMENT 1 –SERVICE LEVEL AGREEMENT
TO
PRODUCT AND SERVICES SCHEDULE
TO
PRODUCT AND SERVICES AGENCY AGREEMENT

SERVICE LEVEL CHOSEN: _____

SERVICE APPLICABLE PRODUCT(s): Check the box for the Product(s) you are purchasing the Additional Services for.

CAM ☐ REMOTE BREATH ☐ HOUSE ARREST ☐ GPS ☐

ADDITIONAL MONITORING SERVICES	CAM	REMOTE BREATH, HOUSE ARREST, GPS (Per Day, Per Client)
Standard (Included In Services Fee)		
<ul style="list-style-type: none"> • 24/7/365 monitoring services • Online training and certifications • Automated alert notifications delivered via text, email or page • Daily summary reports • 24/7 alert generation and analysis 	No Additional Charge	No Additional Charge
Premier		
<ul style="list-style-type: none"> • Standard, plus: • High priority alert investigation/ handling/ resolution • Manual outbound officer and offender calls • Closed loop documentation of alert handling/ resolution (1-3 calls per alert) 	Not Available	\$1.00
Premier Plus		
<ul style="list-style-type: none"> • Premier, plus: • Outbound offender and officer calls based on defined protocols and escalation procedures per SLA • Escalated alert notifications to officers and/or supervisors (e.g. highest authority for notification) (>3 calls per alert) 	Not Available	\$1.25/day/Client
Customized Services		
For data entry, schedule changes, on-site training, operational assessments, agency and court reporting packages	Priced for each service in the SLA	Priced for each service in the SLA



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/1/2019

8/10/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 8110 E. Union Avenue Suite 700 Denver CO 80237 (303) 414-6000	CONTACT NAME:	FAX (A/C, No):	
	PHONE (A/C, No, Ext):	E-MAIL ADDRESS:	
INSURED Alcohol Monitoring Systems, Limited 1373359 Level 18 40 Bank St. (HQ3) Canary Wharf, London E145NR	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Underwriters at Lloyds of London		10736
	INSURER B: Evanston Insurance Company		35378
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:** 15546666**REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Deductible: \$50,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	N	N	CJ1002118	5/1/2018	5/1/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	N	N	MKLVEUL100753	5/1/2018	5/1/2019	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$ XXXXXXXX
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	NOT APPLICABLE			PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
A	Professional Liability-Claims Made	N	N	CJ1002118	5/1/2018	5/1/2019	\$1,000,000 Per claim \$1,000,000 Agg \$50,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**15546666**Spokane Municipal Court Probation
1100 W Mallon Ave
Spokane WA 99260**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Charles M. McDaniel

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Agenda Sheet for City Council Meeting

of:

08/20/2018

Date Rec'd

8/8/2018

Clerk's File #

OPR 2018-0509

Renews #

Cross Ref #

Project #

Bid #

Requisition #

Submitting Dept

ASSET MANAGEMENT

Contact Name/Phone

DAVE STEELE X6064

Contact E-Mail

DSTEELE@SPOKANECITY.ORG

Agenda Item Type

Contract Item

Agenda Item Name

5900 - ASSET MANAGEMENT LONG TERM PROPERTY LEASE

Agenda Wording

Renewal of a long term lease with Ulupalakua Ranch Inc. regarding City owned property.

Summary (Background)

This is a lease renewal with Ulupalakua Ranch Inc. regarding City owned property where the property has been deemed not needed for public right of way purposes and will not be needed for public purposes in the foreseeable future.

Fiscal Impact

Grant related? NO

Public Works? NO

Budget Account

Revenue \$ 296,803.47

5900-30900-99999-36250-81085

Revenue \$ 38,109.52

0100-99999-99999-24502-81085

Select \$

#

Select \$

#

Approvals

Council Notifications

Dept Head

LUKAS, ED

Study Session

Division Director

MARCHAND, CRYSTAL

Other

Finance Committee
8/20/18

Finance

ORLOB, KIMBERLY

Distribution List

Legal

DALTON, PAT

dstele@spokanecity.org

For the Mayor

SANDERS, THERESA

Additional Approvals

Purchasing

Briefing Paper

Council Study Session

Division & Department:	Finance & Administration, Asset Management
Subject:	Long Term Property Lease
Date:	8/6/18
Author (email & phone):	Dave Steele, 625-6064
City Council Sponsor:	TBD
Executive Sponsor:	Theresa Sanders
Committee(s) Impacted:	NA
Type of Agenda item:	XXX Consent Discussion Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	6 Year Capital Program
Strategic Initiative:	Innovative Infrastructure
Deadline:	ASAP
Outcome: (deliverables, delivery duties, milestones to meet)	New long term lease, replacing an expired lease for the same location.
Background/History: In 1958 the Washington State Department of Transportation transferred and abandoned section of highway to the City of Spokane. This property was conditioned with a lease to the adjacent property owners for the purpose of parking. The adjacent property owner has been leasing month to month since the expiration of this lease. The adjacent property owner is interested in establishing a new lease with the City of Spokane to maintain their parking access.	
Executive Summary: This long term lease provides a clean start for an expired lease covering property conveyed to the City by WSDOT in 1958. The property had a lease in place when conveyed which has since expired. This lease establishes a new agreement for the same property with the adjacent property owner for a term of twenty years.	
Budget Impact: Approved in current year budget? XX Yes No Annual/Reoccurring expenditure? XX Yes No If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? XX Yes No Requires change in current operations/policy? Yes XX No Specify changes required: Known challenges/barriers:	

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is entered into effective as of the 1st day of August, 2018, between the CITY OF SPOKANE, a Washington municipal corporation ("City" or "Lessor"), and the ULUPALAKUA RANCH, INC., a Hawaii corporation ("Lessee"), collectively the "Parties".

Recitals

Whereas, the land and the Premises herein (the "Premises") were certified to the City of Spokane in 1958 when the Washington State Department of Transportation ("WSDOT") deemed it an abandoned highway, but the property was not subsequently conveyed by deed.

Whereas, pursuant to RCW 36.75.090 and 47.24.020(15), unrestricted title to the Premises vested in the City upon WSDOT's certification and abandonment of the Premises.

Whereas, Lessee has been leasing and occupying the Premises by virtue of certain Airspace Leases by and between WSDOT and the predecessors in interest to Lessee, (i) dated April 8, 1991, and commencing on March 1, 1991, said lease having a 20-year term, and two options of renewal in increments of five year periods; and (ii) dated May 17, 1982, and executed July 7, 1982, said lease having a 20-year term, and two options of renewal in increments of five year periods (collectively, the "WSDOT Leases").

Whereas, WSDOT terminated the WSDOT Leases once it discovered that WSDOT no longer had an interest in the Premises and that the Premises are owned by the City of Spokane.

Whereas, since the termination of the WSDOT Leases, Lessee has been leasing said Premises from the City of Spokane on a month-to-month basis on the same terms and conditions as set forth in the WSDOT Leases.

Whereas, Lessee desires to renew its lease of the Premises by entering into a new lease with the City.

Whereas, the City has determined that the Premises are not now needed for public right-of-way purposes and will not be needed for public purposes in the foreseeable future.

Whereas, this Lease amends, replaces, supersedes and replaces all prior leases related in any way to the Premises, including but not limited to the WSDOT Leases.

NOW, THEREFORE, City and Lessee agree as follows:

1. PREMISES. The City leases to Lessee, and Lessee leases from the City the Premises, which Premises are legally described and depicted in Exhibit A hereto, upon the terms specified in this Lease.

2. TERM. The Lease shall be for a term of twenty (20) years, commencing August 1, 2018 ("Commencement Date"), and terminating July 31, 2038 ("Termination Date"), unless otherwise agreed in writing by the Parties.

3. TERMINATION. This Lease may be terminated for any reason by Lessee, without penalty, on 180 days written notice to City. This Lease may only be terminated by City without penalty, on 180 days written notice to Lessee ("City Termination Notice"), if City reasonably determines that City will use the Premises solely for City operations, beginning on the date that is no later than 60 days following the date of Lease termination as described in City Termination Notice. In the event that this Lease is terminated by the City, the Lessee shall not be entitled to any payment or compensation by reason of such termination. Provided, the Lessee shall be entitled to a return of rental payment based upon rent paid beyond the effective cancellation date. Furthermore, the leased Premises shall not be considered as part of or as contributing to the use of any adjoining or other properties owned, used, or controlled by the Lessee in the event such other property or property rights of the Lessee are subject to condemnation subsequent to the execution of this Lease.

4. NONAPPLICABILITY OF RELOCATION ASSISTANCE. The Lessee acknowledges that the signing of this Lease does not entitle the Lessee to assistance under the Uniform Relocation Act and Real Property Acquisition Policy (RCW 8.26) unless previously eligible for such assistance.

5. RENT; SETTLEMENT. No later than two (2) business days after the City's execution and delivery to Lessee a fully-executed copy of this Lease, and thereafter in advance on or before the first day of each August during the Term of this Lease, Lessee shall pay the City annual rent of THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800) per year (the "Initial Rent"), PLUS WASHINGTON STATE LEASEHOLD EXCISE TAX, per chapter 82.29A RCW. The Initial Rent shall be subject to adjustment pursuant to Section 6 below. Rent will be paid during the entire Term of this Lease at the address designated by the City. In no event shall the Rent be less than this amount.

In consideration of Lessor entering into this Lease with Lessee and leasing the Premises to Lessee, Lessee agrees to pay Lessor, within 2 business days from the date the City executes and delivers a fully-executed copy of this Lease to Lessee, a one time payment in the amount of TWENTY THOUSAND EIGHT HUNDRED THREE AND 47/100 DOLLARS (\$20,803.47) plus Washington State Leasehold Excise Tax, per chapter 82.29A RCW, in the amount of \$2,671.16. Other than the rental amounts expressly described in Sections 5 and 6 of this Lease, Lessor acknowledges and agrees that Lessee shall not and does not owe Lessor any other payments or amounts whatsoever to Lessor, including but not limited to any payments related to (i) the

WSDOT Leases; (ii) any prior month to month leases for the Premises; or (iii) past due rent, taxes, utilities, or otherwise.

All payments by Lessee to the City under this Lease shall be payable at the following address, or such other place designated in writing by the City:

Treasurer's Office
808 W Spokane Falls Blvd
Spokane, WA 99201

6. RENT ADJUSTMENTS. Rent will not be adjusted during the first two years of the Term, and subsequent adjustments shall not be made more frequently than at two-year intervals ("Rent Adjustment Period"). The City shall give two hundred ten (210) days written notice to the Lessee that a rent adjustment is being made ("Rent Change Notice"). This Rent Change Notice shall include the amount of the adjusted rental rate and the date the new rate is to become effective. Failure or refusal by the Lessee to pay Rent at the adjusted rental rate shall constitute a default of this Lease.

The foregoing notwithstanding, any Rent increase shall not be adjusted to exceed a percentage equal to the lesser of (i) the percentage increase in the Index over the immediately preceding Rent Adjustment Period and (ii) two percent (2%) of the Rent owing during the immediately preceding Rent Adjustment Period.

As used herein, the "Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers (1982-1984=100) U.S. City Average for All Items, as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). If the Index is discontinued or revised during the term, such other similar index or computation as reasonably selected by City shall be deemed to be the "Index." City shall determine the applicable percentage increase in the Index promptly after the information is available and provide Lessee with such information in accordance with the requirements of the Rent Change Notice described in this Section 6.

7. CHARGE FOR LATE PAYMENT. If any payment of rent or if any other sum due the City is not received by the City or postmarked by the due date, a late charge of one percent (1%) of the amount due and unpaid plus \$25.00 administration fee shall be added to the amount due and the total sum shall become immediately due and payable to the City. Each additional month that the amount due goes unpaid shall be subject to a late charge of one percent (1%) of that month's rent plus an administration fee of \$25.00. In addition, Lessee shall pay the City a standard charge for each unreturned check based upon the amount banks are then charging. City and Lessee agree that such charges represent a fair and reasonable estimate of the costs incurred by the City by reason of a late payment. Acceptance of late payment charges and/or any portion of the overdue payment by City shall in no event constitute a waiver of Lessee's default with respect to such overdue payment, or prevent City from exercising any other rights and remedies granted in this Lease or Washington law.

8. USE OF PREMISES. In using the Premises, the Lessee shall comply with all policies and regulations heretofore or hereafter promulgated by the City relative to the location, operation, and maintenance of improvements located on the Premises.

It is further understood and agreed by the parties hereto that the execution of this Lease shall in no way abrogate any rights or privileges to the limitation of access to Sprague Way and the City of Spokane, as its sole discretion, and without incurring liability of any kind or nature, may require the closing of the existing access/entrance at any time upon two hundred ten (210) days written notice. Upon receipt of said notice, Lessee shall remove the entrance and replace the curb and sidewalk.

It is further understood and agreed that the cost for both the construction and the removal of this access modification, if and when such should occur, shall be the sole financial responsibility of Lessee.

All construction plans and any changes thereto are subject to approval by the City. Furthermore, in using the leased Premises, it is expressly agreed that the Lessee must comply with applicable Federal, State, and Local ordinances, regulations and environmental requirements, and secure all necessary permits and licenses. Lessee hereby agrees to hold City harmless from claims or suits resulting from Lessee's failure to comply with such requirements.

The use of said Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall be permitted to rise above the grade line of the highway facility. Toxic/or hazardous materials as defined under the Comprehensive Environmental Response Compensation and Usability Act ("CERCLA" or Federal Superfund)(42 U.S.C.@ 9601 et seq.) or flammable materials, which flammable materials include but are not limited to explosives, petroleum products, paint, solvents, and resins, are not allowed on the site without the express permission of City. In the event written permission to store the preceding materials is granted by City, disposal of such materials shall be in a legal manner.

Signs, display lights, or advertising media/materials are not permitted unless completely detailed on a separate plan sheet and require specific prior written approval. Fences in place at the time of execution of this Lease or relocated to separate the leased Premises from the traveled roadway will be maintained by the City for the duration of the lease. Nothing is to be attached to City's fence without prior written approval. If any fence is damaged as a result of Lessee's activities, Lessee will repair such damage at its cost to City's satisfaction. The Lessee shall perform or cause to be performed at his expense all maintenance of the Premises which will Include, but not be limited to, keeping the Premises in good condition, both as to safety and appearance, to the satisfaction of the City.

9. ENCUMBRANCES. It is expressly understood that the Lessee shall not encumber the leased Premises. The Lessee and the City acknowledge and agree that the Lessee may encumber its leasehold interest (but not the City's property)

and/or the improvements to be constructed upon the leased Premises for financing purposes. Any encumbrance is void without the prior written consent of the City. The Lessee must secure the financing from a financial institution (hereinafter called the "Lender") qualified to do business in the State of Washington, and must provide City with written notice of the Lender's name and address within 30 days of obtaining financing. The Lender must agree to provide City thirty (30) days written notice in the event of default on the loan.

In the event the Lessee defaults in performance of any obligation under this Lease, the City will not terminate the Lease because of such default unless and until the City gives thirty (30) days written notice to the Lender. Upon such notification the Lender must cure such default, if the same can be cured by the payment of money required to be paid under the provisions of said lease, or if such default is not curable by money, (a) cause the commencement and thereafter diligently pursue to completion steps and proceedings for the exercise of power of sale in the manner provided by law (foreclosure), and (b) cause and perform all of the covenants and conditions of this Lease requiring the expenditure of money by the Lessee until such time as the improvements on the Premises shall be sold in the manner provided by law. HOWEVER, if the Lender fails or refuses to comply with any and all of the conditions in this paragraph, then and thereupon the City shall be released from the covenant of forbearance, and the City may declare this Lease to be terminated, and all rights of the Lessee and/or the Lender and those who claim under the Lessee, stemming from this Lease, shall terminate.

In the event of a foreclosure or trustee's sale of the Lender's security interest pursuant to the laws of the State of Washington, the purchaser at said sale, be it the Lender or another, shall succeed to all of the right, title, and interest of the secured party. The Lender may, with the City's consent, receive a deed (a quit claim deed of all interest of the Lessee) or assignment of the Lessee's interest in lieu of a foreclosure.

10. HAZARDOUS MATERIALS. Prior to initiating any process requiring use or storage of, or generating hazardous materials as defined under the Environmental Response Compensation and Recovery Act ("CERCLA" or Federal Superfund) (42 U.S.C. @ 9601 et seq.) or the Model Toxics Control Act (MTCA; RCW Ch. 70.10SD), Lessee covenants and agrees to obtain City's prior approval. City may consider approving the specific use, but only after Lessee can demonstrate to City that Lessee has all necessary permits for operation and a hazardous materials emergency response plan.

Lessee will cooperate in any environmental audits conducted by City's staff or independent third parties. Lessee will provide City with notice of any inspections of the Leased Premises, notices of violations, and orders to clean up contamination. Lessee will permit City to participate in all settlement or abatement discussions. In the event the Lessee fails to take remedial measures as duly directed by a State, Federal, or local regulatory agency within 90 days of such notice, the City may elect to perform such work, and Lessee covenants and agrees to reimburse City for all direct and indirect

costs associated with City's work.

11. CITY'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS. The City reserves the right for utility franchise and permit holders to enter upon the leased Premises to maintain existing facilities and, for itself, to grant utility franchises and/or permits across the leased Premises *provided that* (i) the City shall not interfere with or otherwise unreasonably disrupt Lessee's use of the Premises in connection with any such entrance onto the Property; and (ii) any such installation will be accomplished by the City in such a manner as to minimize any disruption to the Lessee. The franchise/permit holder will be required to restore paving and grading damaged by the installation.

The Lessee will not disturb markers installed by a franchise/permit holder and will contact the franchise permit holder prior to any excavation in order that the franchise/permit holder may locate the utility. It is the Lessee's responsibility to protect legally installed underground utilities.

12. TAXES, ASSESSMENTS AND UTILITIES. The Lessee agrees to pay all taxes and assessments which benefit the leased Premises and/or which may hereafter become a lien on the interest of the Lessee in accordance with RCW 79.44.010, and also taxes which may hereafter be levied or imposed upon the interest of the Lessee or by reason of this agreement. The Lessee is responsible for and agrees to pay for utilities which serve the leased Premises.

13. CITY'S APPROVAL OF DESIGN AND CONSTRUCTION. The Lessee covenants that any re-grading or improvements to be constructed on the Premises will not at any time during or after construction either damage, threaten to damage, or otherwise adversely affect any part or element of the adjoining public street or the operation thereof. The City shall be furnished with two sets of complete plans, details, and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises, and no work shall be done without prior written approval of such plans by the City. All construction work shall be done in conformity with the plans and specifications as approved. The City may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure observation of the plans and specifications, protection of all parts and elements of the adjoining street, and compliance with City's construction and safety standards. The improvements shall be designed and constructed in a manner which will permit access to the public street for the purpose of inspection, maintenance, and construction when necessary.

14. AS BUILT PLANS. Within 60 days following completion of underground utilities and/or buildings or other construction, Lessee shall furnish City a complete set of reproducible "As Built" plans subject to City's approval.

15. LIENS. Nothing in this Lease shall be deemed to make the Lessee the agent of the City for purposes of construction, repair, alteration, or installation of

structures, improvements, equipment, or facilities on the Premises. The Lessee acknowledges that the City may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the Lessee.

In the event a lien is the leased Premises, Lessee shall either:

- a. Record a valid Release of Lien, or
- b. Deposit sufficient cash with City to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lien holder claim, or
- c. Procure and record a bond which releases the leased Premises from the claim of the lien and from any action brought to foreclose the lien.

Should Lessee fail to accomplish a, b, or c above within 15 days after filing of such a lien, the Lease shall be in default.

16. CITY'S RIGHT OF ENTRY AND INSPECTION. The City, for itself and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time without notice to the Lessee for the purpose of inspection, maintenance, construction, or reconstruction of the adjoining public street or any element thereof. Any loss of the use of the leased Premises due to the City's exercise of such right will be compensated for solely by a pro rata reduction of rent. The City shall in no way be responsible for any incidental or consequential damages due to such loss of use by Lessee. The City and the Federal Highway Administration may from time to time go upon the Premises for the purpose of inspecting any excavation, construction, or maintenance work being done by the Lessee. Entry upon the Premises for any other purpose by the City and the Federal Highway Administration shall be conducted with reasonable notice to the Lessee and during the hours of 8:00a.m. to 5:00 p.m.

17. INSURANCE.

a. General Liability Insurance. Lessee shall, at its sole expense, obtain and keep in force throughout the Term of this Lease and at all times when Lessee is in use and/or possession of the Premises commercial general liability insurance on an occurrence basis with a combined single limit of no less than \$1 million per occurrence and Two Million (\$2,000,000) General Aggregate, naming the City of Spokane, its officers, employees, contractors, agents, and other such persons or entities as the city may designate as additional insureds. The policy shall contain cross liability endorsements, and shall provide coverage for liability arising out of or relating to the ownership, use, and occupancy of the Premises. At any time, if, in the reasonable opinion of the City, the amount of commercial general liability

insurance coverage provided for herein is not adequate, Lessee shall increase the insurance coverage as required by the City.

b. Worker's Compensation. Lessee, if required by applicable law, at its sole expense, shall procure and maintain Workers' Compensation and Employer's Liability insurance with a limit of no less than the amount and in form required by law. If permitted by applicable law, Lessee may "self-insure" with respect to Workers' Compensation.

c. Contractor's Insurance. Lessee shall require any contractor performing work for it on the Premises to carry and maintain, at no expense to the City: (i) comprehensive general liability insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, to afford protection, with respect to personal injury, death or property damage of not less than \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate; (ii) comprehensive automobile liability insurance with limits for each occurrence of not less than \$1,000,000 with respect to personal injury or death and \$500,000 with respect to property damage; and (iii) Worker's Compensation or similar insurance in form and amounts required by law.

d. Other Matters. All the insurance required of Lessee under this Lease shall: (i) be issued by insurance companies authorized to do business in the state of Washington, holding a general policy holder's rating ("Best Rating") of at least "A" or better; (ii) contain an endorsement requiring 30 days written notice from the insurance company to both parties before cancellation, non-renewal or change in coverage, scope or amount of any policy; and (iii) shall be written as primary policies, not contributing with and not supplemental to any coverage that the City may carry.

e. Proof of Coverage. Lessee shall furnish its insurance carriers with a copy of this Lease to insure proper coverage. As evidence of the insurance coverages required by this Lease, Lessee shall furnish acceptable insurance certificates to the City prior to the Commencement Date. The certificates shall specify all of the parties who are additional insured, will include applicable policy endorsements, and will include the 30-day cancellation clause. If Lessee fails to perform any of its obligations under this Section 16, the City may perform the same and the cost thereof shall be payable upon the City's demand. The City makes no representations that the types or amounts of coverage required to be carried by Lessee pursuant to this section are adequate to protect Lessee. If Lessee believes that any of such insurance coverage is inadequate, Lessee will obtain, at Lessee's sole cost and expense, such additional insurance coverage as Lessee deems appropriate.

f. Mutual Waiver. The City and Lessee mutually release the other from any and all liability or responsibility (to the other or anyone claiming through

or under them by way of subrogation or otherwise) for any loss or damage to property covered by the insurance policies as required to be carried by the parties under this Lease or any other insurance actually carried by such party, and do hereby mutually waive all rights of subrogation in favor of any insurance carrier against the other arising out of any such loss or damage.

18. HOLD HARMLESS/INDEMNIFICATION. Lessee, its successors, or assigns, will protect, save, and hold harmless the City of Spokane, its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omission of the Lessee, its assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities authorized by this Lease. The Lessee further agrees to defend the City of Spokane, its agents, or employees in any litigation, including payment of any costs or attorney's fees, for any claims or action commenced, thereon arising out of or in connection with acts or activities authorized by this Lease. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of the City of Spokane or its authorized agents or employees; Provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the City, its agents, or employees and (b) the Lessee, its agents, or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Lessee or Lessee's agents or employees.

19. NON-DISCRIMINATION. The Lessee, for itself, its successors, and assigns as a part of the consideration hereof, does not hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be excluded from participation in, be denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the Premises, that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no such discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such discrimination shall not be practiced against the public in their access to and use of the facility and services provided for public accommodation constructed or operated on, over, or under the right of way, and that the Lessee shall use the Premises in compliance with all other requirements imposed pursuant to the Revised Code of Washington Chapter 49.60 and Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 21 (49 C.F.R. Part 21), and as said Regulations may be amended. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the City to terminate this Lease in accordance with the procedures set forth herein.

20. ASSIGNMENTS. Except for an assignment to or sublease with Hospice of Spokane, neither this Lease nor any rights created by it may be assigned, sublet, or transferred without written permission from the City, which shall not be withheld unreasonably. If the Lessee is a corporation, then the transfer of forty percent (40%) of the

stock is deemed an assignment for the purposes of this Lease and requires City's approval. In the event that the City consents in writing to any assignment, then all of the provisions of this Lease apply to the assignee and to subsequent assignees and/or subtenants. The City hereby acknowledges, agrees, consents to, and permits Lessee to enter into an assignment of this Lease with, or a sublease of the Premises to, Hospice of Spokane. The Lessee hereby covenants that he is acting as Principal for himself, and not as an agent for any undisclosed principal.

If the leased Premises are used as an adjunct to abutting property owned or otherwise under control of the Lessee, any transfer of ownership or control of the property owned or controlled by the Lessee to a third party may be understood to serve as an assignment of the Lease and requires the City's written approval. Lessee will therefore notify City of the sale within 30 days of closing or change of control in Lessee's property and request approval of the assignment of this Lease. Notwithstanding the preceding sentence, the foregoing notification requirement shall not apply to Hospice of Spokane, which is anticipated to acquire abutting property owned by Lessee on or about the date of this Lease.

21. DEFAULT TERMINATION OR ABANDONMENT. The Lessee shall be in default immediately upon the breach of any covenant in this Lease.

a. Notice of Default. At any time after occurrence of a default or defaults under this Lease and while any such default remains uncured, the City shall have the option of giving notice in writing of its intention to terminate this Lease by personal service upon, or by written notice directed to the Lessee. Such notice of intention to terminate shall specify the default or defaults then outstanding. Waiver or acceptance of any default of the terms of this agreement by the City shall not operate as a release of the Lessee's responsibility for any prior or subsequent default.

b. Termination and Extension. After the expiration of thirty (30) days from the giving of such notice in the case of default, if one or more defaults described in such notice then remains uncured, this Lease shall terminate without further notice and all right of the Lessee shall cease. The City may in writing, at his option, extend the above period, if in the judgment of the City, an extension is justified.

c. Multiple Defaults. If Lessee defaults on any provision in this Lease, (such as the timely payment of rent) three (3) times within six (6) months, then the third default shall be deemed "non-curable" and the Lease may be terminated by City on thirty (30) days notice to Lessee.

d. Assignment for Benefit of Creditors, Insolvency, or Bankruptcy (non- governmental entities). Appointment of a receiver to take possession of the Lessee's assets, the Lessee's general assignment for benefit of creditors, or the Lessee's insolvency or taking or suffering action under the Bankruptcy Act is a breach of this Lease and this Lease shall terminate.

e. Performance by City. If the Lessee defaults in the performance or observation of any covenant or agreement contained in this Lease, the City, without notice if deemed by the City that an emergency exists (endangerment of life or the highway facility or failure of the Lessee to obtain in a timely manner any insurance or to pay any taxes due is presumed to be an emergency), may direct the Lessee to stop work and cure the default immediately or may itself perform or cause to be performed such covenant or agreement and may enter upon the Premises for such purpose. The Lessee shall repay to the City upon demand the entire cost and expense of such performance by the City. Any act or thing done by City under the provisions of this Paragraph shall not be or be construed as a waiver of any agreement or condition herein contained or the performance thereof.

f. Disposition of Improvements. Upon termination of this Lease under any provision thereof, the improvements constructed on the leased Premises shall become the property of the City or, at the option of the City, shall be removed by the Lessee at his expense in a manner prescribed by the City.

g. Restoration of Grades and Fences. On termination of this Lease for any reason, Lessee agrees, if so directed by City, to restore grades and on limited access highways also to relocate City's fences, if any, to their configurations immediately prior to the date of this Lease. This work is to be done at Lessee's expense, if any, to the satisfaction of the City.

h. Vacation of Premises. Upon termination of this Lease, the Lessee shall cease his operations on and/or use of the leased Premises. In the event the Lessee fails to vacate the Premises on the date of termination, he shall be liable for any and all costs to the City arising from such failure, plus liquidated damages in the amount of two months' rent.

i. Abandonment. In the event that it becomes apparent in the City's sole judgment that the Premises have ceased to be used or have been abandoned for a continuous period of sixty (60) days, the City at its option shall have the right to terminate this Lease, provided due notice of termination shall be given the Lessee not less than thirty (30) days prior to the proposed termination date.

22. BINDING CONTRACT. This Lease is hereby tendered, but the terms and obligations contained herein shall not become binding upon the City of Spokane unless and until accepted and approved hereon in writing by the Mayor.

23. ATTORNEYS' FEES. In the event of any controversy, claim, or dispute arising out of this Lease, the substantially prevailing party shall, in addition to any other remedy, be entitled to recover any reasonable costs or attorneys' fees which it incurs.

24. MODIFICATIONS. This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

25. NOTICES. Wherever in this Lease written notices are to be given or made, they will be sent by certified mail addressed to the parties at the address listed below unless a different address shall be designated in writing and delivered to the other party.

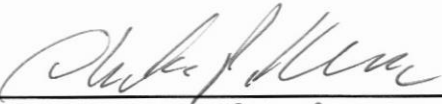
CITY: City of Spokane
Asset Management
W. 808 Spokane Falls Blvd.
Spokane, WA 99201

LESSEE: Ulupalakua Ranch, Ltd., a Hawaiian corporation
HC1 Box 901
Kula, Maui HI 96790

Dated effective the 1st day of August, 2018.

Ulupalakua Ranch, Inc., a Hawaii
corporation

City of Spokane

By: 
Name: CHRISTIAN P. ERDMAN
Its: VIC PRESIDENT
Date: 30 July 2018

By: _____
Name: _____
Its: _____
Date: _____

Attest:

Approved as to form:

Clerk

Assistant City Attorney

STATE OF WASHINGTON)

) ss.

County of Spokane)

I certify that I know or have satisfactory evidence that _____
and TERRI L. PFISTER are the persons who appeared before me and said persons
acknowledged that they signed this document, and on oath stated that they were
authorized to sign and acknowledged it as the _____, and
the City Clerk, respectively, of the CITY OF SPOKANE, a municipal corporation, to be the
free and voluntary act of such party for the uses and purposes therein mentioned.

DATED: _____

Notary Public in and for Washington State

Residing at _____

My appointment expires _____

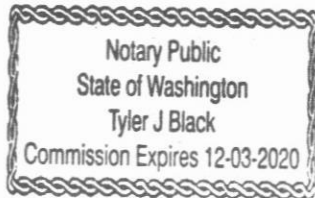
STATE OF WASHINGTON)

) ss.

County of Spokane)

I hereby certify that I know or have satisfactory evidence that, on this 30th day of July, 2018, Christian P. Erdman signed this instrument, on oath stated that (she/he/they) is/are authorized to execute the instrument as a VILL PRESIDENT of Ulupalakua Ranch, Inc., a Hawaii corporation, and acknowledged it to be (her/his/their) free and voluntary act of such party for uses and purposes mentioned in the instrument.

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 commission expires: 12.3.20

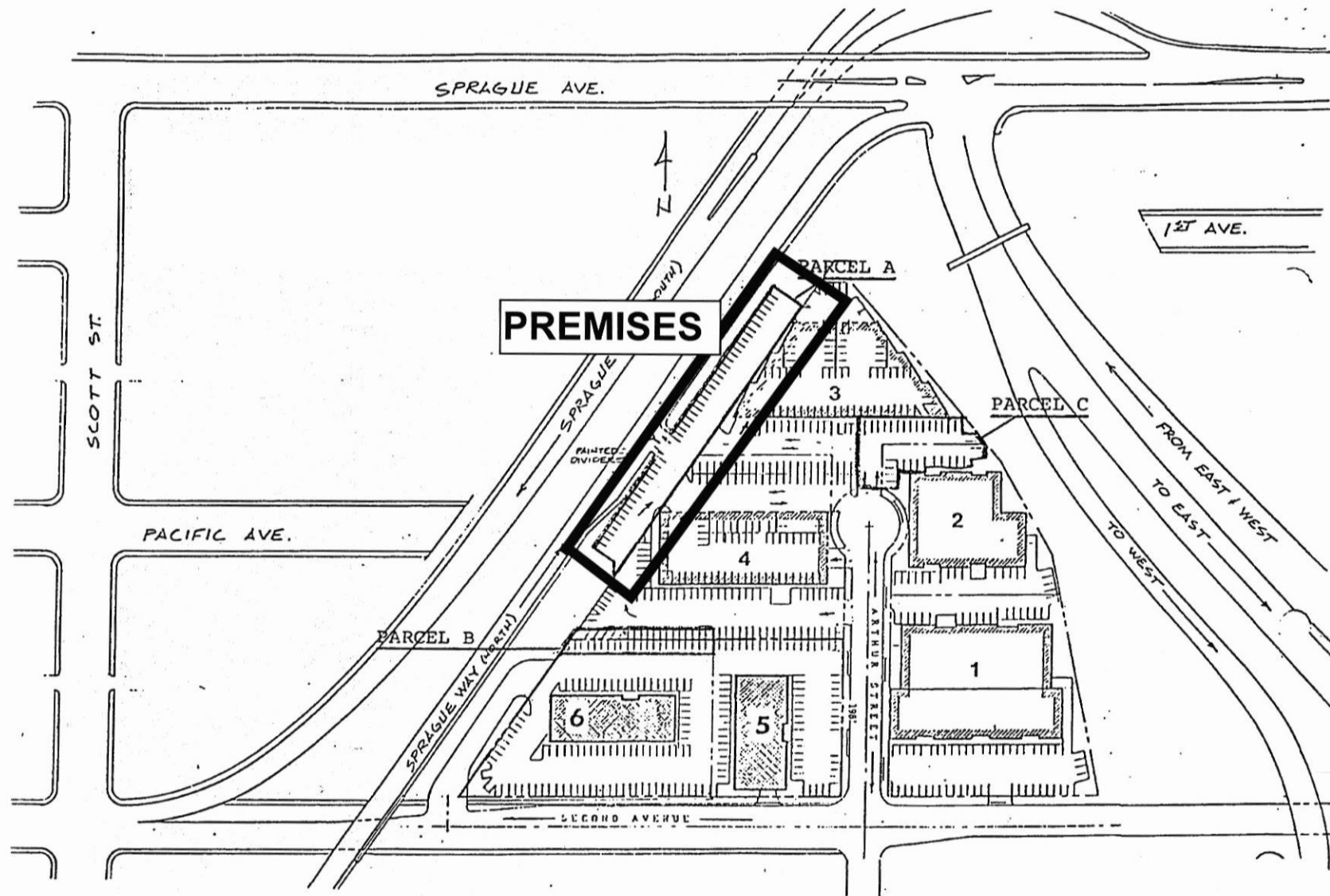
Exhibit A

Legal Description and Drawings of the Premises

That portion of deeded Sprague Way lying within Agnew and Byer's Addition, according to plat recorded in Volume "A" of Plats, page 13, City and County of Spokane, Washington, described as follows:

Beginning at the northeast corner of Block 3 in said addition; thence N89°55'30"W, along the north line of said Block 3, 276.74 feet to a point on the easterly right of way line of Sprague Way; thence S34°52'56"W, along said easterly line, 31.28 feet to the True Point of Beginning; thence N55°07'04"W, 50.00 feet; thence N34°52'56"E, 420.00 feet; thence S55°07'04"E, 50.00 feet to the easterly right of way line of Sprague Way; thence S34°52'56"W, along said easterly line, 420.00 feet to the True Point of Beginning.

EXHIBIT "A"



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

08/20/2018

Date Rec'd

7/30/2018

Clerk's File #

ORD C35672

Renews #Submitting Dept

FIRE

Cross Ref #Contact Name/Phone

BRIAN SCHAEFFER X7001

Project #Contact E-Mail

BSCHAEFFER@SPOKANEFIRE.ORG

Bid #Agenda Item Type

Special Budget Ordinance

Requisition #Agenda Item Name

1970 - SBO FOR AFG GRANT

Agenda Wording

Additional budget authority is needed for the AFG (Assistance to Firefighters) grant so the remainder of the grant can be spent.

Summary (Background)

Additional funds are needed to allow for the remaining amount of the grant to be spent during 2018 before the grant expires. The grant pays for 90% of allowable expenses, with 10% being the local match.

Fiscal Impact

Grant related? YES

Budget Account

Public Works? NO

Expense \$ 50,000

1970-93532-94220-56401-99999

Revenue \$ 50,000

1970-93532-99999-33197-99999

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

SCHAEFFER, BRIAN

Study Session

PSCHC 07/30/18

Division Director

SCHAEFFER, BRIAN

OtherFinance

BUSTOS, KIM

Distribution ListLegal

PICCOLO, MIKE

For the Mayor

SANDERS, THERESA

Additional ApprovalsPurchasingCITY COUNCIL

MCCLATCHEY, BRIAN

GRANTS &
CONTRACT MGMT

BROWN, SKYLER

ORDINANCE NO C35672

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 Fire/EMS 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 Fire/EMS Fund, and the budget annexed thereto with reference to the Fire/EMS Fund, the following changes be made:

REVENUE:

FUND:	FUND NAME:	BUDGET CODE:	DESCRIPTION:	AMOUNT:
1970	Fire/EMS Fund	1970-93532-99999-33197	Homeland Security	50,000
			Total	50,000

EXPENSE:

FUND:	FUND NAME:	BUDGET CODE:	DESCRIPTION:	AMOUNT:
1970	Fire/EMS Fund	1970-93532-94220-56401	Machinery/Equip	50,000
			Total	50,000

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 increase the budget for the AFG (Assistance to Firefighter Grant) to allow remaining 2018 grant expenses to be incurred, 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

Public Safety and Community Health

Division & Department:	Fire
Subject:	SBO
Date:	07/17/18
Contact (email & phone):	Brian Schaeffer (X7001), bschaeffer@spokanecity.org Kim Bustos (X7155), kbustos@spokanecity.org
City Council Sponsor:	
Executive Sponsor:	
Committee(s) Impacted:	Public Safety and Community Health 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)	Budget Ordinance C-35565
Strategic Initiative:	Safe & Healthy
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Additional budget authority to spend remaining amount on AFG grant.
<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 City of Spokane accepted an AFG (Assistance to Firefighters Grant) of \$299,835 in June 2017 via OPR 2017-0381. The original grant expired April 30, 2018 although we were granted an extension to July 31, 2018.</p> <p>The purpose of the original grant was to provide PPE (personal protective equipment) and training to the 48 new SAFER firefighters. There were still some remaining grant funds available at the end of the original grant period so we requested an extension to purchase some additional equipment. Due to the lengthy procurement process of the equipment, it will be necessary to obtain an additional extension.</p>	
<p><u>Executive Summary:</u></p> <p>SBO needed to increase budget authority for the AFG grant so that we can spend remaining \$60k available on the grant. Currently, \$10k is budgeted so this request is for an additional \$50k.</p>	
<p><u>Budget Impact:</u></p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.) See related SBO</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>	

ORDINANCE NO C35672

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 Fire/EMS 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 Fire/EMS Fund, and the budget annexed thereto with reference to the Fire/EMS Fund, the following changes be made:

REVENUE:

FUND:	FUND NAME:	BUDGET CODE:	DESCRIPTION:	AMOUNT:
1970	Fire/EMS Fund	1970-93532-99999-33197	Homeland Security	50,000
			Total	50,000

EXPENSE:

FUND:	FUND NAME:	BUDGET CODE:	DESCRIPTION:	AMOUNT:
1970	Fire/EMS Fund	1970-93532-94220-56401	Machinery/Equip	50,000
			Total	50,000

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 increase the budget for the AFG (Assistance to Firefighter Grant) to allow remaining 2018 grant expenses to be incurred, 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:**

08/20/2018

Date Rec'd

8/7/2018

Clerk's File #

RES 2018-0072

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 - WSDOT NSC PROJECT, VACATION OF RIGHT-OF-WAYS

Agenda Wording

Resolution setting hearing before the City Council for September 24, 2018. As part of WSDOT's NSC Project the City wishes to initiate by resolution the vacation of portions the surrounding right-of-ways.

Summary (Background)

Staff requests that City Council set a public hearing on the vacation

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

BECKER, KRIS

Study SessionDivision Director

KINDER, DAWN

OtherFinance

ORLOB, KIMBERLY

Distribution ListLegal

DALTON, PAT

ebrown@spokanecity.org

For the Mayor

SANDERS, THERESA

edjohnson@spokanecity.org

Additional Approvals

kbecker@spokanecity.org

Purchasing

krichards@spokanecity.org

CITY COUNCIL

MCCLATCHEY, BRIAN

RESOLUTION 2018-0072

A RESOLUTION INITIATING THE VACATION OF CITY RIGHT-OF-WAY AND SETTING A HEARING.

WHEREAS, the City is working with the Washington State Department of Transportation to obtain the necessary right-of-ways needed for Washington State Department of Transportation NSC (North Spokane Corridor) project. (the "Project");

WHEREAS, pursuant to Chapter 35.79 RCW, the City may initiate by resolution the vacation of any street or portion thereof when it is in the public interest; and

WHEREAS, the City Council finds it in the public interest to vacate those portions of right-of-ways identified in Exhibit "A" to facilitate the Project, and desires to provide posted and mailed notice to owners of lots, tracts or parcels of property abutting upon such portions of right-of-ways, as shown on the rolls of the county treasurer and set a public hearing in order to act upon the vacation; and

NOW, THEREFORE - - it is hereby resolved by the Spokane City Council;

1. The Spokane City Council hereby initiates the vacation of those portions of City right-of-way identified in Exhibit "A" by Resolution.
2. The hearing on the proposed resolution will be held in front of the Spokane City Council at 6:00 P.M. or as soon thereafter as possible on September 24, 2018, and the City Clerk of the City of Spokane is instructed to proceed with all proper notice according to State law.

ADOPTED by the Spokane City Council this _____ day of _____, 20____.

City Clerk

Approved as to form:

Assistant City Attorney



**CITY OF SPOKANE
PLANNING & DEVELOPMENT**

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

**STREET VACATION REPORT
8-3-18**

LOCATION: Multiple right-of-ways for the NSC

PROPONENT: Washington State Department of Transportation

PURPOSE: Continued building on the North Spokane Freeway Corridor.

HEARING: September 24, 2018

REPORTS:

AVISTA UTILITIES - Hoffman Avenue - between Market and Greene Street. No reservation of easements requested.

Lacrosse Avenue - between Market and Greene Street. No reservation of easements requested.

Garland Avenue - between Market and old Rail Road right-of-way west of Greene Street (see page 2 of attachment). No reservation of easements requested.

Gordon Avenue - between Market and Greene Street. No reservation of easements requested.

Glass Avenue - between Market and Greene Street. No reservation of easements requested.

Portion of Garnet Avenue - between Market and Greene Street (see page 4 of attachment). No reservation of easements requested.

Portion of Bridgeport Avenue - between Market and east side of Greene Street (see page 4 of attachment). Reserve easement for natural gas pipe lines and appurtenances.

Greene Street – from the north side of Garnet Avenue running south to the north side of Bridgeport Avenue (see page 2 to page 4 of attachment) No reservation of easements requested.

Portion of Liberty Avenue - between Market and west side of Greene Street (see page 5 of attachment). No reservation of easement requested.

Greene Street – From north side of Bridgeport Avenue running south to north side of Euclid Avenue (see pages 4 and 5 of attachment). Reserve easement for natural gas pipe lines and appurtenances.

Greene Street - from south side of Euclid Avenue running south to south side of Cleveland Avenue (see pages 5 and 6 of attachment). Reserve easement for natural gas pipe lines and appurtenances.

Fairview – That portion of Fairview west of Greene Street, as shown on Page 6 of attachment, reserve easement for gas lines and appurtenances.

Cleveland Avenue and Greene Street – Reserve easement at this intersection for over-head electrical lines running along Cleveland Avenue crossing Greene Street.

COMCAST – Comcast has reviewed the vacation request. Comcast has no objections with the vacation.

CENTURYLINK – CenturyLink has no conflicts with the locations listed in the email.

INLAND POWER & LIGHT – Inland Power & Light Co has no facilities in any of the proposed areas to vacate as indicated on the received maps.

XO COMMUNICATIONS – XO Communications is clear and has no interest concerning this property.

ZAYO COMMUNICATIONS – Zayo wants to note, that at this time we only have facilities crossing Euclid proceeding east and west. We would request work with whoever it need be to make sure this meets the alignment and plans to remain in this location.

ASSET MANAGEMENT - CAPITAL PROGRAMS – No comments

FIRE DEPARTMENT – No objections to the requested vacations but would need emergency access and nearest hydrants to remaining structures in the NSC corridor be maintained until buildings are completely removed.

NEIGHBORHOOD SERVICES - No comments

PARKS DEPARTMENT - No comments

PLANNING & DEVELOPMENT – DEVELOPER SERVICES - No comments

PLANNING & DEVELOPMENT – TRAFFIC DESIGN – No comments

PLANNING & DEVELOPMENT – PLANNING – No comments

POLICE DEPARTMENT - No comments

SOLID WASTE MANAGEMENT - No comments

STREET DEPARTMENT – We have reviewed the proposed vacations for WSDOT right-of-way vacation for NSC and have concerns about the Traffic Signal at Garland Ave. and Market St. and any changes to any signal infrastructure. Traffic Signal Controller is on the southeast corner with traffic communication from Euclid Ave and Market St.

WASTEWATER MANAGEMENT – Wastewater Management had a previous agreement with WSDOT about sewer mains running into the areas that were being requested for vacation (on both the Ralph and Market sides of Greene). For this specific request at Liberty, Bridgeport and Garnet and Fairview. we have sewer mains that need to have new sewer start manholes added within the proposed future right of way, outside the vacation area to shorten the length of the mains. This is needed in order to continue to provide service to residences and businesses that are remaining in the area and allow us to inspect and maintain those lines. The agreement was that WSDOT would pay for the work and our crews were going to do the actual construction. Unfortunately WSDOT has already paved and dead ended the street at Liberty without that work being done. In order for us to agree to the vacations at least at those streets we need to get those sewer lines taken care of prior to more paving and closing the right of ways.

WATER DEPARTMENT - No comments

BICYCLE ADVISORY BOARD - No comments

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

1. An easement as requested by Avista Utilities shall be retained to protect existing utilities over the following right-of-ways;
 - a) Greene Street from the south right-of-way line of Euclid Avenue to the south right-of-way line of Cleveland Avenue
 - b) Greene Street from the south right-of-way line of Bridgeport Avenue to the north right-of-way line of Euclid Avenue.
 - c) Bridgeport Avenue from the west line of Lot 10, Block 17, of Minnehaha Addition as recorded with the Spokane County Auditor under AFN #3100500, to the center of the right-of-way line of Greene Street.
2. An easement as requested by the City of Spokane shall be retained to protect existing utilities over the following right-of-ways;
 - a) Lacrosse Avenue from the east right-of-way line of Market Street to the west line of existing Burlington Northern Santa Fe Railroad (BNSF) railroad right-of-way as defined in the Record of Survey defining the BNSF right-of-way and recorded with the Spokane County Auditor in Book 151 pages 96-98 under Auditor's File Number 6222766.
 - b) Greene Street from the south right-of-way line of Euclid Avenue to the south right-of-way line of Cleveland Avenue
 - c) Lacrosse Avenue from the east right-of-way line of Market Street to the west line of existing Burlington Northern Santa Fe Railroad (BNSF) railroad right-of-way as defined in the Record of Survey defining the BNSF right-of-way and recorded with the Spokane County Auditor in Book 151 pages 96-98 under Auditor's File Number 6222766.
 - d) Bridgeport Avenue from the west line of Lot 10, Block 17, of Minnehaha Addition as recorded with the Spokane County Auditor under AFN #3100500, to the center of the right-of-way line of Greene Street.
 - e) Liberty Avenue from the west line of Lot 2, Block 3, of Minnehaha Addition as recorded with the Spokane County Auditor under AFN #3100500, to the west right-of-way line of Greene Street.
 - f) Fairview Avenue from the west line of Lot 10, Block 5, of Minnehaha Addition, as recorded with the Spokane County Auditor under AFN #3100500, to the west right-of-way line of Ralph Street.
 - g) Cleveland Avenue from the west right-of-way line of Greene Street to the west right-of-way line of Ralph Street.
3. That no compensation for the assessed value of the area herein be required.

4. Closure and termination of the existing right-of-ways be handled during the design/construction process.

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

EDJ/edj

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

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

08/13/2018

<u>Date Rec'd</u>	7/26/2018
<u>Clerk's File #</u>	ORD C35668
<u>Renews #</u>	

Submitting Dept	CITY COUNCIL	Cross Ref #	
Contact Name/Phone	BREEAN 625269	Project #	
Contact E-Mail	AMCDANIEL@SPOKANECITY.ORG	Bid #	
Agenda Item Type	First Reading Ordinance	Requisition #	
Agenda Item Name	0320 SUSTAINABILITY ACTION COMMISSION ORDINANCE		

Agenda Wording

An ordinance creating a Sustainability Action Commission, describing its composition, and stating its goals, duties, and functions; and enacting a new chapter 04.36 to the Spokane Municipal Code.

Summary (Background)

This ordinance: Creates an eleven member Sustainability Action Commission and establishes its duties and appointment process. Duties include: developing plans to achieve renewable energy goals, updating the Sustainability Action Plan, developing an overall climate action plan, working with City staff to identify and recommend sustainable policies, and partnering with local utilities to identify ways to meet renewable energy goals.

<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>	PIES July 23rd
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE		
<u>For the Mayor</u>	SANDERS, THERESA		

<u>Additional Approvals</u>		
<u>Purchasing</u>		
<u>CITY COUNCIL</u>	MCDANIEL, ADAM	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

This ordinance also • Outlines membership qualifications for the Sustainability Action Commission. Members of the Commission may include but are not limited to: members of the 2009 Mayor's Task Force on Sustainability, energy utility representatives, college faculty members with expertise in sustainability or climate change, public health experts, local climate and environmental policy advocates, representatives of low-income citizens, and at least one non-voting member of the City Council. The ordinance also establishes a fiscal impact analysis requirement for any policy recommendations made by the Sustainability Action Commission.

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

ORDINANCE NO. C35668

An ordinance creating a Sustainability Action Commission, describing its composition, and stating its goals, duties, and functions; and enacting a new chapter 04.36 to the Spokane Municipal Code.

WHEREAS, the extraction and combustion of fossil fuels are significant sources of greenhouse gas emissions and major contributors to climate change and pollution; and;

WHEREAS, local, regional, and global economies are transitioning to low-carbon energy sources, and businesses are leaders in providing energy efficiency and renewable energy technologies and services; and

WHEREAS, the future of the fossil fuel industry is questionable given global action to reduce greenhouse gas emissions; and

WHEREAS, changes in Spokane's climate are already being felt; and

WHEREAS, scientists found that climate change poses a significant threat to Washington's economy and impacts that are likely to include longer and more intense wildfire seasons, diminished fish and wildlife habitat, changes in precipitation patterns that will affect agriculture and hydro-electric energy generation, and increased disease vectors and invasive species; and

WHEREAS, Spokane's climate future is expected to be characterized by hotter, drier summers with more high-heat days, earlier springs with rapid snowpack melt, and warmer winters with more intense rain events; and

WHEREAS, the entire community will be impacted by climate change, but communities that already face existing socioeconomic and health inequities will be most severely impacted by these risks; and

WHEREAS, for thousands of years, indigenous peoples have called home what we now recognize as Spokane. We must respect this as native land, and in doing so act as its caretakers; and

WHEREAS, federally recognized tribal governments have a distinctive legal and political status separate from other sovereigns. Spokane therefore, has a unique responsibility to consult with, at a minimum, federally recognized tribal governments and urban Native American communities; and

WHEREAS, Spokane's first priority for meeting energy needs is energy efficiency, and the City remains committed to acquiring at a minimum all cost-effective energy efficiency available with a particular focus on achieving energy efficiency in low-income housing; and

WHEREAS, the economic opportunities presented by a clean energy transition far outweigh the opportunities to expanding the fossil fuel economy; and

WHEREAS, one sector alone, solar energy, accounts for over 300,000 jobs in the United States; and

WHEREAS, communities of color and low-income populations have been historically underserved by programs and investments and under-represented in decision making on climate policy; and

WHEREAS, cities and states are developing strategies to engage low-income populations and communities of color, minimize harms and hazards, and ensure economic, social, and environmental benefits are shared; and

WHEREAS, community-based development of environmental infrastructure, is an emerging and underutilized best practice for ensuring that economic, social, and environmental benefits are led and shared by low-income populations and communities of color and warrants further increased private capacity building investments in community facing organizations; and

WHEREAS, it is imperative that energy consumers and the utilities serving them take early action to reduce carbon emissions and shift to renewable energy; and

WHEREAS, achieving these goals will require action at all levels: individual, family, neighborhood, community, local, regional, state and federal governments, businesses and utilities; and

WHEREAS, "renewable energy" specifically excludes energy derived from fossil fuels, nuclear, and biomass energy from (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic and (ii) non-residual wood from standing trees; and

WHEREAS, any forest biomass energy project requires special consideration to ensure that ecosystem health is not harmed, that the project does not result in increased life-cycle carbon emissions, and that air quality and fish habitat is not degraded; and

WHEREAS, renewable energy must also be sustainable, both in terms of the conservation of fish and wildlife habitat and in the promotion of human health and racial, environmental, and economic justice, and therefore reliance on existing hydroelectric power requires special consideration to reduce negative ecological impacts to biological systems dependent on the affected watersheds; and

WHEREAS, access to the financial and environmental benefits of renewable energy must be shared equitably across all economic classes, and this can be achieved through such mechanisms as community-based development of renewable energy

infrastructure, equitable pricing structures, community solar programs with low-income communities, and non-profit organization leadership; and

WHEREAS, the renewable energy economy presents opportunities for workers in manufacturing, construction, and service sector and it is essential that workers play a role in helping drive innovation towards cleaner energy economies while creating and maintaining family-sustaining jobs; and

WHEREAS, local, state, tribal and federal government should adjust their laws and spending to encourage investment in energy efficiency, rooftop solar, low income community solar and should demand control technologies offer the opportunity to redistribute resources address poverty, stimulate new economic activity, and lift up those most impacted by high energy costs; and

WHEREAS, the benefits of affordability programs can ease the energy burden on low-income households, fostering equality as a percent of household incomes and preventing disconnections, and thus mitigate the impacts of price spikes and the cost of implementing renewable programs; and

WHEREAS, improving transit service to be less costly, readily accessible to all, use clean fuels, and especially available to low-income neighborhoods, will bring not only significant greenhouse gas reductions but also improve access to employment opportunities; and

WHEREAS, the construction of new fossil fuel infrastructure or expanded reliance on fossil fuels in utility resource mixes adversely impacts a renewable energy powered future and creates financial risk to customers through potential stranded assets; and

WHEREAS, energy conservation is critical to reducing fossil fuel demand, and increasing green infrastructure such as urban tree canopy, green streets, green roofs and other natural resource focused strategies are effective strategies to reduce energy consumption, urban heat island impacts and address disparities in the impacts of climate change on vulnerable communities; and

WHEREAS, the transportation sector accounts for a significant percent of greenhouse gas emissions in our community, and significant reductions in emissions from transportation are essential to achieving our climate-protection goals; and

WHEREAS, electrifying car, truck, and bus fleets will bring environmental and economic benefits to local residents, including lower cost transportation options for low income households; and

WHEREAS, local educational institutions (high schools, community colleges, universities), community-based job training programs, apprenticeship programs, and on-the-job training providers are well situated to train the professionals who will design,

implement, install, retrofit, and maintain the renewable energy infrastructure of the future; and

WHEREAS, equitably distributed solar energy paired with energy storage will build disaster resilience into our communities; and

WHEREAS, the challenge of climate change involves both short-, medium-, and long-term challenges, it is vital that the City pursue practical strategies that match each of these timescales.

NOW, THEREFORE, BE IT RESOLVED, since the threat of a changing climate is urgent, while the Sustainability Action Commission updates the Sustainability Action Plan, the Commission will at the same time identify three to five strategies to recommend to the Mayor and Council for immediate adoption to help plan for climate resilience, achieve City and State mandated greenhouse gas emission reductions, or support the goal of 100 percent renewable electricity by 2030.

NOW, THEREFORE, BE IT FURTHER RESOLVED, the City of Spokane does ordain:

Section 1. That there is adopted a new chapter 04.36 of the Spokane Municipal Code to read as follows:

Chapter 04.36 Sustainability Action Commission

Section 04.36.005 Definitions

- A. "Community-based renewable energy" shall mean energy that comes from resources which are naturally replenished on a human timescale, is created within the community or nearby region, and is used primarily (not necessarily fully) within the community.
- B. "Community-wide electricity" shall be defined by the Spokane Urban Growth Area boundary, as defined by the City Comprehensive Plan.
- C. "Renewable energy" shall mean energy from wind power; solar; existing and low-impact hydroelectric; geothermal; waste-to-energy sourced almost entirely from non-fossil fuel based waste; biomass energy from (i) organic by-products of pulping and the wood manufacturing process, (ii) animal manure, (iii) forest or field residues, (iv) untreated wooden demolition or construction debris, (v) food waste and food processing residuals, and (vi) liquors derived from algae; hydrogen from non-fossil fuel sources; and gas captured from renewable sources like wastewater treatment facilities, landfill gas, dairies and others. Renewable energy excludes energy derived from fossil fuels, nuclear, and biomass energy from (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic and (ii) non-residual

wood from standing trees.

Section 04.36.010 Duties and Functions

The Sustainability Action Commission (“Commission”) shall have the following duties and functions:

1. update the Sustainability Action Plan (“Plan”) and its subsequent action plans at least every five years.
2. develop, as part of the Plan, an action plan to achieve 100% renewable energy for the city of Spokane’s community electricity supply by no later than 2030, while identifying any economic, regulatory or technological challenges involved in attaining that objective.
3. develop a plan to supply 100 percent of the electricity for City operations from renewable energy by 2020 through a combination of on-site renewable electricity generation, utility-supplied renewables, and dedicated off-site renewable resources.
4. develop, as part of the Plan, a climate action plan to meet or exceed the City and Washington State mandated greenhouse gas emission reduction targets (mitigation) and plan for climate resilience (adaptation).
5. consult with all City divisions and departments to recommend to the Mayor and Council code or policy changes for Council consideration that advance the policies set forth in the Plan.
6. identify ways in which the City can assist energy utilities to help advance the City’s renewable energy goals.
7. identify opportunities and advocate for the development of community-based renewable energy infrastructure to achieve a goal of meeting at least 10 percent of overall community-wide energy needs (including transportation, heating, and electricity) via such infrastructure by 2035
8. recommend to the Mayor and Council ways in which the City can assist local colleges, labor groups and workforce development agencies in the creation and development of training and retraining programs to assist workers displaced by implementation of the Plan.
9. identify strategies to assist community organizations looking to maximize energy efficiency.

10. recommend to the Mayor and Council policies to reduce the cost-burden to low-income citizens as a result of implementing the Plan.

Section 04.36.020 Membership

The Commission shall consist of eleven voting (11) members, who shall serve without compensation. The membership as a whole shall reflect a broad range of opinion, experience, socio-economic levels, races, ages, and expertise with the objective of implementing the Plan. To achieve that purpose, it may include but is not limited to:

1. At least one and not more than two members of 2009 Mayor's Task Force on Sustainability;
 2. At least one and not more than two representatives of an energy utility serving customers in the city of Spokane;
 3. At least one faculty member from a local college or university with expertise in sustainability action planning or climate change;
 4. At least one and not more than two members or representatives of local or regional business or technology companies with a history of implementing sustainability initiatives; and
 5. At least one and not more than two representatives of the public health community knowledgeable about climate change related health impact; and
 6. At least one and not more than two members or representatives of local environmental or climate action advocacy groups; and
 7. At least one and not more than two representatives of low-income citizens; and
 8. One member of the City Council may serve on the Sustainability Action Committee as a non-voting member.
- A. The Commission shall determine its own leadership or governance structure and meeting times and places as it sees fit, except that the Commission's activities are subject to the requirements of Chapter 42.30 RCW (Open Meetings Act).

Section 04.05.030 Appointment and Removal

- A. Commission members are nominated by the Mayor and appointed by the City Council. Three (3) members shall be appointed for an initial term of one (1) year, three (3) members shall be appointed for an initial term of two (2) years, and four (4) members shall be appointed for an initial term of three (3) years. Upon the expiration of the initial terms, a member may receive no more than two

subsequent appointments, each for three (3) years.

- B. Commission members appointed by the City Council pursuant to SMC 04.06.030(A) shall not be removed from office by the City Council before the expiration of their terms except for cause based upon a determination of incapacity, incompetence, the presence of irreconcilable conflicts of interest, neglect of duty, or malfeasance, and upon the affirmative vote of five (5) Council members. No commission member shall be removed without written notice of the intent to remove and an opportunity to provide a written response to the notice.

Section 04.36.040 Fiscal Impact Analyses Required

- A. The Commission shall undertake financial impact analyses to determine potential economic impact associated with implementing and not-implementing the Plan, including negative externalities. The Commission shall undertake analyses to determine potential economic and fiscal impacts associated with implementing and not-implementing Commission recommendations, including negative externalities.
- B. The Commission shall publish a fiscal impact statement for any proposed code or administrative policy change which will have an impact on city operations.
- C. Any fiscal impact statements or analyses prepared as required by this section shall be published on the City's website.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

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

08/20/2018

Date Rec'd

8/3/2018

Clerk's File #

ORD C35673

Renews #Submitting DeptNEIGHBORHOOD SERVICES & CODE
ENFORCEMENTCross Ref #Contact Name/Phone

TIM SZAMBELAN 6225

Project #Contact E-MailTSZAMBELAN@SPOKANECITY.ORG
625-6225Bid #Agenda Item Type

First Reading Ordinance

Requisition #Agenda Item Name0500 ORDINANCE RELATING TO ANIMAL CONTROL AND AMENDING SMC
10.03Agenda Wording

An ordinance relating to animal control and amending SMC Sections 10.03.033.

Summary (Background)

The City entered into a regional animal control program with Spokane County (SCRAPS) that was effective January 1, 2014. The dangerous dog declaration and registration remained in the Spokane Municipal Code. The proposed amendments are necessary for uniform administration of dangerous dog declarations and registrations in the City and the County.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

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Study SessionDivision Director

KINDER, DAWN

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FINANCE & ADMIN

PILGRIM, NATHAN

CITY ATTORNEY

PILGRIM, NATHAN

ORDINANCE NO. C - _____

An ordinance relating to animal control and amending SMC sections 10.03.020, 10.03.033.

WHEREAS, the City entered into a regional animal control program with Spokane County that went into effect in January 1, 2014; and,

WHEREAS, with the implementation of the regional animal control system certain changes to the current Spokane Municipal Code need to be amended to operate efficiently for all parties involved;

-- Now, Therefore,

The City of Spokane does ordain:

Section 1. That section 10.03.020 of the Spokane Municipal Code is amended to read as follows:

Chapter 10.03 Offenses Involving Animals

Section 10.03.020 Dangerous Dog Declaration and Registration

- A. When an animal protection officer has probable cause, based upon the officer's records or investigation of an incident, to believe that a dog is a dangerous dog, the officer declares the dog to be a dangerous dog by the issuance of a dangerous dog declaration.
- B. Upon issuance of the dangerous dog declaration, the animal protection officer shall immediately confiscate the dog and place the dog in the animal control authority's custody pending final disposition. For the purposes of the City Code, "owner and keeper" has the same definition as the "owner, handler, or keeper as definition in SCC 5.04.020 (17).
 1. The animal protection officer serves the owner or keeper of the dog with notice of the dangerous dog declaration either in person or by regular and certified mail, return receipt requested.
 2. Service, if by mail, shall be considered completed three (3) days after mailing of the notice.
 3. The notice shall state:
 - a. The person receiving the notice is the owner or keeper of a dangerous dog as defined in SCC 5.04.020 (9).
 - b. The breed, color, sex, and license number (if known) of the dog;
 - c. A copy of the records relied upon by the director that forms the basis for declaring the dog to be a dangerous dog; which records

may be supplemented with additional information as it becomes available;

- d. That receipt of the notice renders final the declaration of dangerous dog unless the owner or keeper of the dog submits a request for an administrative appeal hearing before the city hearing examiner in writing to the director on a form provided with the notice within fifteen (15) days of the receipt of the notice;
 - e. If an appeal hearing is requested, such appeal will be held and adjudicated pursuant to the requirements set out in this chapter:
 - i. that at the hearing the records of the director and any supplementary material shall be admissible to prove the dog is a dangerous dog;
 - ii. that the owner or keeper of the dog may upon request require the officer compiling the record or alternatively an officer with personal knowledge of the record to be present at the hearing, unless such officer is unavailable;
 - iii. that the owner or keeper of the dog, and the director, may call witnesses, present evidence, examine witnesses present, and be represented by counsel at the hearing; and,
 - iv. that the burden shall be on the director to establish by a preponderance of evidence that the dog is a dangerous dog.
 - f. A statement that the dog is subject to registration and controls required by this chapter; and,
 - g. An explanation of the owner's or keeper's rights and the proper procedure to appeal the declaration.
- C. No owner or keeper may keep a dangerous dog, except a dog currently used by law enforcement officers for police work, without a certificate of registration issued under this chapter. The certificate of registration must be acquired within fifteen days of service of the dangerous dog notice unless the owner or keeper has appealed the dangerous dog declaration pursuant to subsection (F) of this section.
- D. The animal control authority of the City issues a certificate of registration to the owner or keeper of a dangerous dog upon payment of the fee set forth in SMC 8.02.081 if the owner or keeper presents to the authority sufficient evidence of:
- 1. A proper enclosure, approved by SCRAPS, to confine a dangerous dog; and,
 - 2. The posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property, and the conspicuous display of a sign with a warning symbol that informs children of the presence of a dangerous dog; and
- E. A surety bond or a policy of liability insurance such as homeowner's insurance, as described in this subsection. The surety bond or policy of liability insurance shall be issued by a surety or insurer qualified under chapter 48.28 RCW, be in a form acceptable to the SCRAPS, be in the sum of at least two hundred fifty thousand dollars (\$250,000.00) with a maximum five-hundred dollar (\$500.00) deductible, provide for prior written notification to SCRAPS of cancellation or

material change, and be payable to any person for personal injuries or property damage inflicted by the dangerous dog regardless of whether the personal injury or property damage occurs on or off the owner or keeper's premises.

~~3.((A surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least two hundred fifty thousand dollars, which provides for prior written notification to the animal control authority of cancellation or material change, payable to any person for personal injuries or property damage caused by the dangerous dog regardless of whether the personal injury or property damage occurs on or off the owner's or keeper's premises; or~~

~~4.A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least two hundred fifty thousand dollars with a maximum five hundred dollar deductible and which provides for prior written notification to the animal control authority of cancellation or material change, insuring the owner or keeper for any personal injuries and property damage inflicted by the dangerous dog regardless of whether the personal injury or property damage occurs on or off the owner's or keeper's premises; and,))~~

- ((5.)) 1. The owner or keeper of a dangerous dog shall furnish to SCRAPS a complete copy of the surety bond of insurance specified in this subsection and shall allow SCRAPS reasonable time to review the bond or policy to determine whether the surety bond or certificate of insurance is sufficient, prior to issuing the certificate of registration.
- ((6.)) 2. A permanent microchip implanted and the microchip shall be injected in accordance with policy established by SCRAPS and the owner or keeper will be charged a fee for the microchip; and
- ((7.)) 3. The dangerous dog must be spayed/neutered at the owner's expense in order to complete the registration. Any impounded dangerous dog will be transported to SCRAPS to a veterinarian for spaying/neutering as part of the registration process or documentation demonstrating that the dangerous dog has been spayed or neutered prior to release; and,
- ((8.)) 4. A muzzle and leash approved by the animal control authority, as to strength and fit, for the dangerous dog; and,
5. In addition to the regular dog licensing fees set forth in section SCC 5.04.030, the owner of keeper of a dangerous dog shall pay an annual registration and inspection fee as prescribed in the department fee schedule. The registration will b valid for twelve (12) months.
6. Issuance of a dangerous dog registration or renewal thereof shall be conditioned on the registered owner allowing the Director to inspect the premises at any time to insure compliance with the provisions of this section.
7. The provisions of this section shall not apply to police dogs as defined in RCW 4.24.410
8. An owner or keeper of a dog declared, deemed or determined to be a dangerous dog shall be responsible for meeting and maintaining the

requirements set forth in this section and section SMC 10.03.033 at all times and at their expense. A violation of conditions imposed under this section is a gross misdemeanor

9. Additional conditions determined by the animal control authority to be necessary to protect the public health, safety, and welfare.

((E.)) F. Appeal of Dangerous Dog Declaration.

1. A dangerous dog declaration by the animal control authority may be appealed to the City's hearing examiner.
2. An appeal must be filed with the hearing examiner's office within fifteen (15) days of service of the dangerous dog notice.
3. An appeal does not proceed until the owner or keeper has complied with the requirements of SMC 10.03.050.
4. At the appeal hearing, the records of the animal control director, or the director's designee, and any supplemental material shall be admissible to prove the dog is a dangerous dog. The owner or keeper of the dog may present evidence and examine witnesses present.
5. It is the animal control agency's burden to provide the hearing examiner with evidence which establishes the dangerous dog determination by a preponderance of the evidence. The hearing examiner shall apply a preponderance of the evidence standard at the dangerous dog determination appeal. It is an affirmative defense that the owner must prove by a preponderance of the evidence that the person or domestic animal attacked or bitten by the owner's or keeper's dog provoked the owner's or keeper's dog without justification or excuse.
6. The hearing examiner will provide upon request to an individual all rules and procedures applicable to the appeal.
7. The hearing examiner either:
 - a. Affirms the decision of the animal control authority in issuing the dangerous dog declaration,
 - b. Dismisses the declaration, or
 - c. Reduces a dangerous dog declaration to a potentially dangerous dog declaration based upon the evidence presented during the appeal.
8. The hearing examiner's decision may be appealed to the Spokane County superior court within twenty (20) days from the date the decision is issued.

((F.)) G. If an owner or keeper fails to register the dog as a dangerous dog within fifteen (15) days of service of the animal control authority's notice, or of the hearing examiner's decision affirming the animal control authority's determination, and no restraining order has been served upon the animal control authority, the dog shall be euthanized.

((G.)) H. The animal control director may issue a provisional registration certificate where: (a) the dangerous dog declaration has been appealed, provided all the conditions of maintaining a dangerous dog have been met under this section with the exception of subsection D (7) requiring spay or/neuter; or

(b) the owner is relocating the dangerous dog outside of the City and all conditions of this section have been met with the exception of subsection D(3)-(5) requiring a surety bond or insurance policy. Any provisional permit issued pursuant to this section shall expire fifteen (15) days following the decision on the appeal of the dangerous dog declaration. Any provisional permit issued under G (b) of this subsection shall be valid for the sole purpose of immediate transport and relocation of the dog from the shelter to a location outside of the City.

((H.)) I. Dogs deemed dangerous by other jurisdictions in the State of Washington will be subject to the same regulations as if they have been deemed dangerous in the City. Any owner or keeper of a dog deemed dangerous by jurisdictions outside the State of Washington relocating to the City, Spokane County Washington shall present the dog to SCRAPS within thirty 30 days of their arrival in Spokane to be evaluated by the Director or his/her designee on an individual basis to determine whether the dog should be deemed a dangerous dog, taking into account the criteria set forth in SCC 5.04.020 (8).

((I.)) J. An owner or keeper of a dog previously deemed dangerous by the City or SCRAPS and subsequently relocated outside of the City, must register the dog pursuant to section (C) of this section prior to bringing the dangerous dog into the City; such dogs are prohibited from re-entering the City without prior written consent from SCRAPS and/or full registration.

((J.)) K. An owner or keeper of a dog declared dangerous shall be responsible for meeting and maintaining the requirements set forth in this section at all times. A violation of conditions imposed under this section is a gross misdemeanor.

((K)) L. Dangerous dog" means any dog that (a) inflicts severe injury or multiple bites on a human being without provocation on public or private property, (b) inflicts severe injury, multiple bites, or kills an animal without provocation while the dog is off the owner's or keeper's property, or (c) has previously been declared potentially dangerous pursuant to SMC 10.03.033, and after the owner or keeper received notice of such declaration the dog engages in behavior that meets the definition of "potentially dangerous dog" in subsection SCC 5.04.020 (19); provided, a declaration of dangerous dog under part (c) of this subsection cannot become a final determination under SMC 10.03.020 unless and until the previous declaration of potentially dangerous dog has become final under this Code or a previous version of this Code. If two or more dogs jointly engage in any conduct described in parts (a) or (b) of this subsection, thereby rendering proof of the individual dog that inflicted any particular injury difficult to ascertain, then regardless of the degree of participation by the individual dog(s), all such dogs shall be deemed dangerous dogs.

Section 2. That section 10.03.033 of the Spokane Municipal Code is amended to read as follows:

Section 10.03.033 Potentially Dangerous Dog Declaration

- A. When the director or his or her designee has sufficient articulable information to determine that a dog is a potentially dangerous dog as defined in SCC 5.04.020(19), the director or his or her designee shall declare the dog potentially dangerous and shall notify the owner or keeper of the dog in writing of such determination, either in person or by regular mail. Any notice or determination mailed pursuant to this section shall be deemed received by the party to whom it is addressed on the third day after it is placed in the mail, as set forth by declaration of the sender. The notice shall contain the following information:
1. That the person receiving the notice is identified as the owner or keeper of a potentially dangerous dog as defined in SCC 5.04.020 (~~19~~ 20);
 2. The breed, color, sex, and license number (if known) of the dog;
 3. The facts upon which the declaration of potentially dangerous dog is based;
 4. That if there are future similar incidents with the dog, the dog could be declared a dangerous dog pursuant to SMC 10.03.020 and required to be registered as provided in SMC 10.03.020;
 5. That the owner or keeper must comply with restrictions set forth in the notice as a condition of continued ownership or keeping of the dog and that restrictions may include, but are not limited to, those which that may be imposed on the owner or keeper of a potentially dangerous dog pursuant to SCC 5.04.032 (6);
 6. That the notice renders a final determination that the dog is a potentially dangerous dog, unless the owner or keeper of the dog requests an administrative review meeting in writing on a form provided with the notice within fifteen days of the receipt of the notice. For purposes of this section, if the notice is mailed, it shall be deemed received on the third day after the notice is placed in the mail.
 7. The administrative review meeting shall be informal, open to public view, and at the option of the director or designee, held telephonically and the administrative meeting officer shall be someone who did not participate in making the potentially dangerous dog determination.
 8. Following an administrative review meeting, the director or designee may affirm or reverse the original determination that the dog is potentially dangerous. If the determination is affirmed, the director may impose the same reasonable conditions as may be imposed on the owner or keeper of a potentially dangerous dog pursuant to SMC 10.03.033 C.
 9. That pursuant to this section, a failure by the dog owner or keeper to request and attend an administrative review meeting with the animal control director or designee shall constitute a failure to exhaust all administrative remedies, and that such failure to exhaust all

administrative remedies shall preclude any appeal of the administrative determination to the City hearing examiner.

- B. The notice of a potentially dangerous dog declaration constitutes a final determination that the dog constitutes a potentially dangerous dog, unless the owner or keeper requests an appeal hearing before the City hearing examiner within fifteen (15) days of service of the notice.
- C. In the event the owner or keeper requests an appeal hearing before the hearing examiner, the appeal hearing shall be held within thirty days of the request.
 - 1. The City Hearing Examiner's Office will notify the owner or keeper of the date, time and place of the hearing, as well as the right to present evidence as to why the dog should not be found potentially dangerous.
 - 2. The hearing examiner may affirm, reverse or modify the potentially dangerous dog declaration issued by the director. If the recommendation is to affirm the declaration, the hearing examiner shall recommend requirements listed below be imposed upon the owner or keeper as a condition of continued ownership or keeping of the dog. If the hearing examiner's decision is to modify the declaration, the examiner may determine that the dog be deemed potentially dangerous and that reasonable conditions be imposed on the owner or keeper as a condition of continued ownership or keeping of the dog. Reasonable conditions may include but are not limited to the following measures:
 - a. Erection of new or additional fencing to keep the dog within the confines of the owner's or keeper's premises.
 - b. Construction of a run consistent with the size of the dog within which the dog must be kept.
 - c. Keeping the dog on a leash adequate to control the dog or securely fastened to a secure object when left unattended.
 - d. Keeping the dog indoors at all times, except when on a leash adequate to control the dog and under the actual physical control of the owner or keeper or a competent person at least fifteen years of age.
 - e. Keeping the dog muzzled in a manner that will not cause injury to the dog or interfere with its vision or respiration, but will prevent it from biting any person or animal when outside a proper enclosure.
 - f. Spaying/neutering of the dog.
 - g. Microchip implanting of the dog for identification purposes.

The hearing examiner may alternatively recommend that the director be given the authority to establish the reasonable conditions from the measures listed above, or from revisions or additions to such measures that the director deems necessary to effectuate the purposes of this chapter.

- D. The City hearing examiner notifies, in writing, the owner or keeper of his decision within twenty (20) days of the hearing. The owner or keeper of the dog may appeal the City hearing examiner's decision on the potentially dangerous dog appeal within fifteen (15) days to the Spokane County Superior Court. Conditions imposed on a potentially dangerous dog under this section may be reviewed and modified at the discretion of the Director. Any modification of conditions must be supported by written findings and conclusions issued by the Director, which will become final and effective fifteen days (15) after notice to the owner or keeper of the dog unless appealed. The notice and appeal of any modification of conditions shall be only of the changed conditions and shall follow the notice and appeal procedures contained in the section.
- E. Dogs deemed potentially dangerous by other jurisdictions in the state of Washington shall be subject to the same regulations as if they have been deemed potentially dangerous in Spokane County and the owner or keeper shall present the dog to SCRAPS within thirty (30) days of their arrival in Spokane County in order to allow the Director to evaluate the dog on an individual basis and determine which restrictions authorized under this section to impose. Any owner or keeper of a dog deemed potentially dangerous by a jurisdiction outside of the state of Washington who is relocating to Spokane County shall present the dog to SCRAPS within thirty (30) days of their arrival in Spokane County in order to allow the Director to evaluate the dog on an individual basis and determine which restrictions authorized under this section to impose.
- F. An owner or keeper of a potentially dangerous dog who violates any of the conditions imposed under this section shall be guilty of a misdemeanor as set forth in SCC 5.04.071(b) and (j).

PASSED by the City Council on _____

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date