

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, APRIL 15, 2019

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)

Roll Call of Council

Council Reports

Staff Reports

Committee Reports

Advance Agenda Review

Current Agenda Review

ADMINISTRATIVE SESSION

CONSENT AGENDA

REPORTS, CONTRACTS AND CLAIMS

RECOMMENDATION

- | | | |
|---|---------|------------------------------------|
| 1. Purchase from Core & Main (Spokane, WA) of domestic Ductile Iron and Valve Box Products for the Water Department—\$77,035.34 (incl. tax).
Jim Sakamoto | Approve | OPR 2019-0266
BID 4100-359-2019 |
| 2. Low Bid of Planned and Engineered Construction, Inc., (Helena, MT) for Cure In Place Pipe 2018 SS Rehabilitation—\$588,850 (plus tax). An administrative reserve of \$58,885 (plus tax), which is 10% of the contract price, will be set aside. (Various Neighborhoods)
Dan Buller | Approve | OPR 2019-0267
ENG 2017171 |
| 3. Amendment to Grant Agreement with the Guardians Foundation to add funds for operating costs to provide for Warming Center services provision during the month of April, in line with the Warming Centers ramp down plan—\$98,200.
Kelly Keenan | Approve | OPR 2018-0810 |
| 4. Purchase and Sale Agreement between the City of Spokane and Cody Development Corporation for the sale of .55 acres, situated at 304 East Riverside Avenue and 15 North Grant Street—\$595,125 Revenue.
David Steele | Approve | OPR 2019-0268
ENG 2012119 |

- | | | |
|--|--|---|
| <p>5. Contract with Wm. Winkler Company (Newman Lake, WA) for Utility Concrete Repair Services not to exceed \$270,000 (incl. tax) to be used on an as-needed basis by the Street, Wastewater Maintenance, and Water & Hydroelectric Services departments.
Dan Kegley</p> <p>6. CoC Program Award of \$3,778,347 from the U.S. Department of Housing and Urban Development and authority to enter into contract with the awarded projects once appropriate documents are received from U.S. Department of Housing and Urban Development.
Rebekah Tuno</p> <p>7. Authorization to reapply for the Consolidated Homeless Grant from the WA State Department of Commerce and to subgrant the funds to partner agencies in accordance with the City's Strategic Plan to End Homelessness.
Matt Davis</p> <p>8. Report of the Mayor of pending:</p> <p style="padding-left: 20px;">a. Claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2019, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____.</p> <p style="padding-left: 20px;">b. Payroll claims of previously approved obligations through_____, 2019: \$_____.</p> <p>9. City Council Meeting Minutes: _____, 2019.</p> | <p>Approve</p> <p>Accept</p> <p>Approve and Auth. Contracts</p> <p>Approve & Authorize Payments</p> <p>Approve All</p> | <p>OPR 2019-0269
BID 55-352-19</p> <p>OPR 2019-0270</p> <p>OPR 2019-0271</p> <p>CPR 2019-0002</p> <p>CPR 2019-0003</p> <p>CPR 2019-0013</p> |
|--|--|---|

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 C35757 amending Ordinance No. C35703 passed by the City Council December 10, 2018, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2019, making appropriations to the various funds, departments and programs of the City of Spokane government for the fiscal year ending

December 31, 2019, and providing it shall take effect immediately upon passage," and declaring an emergency and appropriating funds in:

General Fund – Public Defender
FROM: Other Judicial Grants, \$2,499;
TO: Registration/Schooling, same amount.

(This action accepts the additional Office of Public Defense Grant to provide public defense training.)

Kathy Knox

NO EMERGENCY ORDINANCES

RESOLUTIONS & FINAL READING ORDINANCES

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2019-0027 Approving the sale of surplus city property and authorizing the Mayor to execute the purchase and sale agreement with Avista and such other documents as may be needed in order to close the transactions provided for in said purchase and sale agreement—\$204,000 Revenue.
David Steele
- RES 2019-0028 Recognizing the 2019 update of the University District Strategic Master Plan as a declaration of the district's desired future condition, providing direction for district-based improvement activities and stakeholder priorities for future projects.
Christopher Green
- ORD C35755 Requiring baby changing facilities in publicly accessible restrooms in all City of Spokane owned buildings; amending SMC Section 12.05.005; and adopting new section 12.05.025 to Chapter 12.05 of the Spokane Municipal Code.
Council Member Stratton
- ORD C35756 Relating to the Code of Ethics; amending SMC sections 1.04A.020 1.04A.110 of the Spokane Municipal Code.
Council Member Fagan
- ORD C35759 Reformulating the Northeast Public Development Authority and approving its charter and bylaws. (Pending approval of the request for Council suspension of rules to add the ordinance to First Reading Ordinances on the April 8, 2019, Agenda.)
Council President Stuckart

FIRST READING ORDINANCE

(No Public Testimony Will Be Taken)

- ORD C35758 Regarding Spokane's Urban Forestry Program; amending Article V of chapter 12.02 of the Spokane Municipal Code.
Council Member Kinnear

FURTHER ACTION DEFERRED

NO SPECIAL CONSIDERATIONS

NO HEARINGS

Motion to Approve Advance Agenda for April 15, 2019 (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 April 15, 2019, Regular Legislative Session of the City Council is adjourned to April 22, 2019.

NOTES

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

04/15/2019

<u>Date Rec'd</u>	3/27/2019
<u>Clerk's File #</u>	OPR 2019-0266
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	4100-359-2019
<u>Requisition #</u>	RE 19228

<u>Submitting Dept</u>	WATER & HYDROELECTRIC SERVICES
<u>Contact Name/Phone</u>	JIM SAKAMOTO 625-7854
<u>Contact E-Mail</u>	JSAKAMOTO@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Purchase w/o Contract
<u>Agenda Item Name</u>	4100 - PURCHASE OF DUCTILE IRON & VALVE BOX PRODUCTS

Agenda Wording

Purchase of domestic Ductile Iron and Valve Box Products from Core & Main (Spokane, WA) for \$77,035.34 including tax.

Summary (Background)

RFQ #4100-359-2019 was issued March 19, 2019 to facilitate products currently known to be required to support the WSDOT State Route 902 Roundabout. Two (2) quotes were received. Award is recommended to the low quote best able to meet the project timeline negotiated with WSDOT; Core & Main. An agreement with WSDOT to reimburse this purchase is already in place.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense	\$ 77,035.34	# 4100-42440-94000-56595-99999
Select	\$	#
Select	\$	#
Select	\$	#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	KEGLEY, DANIEL	<u>Study Session</u>
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u> UEC 4/8/2019
<u>Finance</u>	ALBIN-MOORE, ANGELA	<u>Distribution List</u>
<u>Legal</u>	DALTON, PAT	sjohnson@spokanecity.org
<u>For the Mayor</u>	ORMSBY, MICHAEL	jsakamoto@spokanecity.org
<u>Additional Approvals</u>		
<u>Purchasing</u>	PRINCE, THEA	

Briefing Paper

Urban Experience Committee

Division & Department:	Public Works, 4100 Water & Hydroelectric Services
Subject:	Purchase of Ductile Iron & Valve Box Products (Domestic) for WSDOT State Route 902 Roundabout
Date:	8 April 2019
Author (email & phone):	Jim Sakamoto, jsakamoto@spokanecity.org , x7854
City Council Sponsor:	---
Executive Sponsor:	---
Committee(s) Impacted:	PIES
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Initial funding for this purchase is available from the Water & Hydroelectric Services department budget. A reimbursement agreement with WSDOT is in place.
Strategic Initiative:	Innovative Infrastructure
Deadline:	Purchase of these products is needed to facilitate project timelines in Q2 2019 already negotiated between the City and WSDOT.
Outcome: (deliverables, delivery duties, milestones to meet)	These products will facilitate relocation of existing City water main at the location of State Route 902 roundabout.
Background/History: RFQ #4100-359-2019 was issued March 19, 2019 to facilitate products currently known to be required and agreed to be reimbursed by WSDOT for this project. The quoting period closed the afternoon of March 25, 2019. Two (2) quotes were received. Award is recommended to the low quote best able to meet the project timeline negotiated with WSDOT; Core & Main.	
Executive Summary: <ul style="list-style-type: none"> • Award Recommended to Core & Main (Spokane, WA) • Total Purchase: \$77,035.34 including tax • Purchase Competed on RFQ #4100-359-2019 • Purchase to be Fully Reimbursed by WSDOT 	
Budget Impact: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If new, specify funding source: Water & Hydroelectric Services Department Budget Other budget impacts: Agreement for WSDOT reimbursement in place	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Specify changes required: --- Known challenges/barriers: ---	



CITY OF SPOKANE - WATER & HYDROELECTRIC SERVICES

914 E. North Foothills Drive
Spokane, Washington 99207
PHONE: 509.625.7800

QUOTE TABULATION

Quote Number	4100-359-2019	
Description	Ductile Iron & Valve Box Products - Domestic Only	
	Core & Main	HD Fowler Co.
DIMJ Sleeve Solid, 36" x 15" Domestic Only, Qty. 2	\$ 6,989.66	\$ 7,440.00
MJ Tee, 36" x 36" x 36" Domestic Only, Qty. 2	\$ 20,958.16	\$ 22,318.00
MJ Plug Solid, 36" Domestic Only, Qty. 1	\$ 4,425.39	\$ 4,710.00
MJ Cap Solid, 36" Domestic Only, Qty. 1	\$ 3,316.17	\$ 3,530.00
MJ 45° Bend, 36" Domestic Only, Qty. 1	\$ 5,992.51	\$ 6,380.00
TR-Flex Ductile Iron Pipe, 36" 18' Sticks - Domestic Only, Qty. 108'	\$ 23,226.48	\$ 24,548.40
Valve Box Top Section 15" w/Cover Domestic Only, Qty. 35	\$ 1,993.95	\$ 2,775.50
Valve Box Top Section 10" w/Cover Domestic Only, Qty. 15	\$ 679.20	\$ 900.00
Valve Box Bottom Section, 36" Domestic Only, Qty. 50	\$ 3,158.00	\$ 3,950.00
Subtotal	\$ 70,739.52	\$ 76,551.90
Sales Tax (8.8%)	\$ 6,295.82	\$ 6,813.12
Quote Total	\$ 77,035.34	\$ 83,365.02

Lead Time	Partial Delivery - 15 Days Full Delivery - 45 Days	Partial Delivery - 15 Days Full Delivery - 80 Days
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PLEASE NOTE THAT THIS TABULATION IS NOT AN INDICATION OF AWARD RECOMMENDATION. CRITERIA, IN ADDITION TO PRICE, ARE EVALUATED TO DETERMINE RESPONSIVE QUOTE MEETING

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

04/15/2019

<u>Date Rec'd</u>	4/2/2019
<u>Clerk's File #</u>	OPR 2019-0267
<u>Renews #</u>	

Submitting Dept	ENGINEERING SERVICES	Cross Ref #	
Contact Name/Phone	DAN BULLER 625-6391	Project #	2017171
Contact E-Mail	DBULLER@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	CR 20424
Agenda Item Name	0370 LOW BID AWARD – PLANNED AND ENGINEERED CONSTRUCTION, INC.		

Agenda Wording

Low Bid of Planned and Engineered Construction, Inc., (Helena, MT) for Cure In Place Pipe (CIPP) 2018 SS Rehabilitation - \$588,850.00 + tax. An administrative reserve of \$58,885.00, which is 10% of the contract price, will be set aside. (Various

Summary (Background)

On April 1, 2019 bids were opened for the above project. The low bid was from Planned and Engineered Construction, Inc. in the amount of \$588,850.00, which is \$18,365.00 or 3% under the Engineer's Estimate; two other bids were received as follows: Insituform Technologies - \$747,530.00 and Michels Corporation - \$752,470.75.

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

Expense	\$ 705,383.42	# 4250 43387 94350 5601 14421
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Select	\$	#
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Select	\$	#
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Select	\$	#
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Approvals

<u>Dept Head</u>	TWOHIG, KYLE
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<u>Division Director</u>	SIMMONS, SCOTT M.
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<u>Finance</u>	ALBIN-MOORE, ANGELA
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<u>Legal</u>	ODLE, MARI
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<u>For the Mayor</u>	ORMSBY, MICHAEL
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Additional Approvals

<u>Purchasing</u>	WAHL, CONNIE
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	publicworksaccounting@spokanecity.org
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Council Notifications

<u>Study Session</u>	Finance 4/8/19
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OtherDistribution List

eraea@spokanecity.org

kgoodman@spokanecity.org

mdoval@spokanecity.org

htrautman@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Neighborhood Council)

Summary (Background)

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

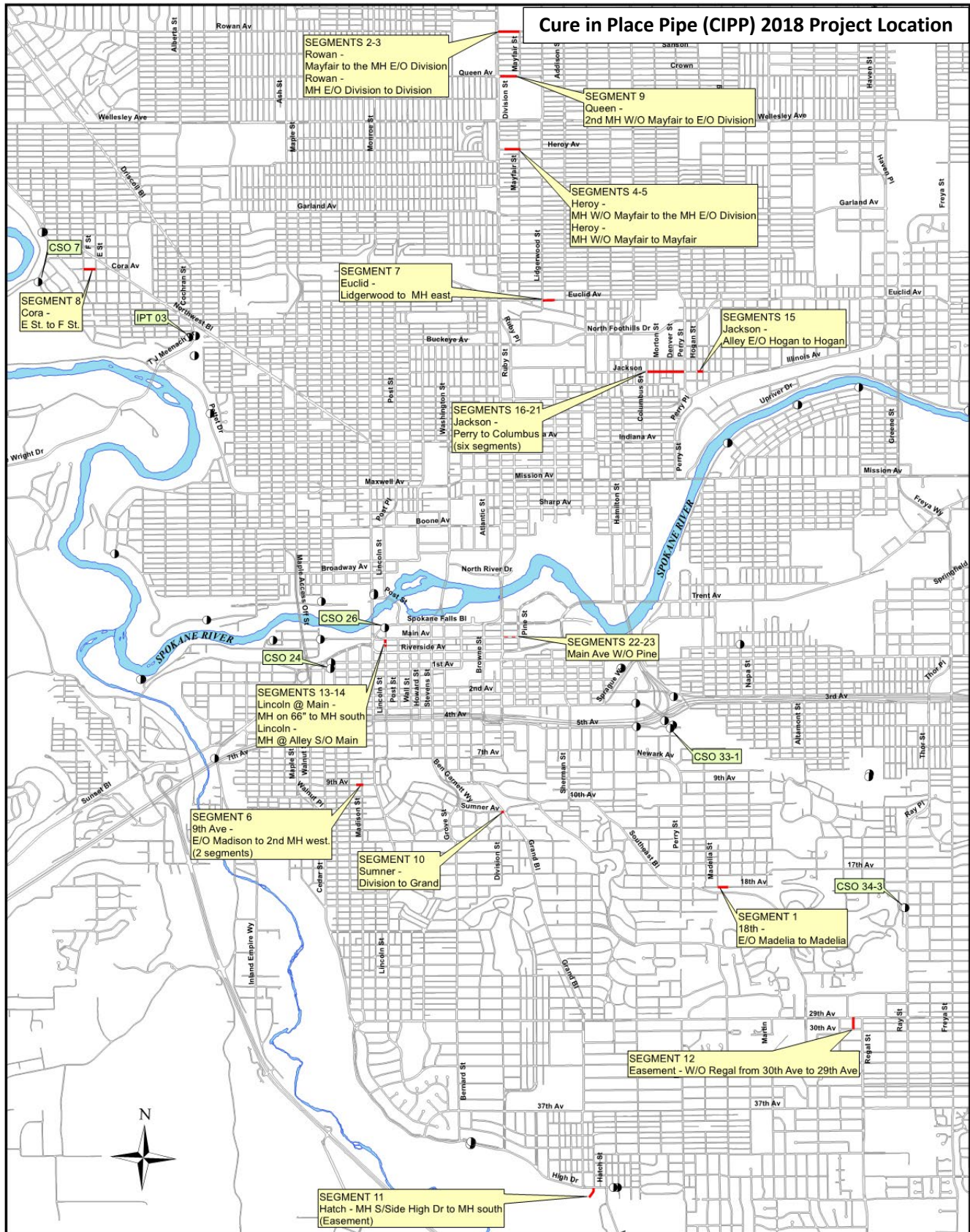
Distribution List

Briefing Paper

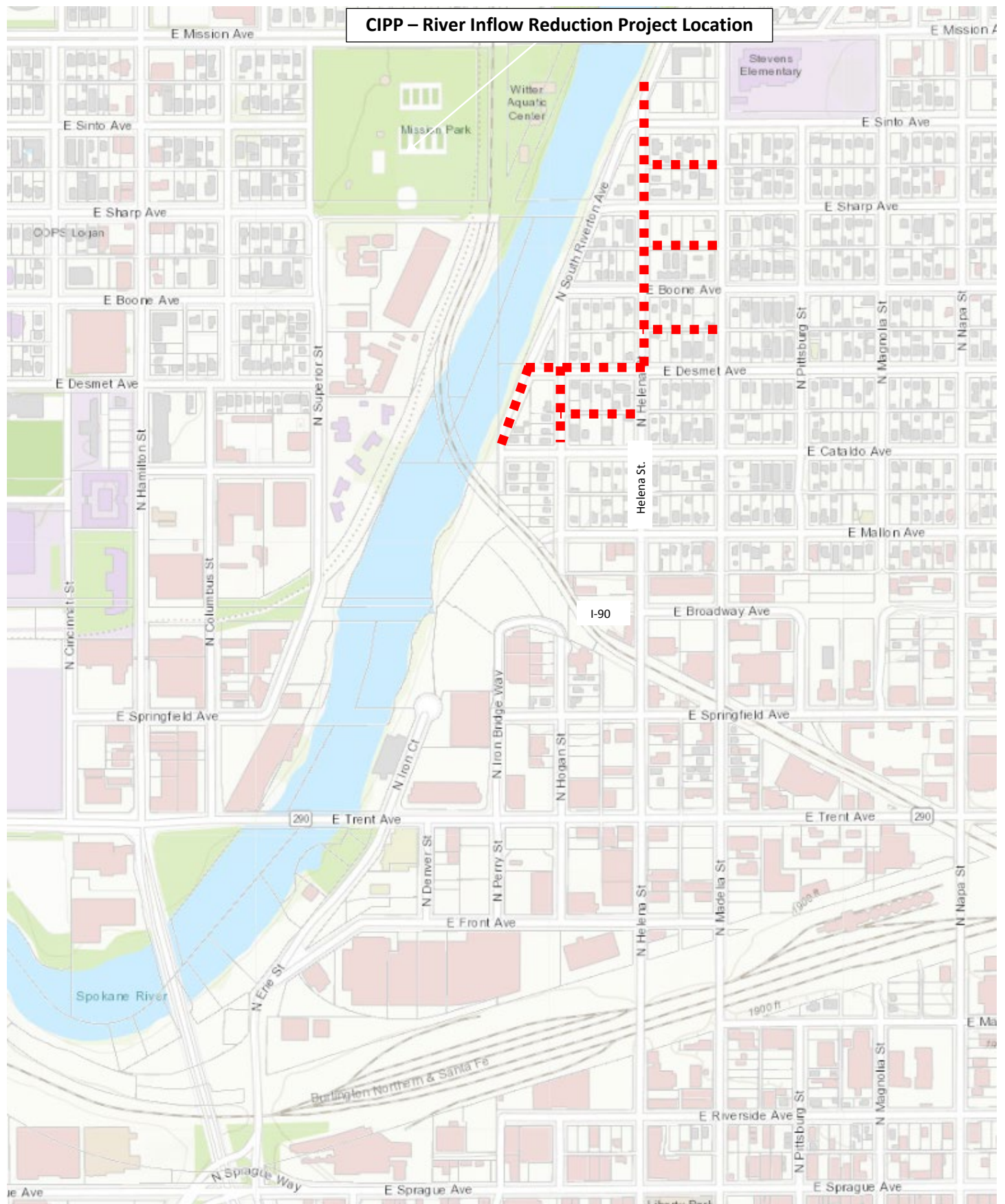
Sustainable Resources

Division & Department:	Engineering Services; Public Works
Subject:	Cure in Place Pipe (CIPP) 2018 & CIPP – River Inflow Reduction
Date:	March 18, 2019
Contact (email & phone):	Dan Buller (dbuller@spokanecity.org , 625-6391)
City Council Sponsor:	
Executive Sponsor:	Scott Simmons
Committee(s) Impacted:	PIES
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	6 Year Sewer Plan
Strategic Initiative:	Innovative Infrastructure
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of construction contracts (once bids are opened and recommendation to award submitted to council for approval)
Background/History: <ul style="list-style-type: none"> This briefing paper covers two cure in place pipe (CIPP) projects, one locally funded (project title Cure In Place Pipe (CIPP) 2018) and one funded with a DOE low interest loan (project title CIPP – River Inflow Reduction) In the Cure In Place Pipe (CIPP) 2018 project, the sewer mains selected for rehabilitation (see first attached exhibit) have structural deficiencies as indicated by video logs. In the CIPP – River Inflow Reduction project, the sewer mains selected for rehabilitation (see second attached exhibit) experience huge infiltration (flows increase by up to 5000%) during high spring runoff years which is visible both in video logs and at downstream flow measurement stations. CIPP (cure in place pipe) lines sewer pipe without digging up the road. CIPP is used to reinforce pipes which are failing structurally, to stop infiltration or both. 	
Executive Summary: <ul style="list-style-type: none"> The purpose of the Cure In Place Pipe (CIPP) 2018 project is to line the main due to structural deficiencies. The purpose of CIPP – River Inflow Reduction project is to line the main and side sewer connections to keep river water out of the sewer system during high spring runoff years. Both will be constructed this summer. 	
Budget Impact: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Specify changes required: Known challenges/barriers:	

Cure in Place Pipe (CIPP) 2018 Project Location



CIPP – River Inflow Reduction Project Location



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

Project Number: 2017171

Project Description Cure In Place (CIPP) 2018 SS Rehabilitation

Original Date 3/1/2019 8:21:44 AM

Funding Source Local

Update Date 4/1/2019 1:37:53 PM

Preparer Mike Morris

Addendum

Project Number: 2017171			Engineer's Estimate		Planned and Engineered Construction		Insituform Technologies Inc		Michels Corporation	
Item No	Bid Item Description	Est. Qty	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount

Schedule Description

Tax Classification

Schedule 01

Sales tax shall NOT be included in unit prices

101	REIMBURSEMENT FOR THIRD PARTY DAMAGE	1 EST	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
102	SPCC PLAN	1 LS	*****	2,000.00	*****	3,500.00	*****	500.00	*****	1,075.00
103	MOBILIZATION	1 LS	*****	35,000.00	*****	45,000.00	*****	18,000.00	*****	43,689.00
104	PROJECT TEMPORARY TRAFFIC CONTROL	1 LS	*****	45,000.00	*****	32,500.00	*****	49,300.00	*****	35,300.00
105	CIPP INSTALLATION - 8" DIA	2255 LF	37.00	83,435.00	36.00	81,180.00	25.00	56,375.00	35.00	78,925.00
106	CIPP INSTALLATION - 10" DIA	300 LF	42.00	12,600.00	38.00	11,400.00	40.00	12,000.00	46.00	13,800.00
107	CIPP INSTALLATION - 15" DIA	66 LF	100.00	6,600.00	100.00	6,600.00	183.00	12,078.00	178.00	11,748.00
108	CIPP INSTALLATION - 18" DIA	298 LF	105.00	31,290.00	90.00	26,820.00	75.00	22,350.00	90.00	26,820.00
109	CIPP INSTALLATION - 24" DIA	358 LF	130.00	46,540.00	120.00	42,960.00	111.00	39,738.00	112.00	40,096.00
110	CIPP INSTALLATION - 27" DIA	511 LF	150.00	76,650.00	165.00	84,315.00	143.00	73,073.00	176.00	89,936.00
111	CIPP INSTALLATION - 28" DIA	18 LF	350.00	6,300.00	250.00	4,500.00	865.00	15,570.00	862.00	15,516.00
112	CIPP INSTALLATION - 30" DIA	753 LF	180.00	135,540.00	190.00	143,070.00	150.00	112,950.00	175.00	131,775.00
113	CCTV INSPECTION - 8" DIA	2255 LF	3.00	6,765.00	2.00	4,510.00	5.00	11,275.00	4.25	9,583.75
114	CCTV INSPECTION - 10" DIA	300 LF	4.00	1,200.00	4.00	1,200.00	5.00	1,500.00	4.00	1,200.00
115	CCTV INSPECTION - 15" DIA	66 LF	10.00	660.00	5.00	330.00	6.00	396.00	20.00	1,320.00

<i>Project Number:</i> 2017171			<i>Engineer's Estimate</i>		Planned and Engineered Construction		Insituform Technologies Inc		Michels Corporation	
<i>Item No</i>	<i>Bid Item Description</i>	<i>Est. Qty</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>					Sales tax shall NOT be included in unit prices					
116	CCTV INSPECTION - 18" DIA	298 LF	5.00	1,490.00	10.00	2,980.00	6.00	1,788.00	17.00	5,066.00
117	CCTV INSPECTION - 24" DIA	358 LF	7.00	2,506.00	10.00	3,580.00	13.00	4,654.00	12.00	4,296.00
118	CCTV INSPECTION - 27" DIA	511 LF	7.00	3,577.00	10.00	5,110.00	14.00	7,154.00	11.00	5,621.00
119	CCTV INSPECTION - 28" DIA	18 LF	30.00	540.00	10.00	180.00	17.00	306.00	72.00	1,296.00
120	CCTV INSPECTION - 30" DIA	753 LF	7.00	5,271.00	10.00	7,530.00	19.00	14,307.00	11.00	8,283.00
121	PROTRUDING TAP REMOVAL	5 EA	650.00	3,250.00	250.00	1,250.00	540.00	2,700.00	1,200.00	6,000.00
122	BYPASS PUMPING	1 LS	*****	75,000.00	*****	42,734.00	*****	271,000.00	*****	191,795.00
123	REINSTATE SIDE SEWER CONNECTION - 8" THRU 12" MAINLINE	47 EA	200.00	9,400.00	200.00	9,400.00	93.00	4,371.00	221.00	10,387.00
124	REINSTATE SIDE SEWER CONNECTION - 15" THRU 22" MAINLINE	2 EA	300.00	600.00	300.00	600.00	122.00	244.00	540.00	1,080.00
125	REINSTATE SIDE SEWER CONNECTION - 23" THRU 30" MAINLINE	8 EA	400.00	3,200.00	500.00	4,000.00	184.00	1,472.00	745.00	5,960.00
126	REINSTATE SIDE SEWER CONNECTION - 14" MAINLINE (Segment 22 & 23)	2 EA	750.00	1,500.00	1,500.00	3,000.00	514.00	1,028.00	324.00	648.00
127	MANHOLE CHANNEL WORK	42 EA	150.00	6,300.00	50.00	2,100.00	100.00	4,200.00	132.00	5,544.00
128	CIPP MAINLINE SPOT REPAIR - 21" TO 24" DIA	1 EA	5,000.00	5,000.00	18,500.00	18,500.00	9,200.00	9,200.00	5,710.00	5,710.00
<i>Schedule Totals</i>				607,215.00		588,850.00		747,530.00		752,470.75

	SCHEDULE SUMMARY								
	Sched 1	Sched 2	Sched 3	Sched 4	Sched 5	Sched 6	Sched 7	Sched 8	Total
Engineer's Est	607,215.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	607,215.00
Planned and Engineere	588,850.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	588,850.00
Insituform Technologie	747,530.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	747,530.00
Michels Corporation	752,470.75	0.00	0.00	0.00	0.00	0.00	0.00	0.00	752,470.75

Low Bid Contractor: Planned and Engineered Construction

	Contractor's Bid	Engineer's Estimate	% Variance	
Schedule 01	\$640,668.80	\$660,649.92	3.02	% Under Estimate
Bid Totals	\$640,668.80	\$660,649.92	3.02	% Under Estimate

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

04/15/2019

<u>Date Rec'd</u>	4/2/2019
<u>Clerk's File #</u>	OPR 2018-0810
<u>Renews #</u>	

Submitting Dept	HOUSING & HUMAN SERVICES	Cross Ref #	
Contact Name/Phone	KELLY KEENAN 625-6056	Project #	
Contact E-Mail	KKEENAN@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	CR 20433000
Agenda Item Name	1680 - THE GUARDIANS FOUNDATION AGREEMENT AMENDMENT		

Agenda Wording

CHHS is requesting approval to amend the City's grant agreement with the Guardians Foundation to provide for Warming Center services provision during the month of April, in line with the Warming Centers ramp down plan.

Summary (Background)

The Guardians Foundation has operated three warming center sites as components of the 2018-19 Warming Centers Program: 527 S. Cannon, Salem Lutheran Church and Westminster Church. The grant agreement amendment associated with this request adds funds for operating costs during the month of April and extends the agreement beyond the original 3/31/19.

<u>Fiscal Impact</u>	Grant related? YES	<u>Budget Account</u>
	Public Works? NO	
Expense	\$ 98,200.00	# 0300-53010-65410-54999-99999
Select	\$	#
Select	\$	#
Select	\$	#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	KEENAN, KELLY	<u>Study Session</u>
<u>Division Director</u>	CORTRIGHT, CARLY	<u>Other</u> PS & CH 4/8/2019
<u>Finance</u>	HUGHES, MICHELLE	Distribution List
<u>Legal</u>	DALTON, PAT	tdanzig@spokanecity.org
<u>For the Mayor</u>	ORMSBY, MICHAEL	cbrown@spokanecity.org
Additional Approvals		kburnett@spokanecity.org
<u>Purchasing</u>	WAHL, CONNIE	tsigler@spokanecity.org
<u>GRANTS &</u>	BROWN, SKYLER	kkeenan@spokanecity.org
		chhsaccounting@spokanecity.org
		office.theguardians@gmail.com



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Neighborhood Council)

Summary (Background)

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

Briefing Paper

Public Safety and Community Health Committee

Division & Department:	Neighborhood and Business Services – Community, Housing, and Human Services (CHHS) Department
Subject:	The Guardians Foundation Warming Centers Services Amendment
Date:	4/3/2019
Author (email & phone):	Kelly Keenan (kkeen@spokanecity.org ext. 6056)
City Council Sponsor:	N/A
Executive Sponsor:	Kelly Keenan
Committee(s) Impacted:	Public Safety and Community Health
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	2015-2020 Strategic Plan to End Homelessness; 2015-2020 Consolidated Plan for Community Development
Strategic Initiative:	Safe & Healthy / Reduce Homelessness
Deadline:	Effective Date for the amendment is 4/1/2019
Outcome: (deliverables, delivery duties, milestones to meet)	CHHS is requesting approval to amend the City's grant agreement with the Guardians Foundation to provide for Warming Center services provision during the month of April, in line with the Warming Centers ramp down plan.
Background/History: The Guardians Foundation has operated three warming center sites as components of the 2018-19 Warming Centers Program: 527 S. Cannon, Salem Lutheran Church and Westminster Church. The grant agreement amendment associated with this request adds funds for operating costs during the month of April and extends the agreement beyond the original 3/31/19.	
Executive Summary: The amendment to the Guardians Foundation grant agreement includes: <ul style="list-style-type: none"> The addition of \$98,200 for operational funding, bringing the total of the grant agreement to \$644,354. An extension of the grant agreement through 5/6/19, to allow for warming center service provision during April in line with the Warming Centers ramp down plan, and a cleanup period after warming center services have ended. 	
Budget Impact: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If new, specify funding source: N/A Other budget impacts: N/A	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Specify changes required: None. Known challenges/barriers: None.	



City of Spokane
AGREEMENT AMENDMENT C
Title: WARMING CENTER PROGRAM

This Agreement Amendment is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **The Guardians Foundation, Inc.**, whose address is 115 North Stone Street, Spokane, Washington 99202 as ("GRANTEE").

WHEREAS, the parties entered into an Agreement wherein the GRANTEE agreed to administer for the City the Warming Center Program; and

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

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

WHEREAS, additional funds are necessary to complete the Project, thus the original Agreement needs to formally Amended by this written document; and

WHEREAS, the parties desire to increase funding and modify the corresponding Project budget and to supplant the original Agreement billing form Attachment referenced as part of the original Agreement documents; and

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

1. CONTRACT DOCUMENTS.

The original Agreement, dated December 7, 2018, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

This Agreement Amendment shall become effective on April 1, 2019.

3. EXTENSION.

The Agreement documents are hereby extended and shall run through May 6, 2019.

4. AMENDMENT.

SECTION NO. 3 – BUDGET. The total amount City shall pay GRANTEE is increased by **NINETY EIGHT THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$98,200.00)** for everything furnished and done under this Amendment which equates to a new total Agreement amount not to exceed **SIX HUNDRED FORTY FOUR THOUSAND THREE HUNDRED FIFTY FOUR AND NO/100 DOLLARS (\$644,354.00)** for everything furnished and done under the original Agreement and this Amendment. This is the maximum amount to be paid under this Amendment and original Agreement, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Agreement and this Amendment document. The original Agreement BUDGET chart is modified as follows (this budget chart entirely replaces the budget chart portrayed in SECTION NO. 3 {page 3} of the original Agreement):

Category	Amount
Salaries & Benefits	\$551,257
Insurance	\$864
Transportation	\$12,172
Supplies	\$21,204
Training	\$280
Indirect Costs	\$58,577
TOTAL	\$644,354

5. AMENDMENT.

SECTION NO. 4 – PAYMENT. The original Agreement is amended as follows:

CITY shall reimburse GRANTEE an amount not to exceed the amount set forth on the FACE SHEET of this Agreement for all things necessary, or incidental to the performance of services as set forth in Section No. 1 of this Agreement.

GRANTEE's reimbursement for services set forth in Section No. 1 of this Agreement shall be in accordance with the terms and conditions outlined in the BUDGET chart located in Section No. 3 of this Agreement (above), as well as in accordance with the Program performance requirements. The CITY reserves the right to revise this amount in any manner which the CITY may deem appropriate in order to account for any future fiscal limitations affecting the CITY.

CITY may advance payment to GRANTEE to cover certain approved expenses on a case by case basis. GRANTEE is required to submit all supporting documentation as requested by the CITY.

6. AMENDMENT.

SECTION NO. 7.H.2 – PAYMENT PROCEDURES. The original Agreement is amended as follows:

The CITY shall reimburse the GRANTEE only for actual incurred costs upon presentation of accurate and complete reimbursement forms as provided by the CITY in ~~Attachment A~~ Attachment 1, and approved by the CITY. Only those allowable costs directly related to this Agreement shall be paid. The amount of each request must be limited to the amount needed for reimbursement of eligible costs.

Requests for reimbursement by GRANTEE shall be submitted no more than once per month on or before the 10th of each month for the previous month's expenditures, using the forms provided by the CITY in ~~Attachment A~~ Attachment 1. For expenses incurred during the month of December, the reimbursement request shall be submitted on or before the 8th of January and for expenses incurred during the month of June, the reimbursement request shall be submitted on or before the 8th of July. In conjunction with each reimbursement request, GRANTEE shall certify that services to be performed under this Agreement do not duplicate any services to be charged against any other grant, subgrant or other founding source. GRANTEE shall submit reimbursement requests to the CITY's Contract Representative designated on the Face Sheet of this Agreement either by mail to the address listed above or by e-mail to chhsreports@spokanecity.org.

Invoices must be submitted with appropriate supporting documentation, including copies of receipts, as well as invoices and time and effort tracking as directed by the CITY's Contract Representative designated on the Face Sheet of this Agreement.

Payment will be made via direct deposit/ACH within thirty (30) days after receipt of the GRANTEE's complete reimbursement request, except as provided by state law. If the CITY objects to all or any portion of the invoice, it shall notify the GRANTEE 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.

In the event that the CITY determines any funds were expended by the GRANTEE for unauthorized or ineligible purposes, or the expenditures constitute disallowed costs in any other way, the CITY may order repayment of the same. The GRANTEE shall remit the disallowed amount to the CITY within thirty (30) days of written notice of the disallowance.

- a. The GRANTEE agrees that funds determined by the CITY to be surplus upon completion of the Agreement will be subject to cancellation by the CITY;
- b. The CITY shall be relieved of any obligation for payments if funds allocated to the CITY cease to be available for any cause other than misfeasance of the CITY itself; and

- c. The CITY reserves the right to withhold payments pending timely delivery of Program reports or documents as may be required under this Agreement.

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

THE GUARDIANS FOUNDATION, INC.

By _____
Signature Date

Type or Print Name

Title

Attest:

City Clerk

CITY OF SPOKANE

By _____
Signature Date

Type or Print Name

Title

Approved as to form:

Assistant City Attorney

Attachments that are part of this Agreement:

Attachment 1 – REVISED Grantee Billing Form

Attachment 2 – Debarment Certification

Information & Instructions for Completing Grantee Billing Form & Itemized Expense Reports

A reimbursement request, otherwise known as a bill, consists of a Grantee Billing Form, Payee Expense Report, Staff Expense Report and detailed documentation of the expenses. The billing form includes the approved budget categories and amounts during the active performance period of the Agreement. The Payee Expense Report and Staff Expense Report should be completed to detail each itemized expense being requested on the billing form in the Current Expense Request in Column B in aggregate value for each Approved Budget Category for the current expense period.

You should bill monthly for expenditures. If there have been no expenditures paid for the previous month, an invoice is not required. Please submit a final reimbursement request with all required documentation by the identified date in your Agreement. A final program report will be required to be submitted as well. You will not be paid until all documentation and final reports are received. HMIS Data MUST be electronically posted in the HMIS database before invoices will be paid.

Complete the Staff Expense Report for each employee you are requesting reimbursement of salary and fringe benefits based on the allowed activity and amount of actual time spent performing that activity. Record the employee Name, allowed Activity being funded, the Expense Category of the approved budget applicable to the activity, Total Hours Worked, Hours Worked on Listed Activity, and Total Salary & Fringe paid during the Expense Period. If you are claiming indirect costs, indicate whether or not each expense is included in your indirect cost base. Total Salary and Fringe should be reflected as the monthly amount. If your grant supports more than one project, complete the Project Name column to clearly associate each expense with a single project.

Complete the Payee Expense Report for the project expenses that are not staff salary/benefits or housing assistance. Record the Payee (who you paid), Expense Category (Rapid Re-Housing, Emergency Shelter or Administration), Expenditure Type (Rent, Housing Stabilization, Program Operations, etc.), Total Bill (total amount of expense). If you are claiming indirect costs, indicate whether or not each expense is included in your indirect cost base. If your grant supports more than one project, complete the Project Name column to clearly associate each expense with a

Complete the Housing Assistance Detail Report for each housing assistance expense (rental application fees, rental assistance, security deposits, etc.) you are claiming reimbursement for. Record the HMIS client ID number, housing assistance expense type (application fee, security deposit, rent assistance, etc.) unit/FMR info if known, client lease information if known, and reimbursement information. If your grant is providing housing assistance through two or more projects, complete a Housing Assistance Detail Report for each one. If needed, complete the Housing Assistance Adjustment Report to explain changes to previously reported housing assistance expenses charged to the grant including Adjustment Reason.

The voucher and itemized expense reports MUST be signed in ink. The formulas should not be changed or adjusted in the form(s).

Completing the Grantee Billing Form:

☐ Name and address of your organization requesting reimbursement.

☐ Expense Period (should bill as monthly expenses, January, February, etc.)

☐ Enter total amount of Monthly Actual in Column B to represent the amount requested for reimbursement for the current period in the line item category of the approved budget (i.e. - Rapid Re-Housing, Emergency Shelter and Administration) and should reflect the total of itemized expenses on the Payee Expense and Staff Expense Reports. The Payee Expense and Staff Expense Reports must be completed and submitted with the billing form. You may not transfer funds between approved categories without written preapproval from the City.

☐ Enter Total Previously Requested in Column C, as applicable to each line item in the approved category of the budget. The amount entered should reflect all previously requested amounts except the current monthly amount. This must be completed and updated each time you prepare the form to request reimbursement of expenses. (The documents' formulas will calculate totals and update remaining Budget Balance in Column D to ensure reconciliation and budget tracking for both the agency and the City).

☐ Ensure all back up documentation is included for payment processing if you are using any type of the allocation for direct or indirect expenses please send the allocation plan to the City for review and approval if it has not already been provided.

☐ Sign in ink, provide title, date, email address and telephone number before sending for approval and payment processing to City of Spokane Community, Housing, and Human Services Department.

Documentation Required for Billing Forms:

All requests for reimbursement must be supported by documentation necessary to show that the costs charged to the grant funds were incurred during the active performance period of the Agreement, were actually paid out, were allowable items and have been approved by the responsible official within the organization. For example:

Salary and Fringe – receipts, payroll reports, timesheets signed by the employee and the immediate supervisor, letters of employment that include rate of pay, benefits and employee withholdings. For staff directly charged to a grant funded program or project time and attendance records should be included as well. Other sources of documentation might include, canceled checks from employees, insurance provider, etc. or evidence of direct deposits which document outlay of expenses. **100% of the time daily must be recorded for all hours worked by activity performed. This is required for all federally funded grant positions.**

Rent/Utilities – proof of payment to vendor, rental or lease agreement, utility bills. If the cost of the space or utilities is split between grant funded and other sources, there must be a reasonable method in place to allocate the charges fairly among the sources and the method provided.


Supplies and Materials (all Goods) – proof of payment to vendor, purchase orders, requisition forms, receipts, and invoices from vendors. It's also helpful to keep information regarding where the supplies are stored and for what program or project are they being used in the organizations' internal file.

Equipment – proof of payment to vendor, purchase orders, requisition forms, receipts, and invoices from vendors. Packing slips are only proof of delivery and do not act as an invoice from the vendor. If the item received is an inventorial piece of equipment, the serial number, model, and inventory tag should be noted on the purchase order or invoice from the vendor.

Other – proof of payment, receipts, invoices from vendor. Please contact the City for specific questions on required documentation.

Admin/Indirect Costs – methodology of application applied in accordance with Federal Guidance on allocation of direct costs for non-profits using the base most appropriate (for federally funded agreements) or applied in accordance with a methodology that the City has approved the use of (for agreements funded with non-federal sources).

If you are allocating either direct expenses or indirect expenses using a rate other than a federally negotiated rate or the de minimis rate (10% MTDC) the use of your allocation plan must be approved by the City prior to you charging the grant program. The allocation should consist of your pooled costs or cost basis and the narrative for the methodology applied to determining the calculated rate or percentage. Direct expenses allocated usually include utilities, rent, agency liability insurance, and may include staff paid time allocated as well.

	City of Spokane Grantee Billing Form 2018 - 2019 Warming Center Program		City Clerk #	OPR 2018-0810
			Vendor ID #	048660
			FMS Acct #	0300-53010-65410-54999-99999
SUBMIT BILLING TO: City of Spokane Community, Housing, and Human Services Dept. 808 W. Spokane Falls Blvd, 6th Floor Spokane, WA 99201			Submit this form to claim payment for materials, merchandise, and/or services. Show complete detail for each item. Vendor/Claimant Certificate: I hereby certify under perjury that the items and totals listed herein are proper charges for materials, merchandise and/or services furnished, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion or Vietnam era or disabled veteran status. By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812). Services performed under this Agreement do not duplicate any services to be charged against any other grant, subgrant or other funding source.	
GRANTEE (Warrant is to be payable to:) The Guardians Foundation 115 N Stone St Spokane, WA 99202				
Grantee Certification				
Project/Program:	Warming Centers		By:	
Award Number:	N/A		(SIGN IN INK)	
National Objective:	N/A		(TITLE) (DATE)	
Eligibility Code:	N/A			
IDIS Activity ID:	N/A		(EMAIL ADDRESS) (TELEPHONE NUMBER)	
Grant Term:	11/26/2018 - 03/31/2019		Billing date:	
Indirect Cost Rate:	10% MTDC		Expense Period:	
EXPENSE Categories:	<u>A</u> Grant Budget	<u>B</u> Current Expense Request	<u>C</u> Total Previously Requested	<u>D</u> Grant Balance (A-B-C)
Salaries & Benefits	\$ 551,257.00	\$ -	\$ 424,912.16	\$ 126,344.84
Insurance	\$ 864.00	\$ -	\$ 863.40	\$ 0.60
Transportation	\$ 12,172.00	\$ -	\$ 11,471.50	\$ 700.50
Supplies	\$ 21,204.00	\$ -	\$ 17,694.63	\$ 3,509.37
Training	\$ 280.00	\$ -	\$ 280.00	\$ -
Indirect Costs - 10% MTDC	\$ 58,577.00	\$ -	\$ 45,521.78	\$ 13,055.22
GRAND TOTAL	\$ 644,354.00	\$ -	\$ 500,743.47	\$ 143,610.53
Contract Amount (auto populated)		\$ 644,354.00	% Expended:	77.71%
Total Expended to Date (auto populated)		\$ 500,743.47	% Remaining:	22.29%
Contract Remaining Balance		\$ 143,610.53		
<input type="checkbox"/> ← Check box if final request.			CHHS Approval:	

Payee Expense Report

Organization:	The Guardians Foundation	Grant #:	N/A	City Clerk #:	OPR 2018-0810
Prepared By:		Title:		Date:	
Please complete the table for ALL (non-Staff) expenses for the reported period. Copies of receipts and invoices MUST be attached.					
Payee/Vendor Name	Expense Category (Support Services, Operating Expenses, etc.)	Expenditure Type (Rent, Maintenance, Furnishings, Case Management etc.)	Direct Amount Billed to Grant	Indirect Amount Billed to Grant	Total
EXAMPLE: Avista	Operating Expenses	Utilities	\$ 90.91	\$ 9.09	\$ 100.00
			\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -
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Total Current Expenses Requested this Period			\$ -	\$ -	\$ -

Staff Expense Report

Organization:	The Guardians Foundation	Grant #:	N/A	City Clerk #:	OPR 2018-0810			
Prepared By:		Title:		Date:				
Please complete the table for all STAFF expenses for the reported period. Signed timesheets MUST be attached.								
Name	Activity Funded	Total Hours Worked (100% of time on ALL activities)	Hours Worked on Listed Activity	Total Salary and Fringe paid to Employee	Direct Amount Billed to Grant	Indirect Amount Billed to Grant	Total Billed to this Grant	Match Contribution this Period
Example: Doe, John	Case Management	80.00	60.00	\$ 1,200.00	\$ 818.00	\$ 82.00	\$ 900.00	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
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				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
Total Staff Expenses Requested this Period					\$ -	\$ -	\$ -	\$ -

ATTACHMENT 2 - DEBARMENT CERTIFICATION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. The undersigned (i.e., signatory for the Subrecipient / Grantee / 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, unless authorized by the City.
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

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

1. The lower tier contractor certified, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.\
4. The undersigned shall notify the City immediately that if it or a lower tier contractor become debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency during the period of performance of this Agreement.
5. 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.
6. I understand that a false statement of this certification may be grounds for termination of the Agreement.

<u>The Guardians Foundation, Inc.</u> Name of Subrecipient / Grantee / Contractor / Consultant (Type or Print)	<u>Warming Center Program</u> Program Title (Type or Print)
 <u>Name of Certifying Official (Type or Print)</u>	 <u>Signature</u>
<u>Title of Certifying Official (Type or Print)</u>	<u>Date (Type or Print)</u>

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

04/15/2019

<u>Date Rec'd</u>	3/26/2019
<u>Clerk's File #</u>	OPR 2019-0268
<u>Renews #</u>	

Submitting Dept	ASSET MANAGEMENT	Cross Ref #	RES 2018-0102
Contact Name/Phone	DAVID STEELE 625-6064	Project #	2012119
Contact E-Mail	DSTEELE@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	5900 - PURCHASE & SALE AGREEMENT - CODY DEVELOPMENT CORP.		

Agenda Wording

Purchase and Sale Agreement between the City of Spokane and Cody Development Corporation for the sale of .55 acres, situated at 304 East Riverside Avenue and 15 North Grant Street.

Summary (Background)

The City of Spokane acquired these parcels as part of the ROW acquisition for the U-District pedestrian bridge South landing area for \$444,181.00 With the completion of the project, those portions of the acquired property that are no longer needed for the ongoing function or maintenance of the completed bridge have been deemed surplus. This sale agreement completes the disposition process for the properties included in this sale agreement. The buyer has agreed to a purchase price of \$595,125.00.

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

Revenue	\$ 595,125.00	# 3200 95023 99999 39510 99999
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	HARRIS, CURTIS	<u>Study Session</u>	
<u>Division Director</u>	SANDERS, THERESA	<u>Other</u>	date
<u>Finance</u>	HUGHES, MICHELLE	<u>Distribution List</u>	
<u>Legal</u>	RICHMAN, JAMES	eraea@spokanecity.org	
<u>For the Mayor</u>	ORMSBY, MICHAEL	dsteele@spokanecity.org	
<u>Additional Approvals</u>		cwofff@spokanecity.org	
<u>Purchasing</u>			



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

For those portions included in this sale agreement, the buyer has agreed to a purchase price of \$204,000.00.

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

PURCHASE AND SALE AGREEMENT

This Agreement is entered into as of _____ (the "Effective Date"), by and between the CITY OF SPOKANE, a Washington municipal corporation ("Seller"), and Cody Development Corp., an Oregon "S" limited corporation ("Buyer").

Whereas, the parties are desirous of entering into an agreement whereby the Buyer will purchase property owned by the Seller, consistent with Buyer's Proposal.

NOW, THEREFORE, in consideration of the respective agreements set forth below and for valuable consideration, the receipt and sufficiency of which is acknowledged, Seller and Buyer agree as follows:

1. Sale of Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, certain real property consisting of approximately .55 acres, situated at 304 E. Riverside and 15 N. Grant, in the City and County of Spokane, State of Washington, and legally described in Exhibit "A" hereto (the "Property").

2. Earnest Money. Within five (5) working days of the execution of this Agreement by both Seller and Buyer, Buyer shall deliver to Spokane County Title Company in Spokane, Washington ("Title Company"), as escrow agent for the closing of this transaction, Five Thousand and 00/100 Dollars (\$5,000.00), to be paid or delivered as earnest money (the "Earnest Money") in part payment for the Purchase Price of the Property. The Title Company will hold the Earnest Money for the benefit of the parties pursuant to the terms of this Agreement. Any interest that accrues on the Earnest Money will be for the benefit of Buyer; provided, however, that if Buyer forfeits the Earnest Money to Seller pursuant to the terms of this Agreement, then all interest accrued on the Earnest Money will be paid to Seller.

3. Purchase Price. The purchase price for the Property (the "Purchase Price") will be Five Hundred Ninety Five Thousand One Hundred Twenty Five and 00/100 Dollars (\$595,125.00), of which the Earnest Money is a part. The Purchase Price, including the Earnest Money, will be paid to Seller in cash through escrow at closing.

4. Title to the Property.

4.1 Conveyance. At closing Seller shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged statutory warranty deed (the "Deed"), free and clear of all defects and encumbrances and subject only to those exceptions that Buyer approves pursuant to Section 4.2 below (the "Permitted Exceptions"). The Deed will reserve to Seller an option to purchase the Property back from Buyer for the Purchase Price, as defined in Section 3 below, if within two (2) years of closing under this Agreement Buyer has failed to obtain building permits for an office building having a floor area of at least 20,000 square feet; alternatively, the Buyer will grant the City a purchase option at closing on the same conditions.

4.2 Preliminary Commitment. Seller shall order a preliminary commitment for an owner's standard coverage policy of title insurance in the amount of the Purchase Price to be issued by the Title Company and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment"). Within fifteen (15) days of Seller's delivery of a copy of the Preliminary Comment to Buyer, Buyer shall advise Seller by written notice of the exceptions to title, if any, that are disapproved by Buyer ("Disapproved Exceptions"). All monetary encumbrances other than nondelinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Exceptions or (ii) Seller elects not to remove Disapproved Exceptions. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Exceptions. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer.

If Seller elects not to remove any nonmonetary Disapproved Exemptions, Buyer will have until the expiration of the Feasibility Study Period to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives notice that it will cause one or more nonmonetary exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Buyer will have the right to either (i) elect to terminate this Agreement by written notice to Seller or (ii) proceed with the purchase, with an abatement of the Purchase Price equal to the actual cost of removing from title those exceptions not approved by Buyer, and to take the Property subject to those exceptions. If Buyer elects to terminate this Agreement under this Section 6.2, the escrow will be terminated, the Earnest Money shall be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this

Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

4.3 Title Policy. Seller shall cause Title Company to issue to Buyer at closing a standard coverage owner's policy of title insurance insuring Buyer's title to the Property in the full amount of the Purchase Price subject only to the Permitted Exceptions (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

5. Conditions to Closing.

5.1 Due Diligence Materials. Seller shall provide to Buyer, or make available to Buyer for inspection, as soon as possible (but in any event no later than fifteen (15) days after the Effective Date) all materials relating to the Property specified in this Section 5.1 that exist and that are in Seller's actual possession or that Seller knows exist and to which Seller has access (collectively, the "Due Diligence Materials"). If Seller thereafter discovers any additional items that should have been included among the due diligence materials, Seller shall promptly deliver them to Buyer. Due Diligence Materials will include:

5.1.1 existing environmental assessment reports;

5.1.2 surveys;

5.1.3 architectural contracts;

5.1.4 soils investigation reports;

5.1.5 seismic studies;

5.1.6 pest reports;

5.1.7 copies of service contracts;

5.1.8 leases and maintenance agreements;

5.1.9 a list of any utility dues and any other fees, dues, and taxes applicable to the Property for the past two (2) years;

5.1.10 a schedule outlining capital expenditures and development costs, showing the cost and nature of the work performed, if any; and

5.1.11 copies of the lease files for any current leases, including without limitation leases of any and all amendments, riders, licenses or occupancy agreements and any guaranties of the leases and a current rent roll for the Property, and copies of any pending or threatened claims or actions relating to the Property, and any governmental notices regarding uncured violations of laws or regulations.

5.2 Feasibility Study.

5.2.1 One hundred and twenty-day period. During the period ending on the date which is one hundred and twenty (120) days following the Effective Date (the “Feasibility Study Period”), Buyer may conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer’s intended use (the “Feasibility Study”).

The Feasibility Study may include all inspections and studies Buyer deems necessary or desirable, in its sole discretion. Buyer and Buyer’s agents, representatives, consultants, architects and engineers will have the right, from time to time, during the Feasibility Study Period to enter onto the Property and make borings, drive test piles and conduct any other test and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Buyer’s intended use. Such tests and inspections are to be performed in a manner not disruptive to tenants or to the operation of the Property. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released.

5.2.2 Extension of feasibility study period. Buyer will have the right, at Buyer’s sole option, to extend the Feasibility Study Period for an additional ninety (90) days (the “Extension Period”). Buyer’s right to extend must be exercised by providing written notice to Seller on or before the expiration of the Feasibility Study Period. In the event Buyer elects to extend the Feasibility Study Period, Buyer shall deposit an additional Five Thousand Dollars (\$5,000.00) into escrow as additional earnest money deposit under the same terms and conditions set forth in Section 2 above.

5.2.3 Entitlements. Upon completion of the Feasibility Study Period, as extended under Section 5.2.2 above, Buyer will have one hundred eighty (180) days to perform entitlement related work (“Entitlement Period”). As used in this Agreement, the term entitlement(s) shall mean all governmental or other zoning, environmental, archeological, historical and other land use approvals, licenses, consents, waivers, abandonments or relocations of easements, entitlements and permits as Buyer, in its discretion, deems

necessary or advisable in order to develop Buyer's project on the Property. The Earnest Money, including any additional money paid by Buyer to extend the Feasibility Study Period, shall become nonrefundable to the Buyer upon the expiration of the Entitlement Period.

5.2.4 Termination of Agreement. Prior to the expiration of the Entitlement Period, Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not suitable for Buyer's intended use or does not meet Buyer's intended investment objectives. Buyer's right to terminate must be exercised by delivering written notice of its election to Seller on or before the expiration of the Feasibility Study Period, or the Extension Period if exercised. In the event Buyer does not complete the purchase, Buyer shall return the Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this Section 5.2.4, except as provided in Section 5.2.2 the Earnest Money will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for Buyer's obligations to indemnify Seller under this Agreement.

5.2.5 Confidentiality of studies and reports. Prior to closing of the purchase of the Property, Buyer will not distribute or divulge the information or materials it and its agents and consultants may generate in connection with the Feasibility Study to other persons except as may be required by law or as may be necessary or desirable in connection with Buyer's evaluation of the Property and its suitability; provided, that during this time period no information or materials concerning wetlands or environmental matters will be divulged to any governmental entity without Seller's written consent, unless required by law. If Buyer elects not to purchase the Property, Buyer agrees that, except as may be required by law, it will not further divulge or further distribute the information and materials except with Seller's consent.

Notwithstanding the foregoing, if Buyer elects not to purchase the Property, and if Seller requests copies of the written reports and studies prepared for Buyer in connection with its Feasibility Study, then Buyer will deliver to Seller copies of the final reports and studies. Buyer will, in that event, cooperate reasonably with Seller to coordinate Seller's communications with the consultants, provided Buyer will not be obligated to bear any costs or expend more than a reasonable period of time in doing so.

5.2.6 Buyer's indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of

injuries or damages to person, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer or its agents or employees in exercising its rights under the right of entry granted in this Section 5, except for claims caused by Seller's negligence.

5.3 Buyer's contingencies. Buyer's obligation to purchase the Property is expressly contingent upon the following:

5.3.1 Feasibility Study. Buyer's approval, prior to expiration of the Feasibility Study Period and the Extension Period (if exercised by Buyer), of the suitability of the Property as a result of the Feasibility Study;

5.3.2 Environmental condition. Buyer's approval, prior to expiration of the Feasibility Study Period, of the environmental condition of the Property pursuant to Section 11 below;

5.3.3 Title Policy. Buyer's receipt of Title Company's firm commitment to issue, upon closing, the Title Policy as described in Section 4.3;

5.3.4 Entitlements. Buyer's receipt of the land use approvals necessary to allow Buyer to develop Buyer's project on the Property.

5.3.4 Seller's compliance. Seller's timely performance of all of its obligations under this Agreement; provided, Seller will be given notice of any failure on its part to perform any such obligations and will have a period of time that is reasonable under the circumstance to cure its nonperformance; and

The foregoing conditions contained in Section 5.3 are collectively referred to in this Agreement as "Buyer's Contingencies." The parties shall diligently attempt to timely satisfy all of the Buyer's Contingencies.

5.4 Satisfaction/waiver of Buyer's Contingencies. Buyer's Contingencies are solely for the benefit of Buyer. The parties shall diligently attempt to timely satisfy all of the Buyer's Contingencies. If any of Buyer's Contingencies are not timely satisfied, Buyer will have the right at its sole election either to waive any of them in writing and proceed with the purchase or to terminate this Agreement. If Buyer elects to terminate this Agreement, the escrow will be terminated, the Earnest Money must immediately be returned to Buyer (except as provided in Section 5.2), all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the cost of terminating the escrow.

6. Closing Date. This transaction will be closed in escrow by the Title Company acting as escrow agent ("Escrow Agent"). The closing will be held at the offices of the Title Company on or before that date which is thirty (30) days after the end of the Feasibility Study Period or Extension Period, as the case may be (the "Closing Date"). Buyer shall have the right on a one-time basis only to extend the Closing Date up to thirty (30) additional calendar days by tendering notice to Seller and posting and releasing to Seller an additional Twenty Thousand Dollars (\$20,000.00) of nonrefundable "Additional Earnest Money" to be applied against the Purchase Price at closing. If closing does not occur on or before _____, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Earnest Money to the party entitled to receive it as provided in this Agreement, and return all documents to the party that deposited them.

7. Closing.

7.1 Seller's Escrow Deposits. On or before the Closing Date, Seller shall deposit into escrow the following:

7.1.1 the duly executed and acknowledged Deed;

7.1.2 a duly executed and acknowledged Real Estate Tax Affidavit; and

7.1.3 any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered.

7.2 Buyer's Escrow Deposits. On or before the Closing Date, Buyer shall deposit into escrow the following:

7.2.1 cash in an amount sufficient to pay the Purchase Price and Buyer's share of closing costs;

7.2.2 a duly executed and completed Real Estate Excise Tax Affidavit; and

7.2.3 any other documents or instruments Buyer is obligated to provide pursuant to this Agreement (if any) in order to close this transaction.

7.3 Additional Instruments and Documentation. Seller and Buyer shall each deposit any other instruments and documents that are reasonably required by Escrow Agent or otherwise required to close the escrow and

consummate the purchase and sale of the Property in accordance with this Agreement.

7.4 Closing Costs.

7.4.1 Seller's Costs. Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price and one-half of Title Company's escrow fee. It is understood between the parties that pursuant to WAC 458-61-420(c) this sale will be exempt from the Washington State real estate excise tax, and Buyer agrees to cooperate with Seller in executing such documents as are required to qualify Seller for such exemption.

7.4.2 Buyer's Costs. Buyer shall pay the additional premium, if any, attributable to the extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer, the cost of recording the Deed and one-half of Title Company's escrow fee.

7.5 Foreign Investment in Real Property Tax Act. The parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder (the "Regulations").

8. Adjustments and Prorations. The following adjustments and prorations will be made as of the Closing Date (with Buyer either responsible for or entitled to a credit for, as the case may be, the actual Closing Date).

8.1 Property Taxes. All property taxes payable in the year of closing and assessments approved by Buyer, if any, will be prorated as of the Closing Date.

8.2 Utilities. All gas, electric and other utility charges will be prorated as of the Closing Date.

9. Covenants.

9.1 Seller's Covenants.

9.1.1 Covenant to Maintain. Prior to the Closing Date, Seller shall maintain, repair, manage and operate the Property in a businesslike manner in accordance with Seller's prior practices and Seller shall not dissipate any portion of the Property.

9.1.2 Contracts Prior to Closing. Seller shall not enter into any leases, contracts of sale or other agreements that are inconsistent with this Agreement without Buyer's prior written consent.

10. Representations and Warranties.

10.1 Seller's Representations and Warranties. Except as specifically provided in this Agreement, Seller makes no warranty or representation, express or implied, with respect to the condition of the Property or its suitability for any particular purpose.

10.1.1 Seller has full power and authority to convey the Property to Buyer.

10.1.2 Seller has not received notice of any special assessment or condemnation proceedings affecting the Property.

10.1.3 To the best of Seller's knowledge, there is no litigation pending or threatened against Seller (or any basis for any claim) that arises out of the ownership of the Property and that might materially and detrimentally affect (i) the use or operation of the Property for Buyer's intended use, or (ii) the ability of Seller to perform its obligations under this Agreement.

10.2 Waiver of Seller Disclosure Statement. Purchaser expressly waives Purchaser's right to receive from Seller a signed and dated Real Property Transfer Disclosure Statement as contemplated by Chapter 64.06 RCW.

10.3 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that Buyer is a limited liability company, duly organized and validly existing under the laws of the state of Washington; this Agreement and all documents executed by Buyer that are to be delivered to Seller at closing are, or at the time of closing will be (i) duly authorized, executed and delivered by Buyer, (ii) legal, valid and binding obligations of Buyer, and (iii) in compliance with all provisions of all agreements and judicial orders to which Buyer is a party or to which Buyer is subject.

11. Hazardous Materials. Notwithstanding the representations set forth in Section 10 herein above, the City makes no representation regarding any Hazardous Materials Condition, as defined below, affecting the Property. Buyer takes the Property "AS IS" with all physical defects, including those that cannot be observed by casual inspection. Seller will have no obligation to repair or remedy any physical defects of the Property. Buyer may, at its sole cost, expense, and liability, conduct an environmental site assessment of the Property during the Feasibility Period. For the purposes of this paragraph, "Hazardous Materials" shall include, but not be limited to, substances defined as "Hazardous Substances," "Hazardous Materials", "Hazardous Waste," "Toxic Substances", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Section 9601 et seq., the Model Toxic Control Act of the State of Washington and all regulations adopted and publications promulgated pursuant to such laws, collectively "Environmental Laws". A "Hazardous Materials Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of Hazardous Materials that would require remediation and/or removal under applicable Federal, State or local law. In the event Buyer notifies Seller prior to the Closing Date that the Property is affected by a Hazardous Materials Condition and such notice is accompanied by a report from an engineering company with experience in evaluating such matters, Buyer may either (a) terminate this contract, or (b) proceed to Closing notwithstanding such contamination. In the event Buyer elects to terminate this contract pursuant to this paragraph, Buyer shall receive a refund of the entire Earnest Money, plus any interest accrued thereon. To the extent allowed by law, the environmental due diligence investigation provided for herein and any information or documents produced or collected by the environmental consultant in connection with this investigation shall be considered to be confidential information by the Buyer and City until Closing. Prior to Closing, or in the event Closing does not occur, Buyer shall not disclose such information to any third party or initiate or have any direct contact with any governmental agencies in connection with the environmental investigation without the prior written consent of the City's Director of Asset Management. Buyer may disclose said information to its employees, attorneys, consultants, lenders, and others who have a need to know and use the information in connection with this transaction, and may disclose said information if required to do so by law, or by court order. If the environmental investigation reveals any conditions that applicable laws require to be reported to any governmental agency, the City shall have the responsibility to make such reports or disclosures, but Buyer shall have the right to do so in the event the City fails to do so within any time period required by applicable law.

12. Eminent Domain. If all or any part of the Property is taken by condemnation or eminent domain and the value of the portion of the Property so taken exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00), Buyer may, upon written notice to Seller, elect to terminate this Agreement, and in such

event all monies theretofore paid on account must be returned to Buyer, and neither party will have any further liability or obligation under this Agreement. If all or any portion of the Property has been or is hereafter condemned or taken by eminent domain and this Agreement is not canceled, Seller's right, title and interest in and to any awards in condemnation or eminent domain, or damages of any kind, to which Seller may have become entitled or may thereafter be entitled by reason of any exercise of the power of condemnation or eminent domain with respect to the Property or any portion thereof shall accrue to Buyer.

13. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date.

14. Events of Default.

14.1 By Seller. If there is an event of default under this Agreement by Seller (including a breach of any representation, warranty or covenant), Buyer will be entitled (a) in addition to all other remedies available at law or in equity, to seek specific performance of Seller's obligations under this Agreement or (b) to terminate this Agreement by written notice to Seller and Escrow Agent. If Buyer terminates this Agreement, the escrow will be terminated, the entire Deposit must immediately be returned to Buyer, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement except that Seller shall pay any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

14.2 By Buyer. IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY, THE EARNEST MONEY DEPOSIT MADE BY BUYER WILL BE FORFEITED TO SELLER AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER FOR SUCH FAILURE.

Seller's Initials

Buyer's Initials

15. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by Mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Seller:	City of Spokane
	Attn: Ed Lukas
	808 W Spokane Falls Blvd

Spokane, WA 99201

With a copy to: James Richman
Office of the City Attorney
808 W Spokane Falls Blvd
Spokane, WA 99201

Buyer: Cody Development Corp.
Attn: Thomas Cody
2359 NW Overton St.
Portland, OR 97209

Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit at any post office in the United States of America, and if delivered via facsimile, the same day as verified, provided that any verification that occurs after 5 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9 a.m. on the following business day.

16. Brokers and Finders. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or a finder's fee as procuring cause of the purchase and sale contemplated by this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim.

17. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

19. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Washington.

20. Entire Agreement. This Agreement and the exhibits to it constitute the entire agreement between the parties with respect to the purchase and sale of the Property, and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth.

21. Attorney Fees. Each party shall pay its own legal fees relating to negotiation and drafting of this Agreement and the documents to be executed at closing. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not substantially prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy court proceeding.

22. Time of the Essence. Time is of the essence of this Agreement.

23. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of a subsequent breach of the same covenant.

24. Nonmerger. The terms and provisions of this Agreement, including, without limitation, all indemnification obligations will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

26. Assignment. Buyer may assign its rights under this Agreement at any time prior to Closing to a to be formed limited partnership in which Buyer is a majority owner.

27. Governmental Approval. Buyer acknowledges and agrees that this Agreement does not bind the City of Spokane until it is signed by the Mayor following approval by the Spokane City Council in open public meeting.

28. Exhibit. The following exhibit is attached to and made a part of this Agreement by this reference.

EXHIBIT A – Legal Description of the Property

In witness whereof, the Buyer and Seller have signed this Agreement effective as of the date first hereinabove written.

Cody Development Corp.

CITY OF SPOKANE

By: Thomas E. Cody
Its: President

By: _____
Mayor

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

STATE OF WASHINGTON :
County of Spokane :ss.

On this ____ day of _____, 20__, before me personally appeared David Condon and Terri Pfister, to me known to be the Mayor and the City Clerk, respectively, of the CITY OF SPOKANE, a municipal corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State
of Washington, residing at Spokane
My Appointment expires _____

STATE OF WASHINGTON :
:ss.
County of Spokane :

On this ____ day of _____, 20____, before me personally appeared _____, to me known to be the _____ of TRG Partners, a Washington limited liability company, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the entity, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public in and for the State
of Washington, residing at Spokane
My Appointment expires _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 10, INCLUSIVE, AND THE EAST HALF OF LOT 11 IN BLOCK 5 IN FIRST ADDITION TO THIRD ADDITION TO RAILROAD ADDITION TO SPOKANE, ACCORDING TO PLAT RECORDED IN VOLUME "C" OF PLATS, PAGES 23 AND 24

Tax Parcel Nos. 35173.1301, 35173.1302, and 35173.1308



**Washington State
Public Works Board**

Post Office Box 42525
Olympia, Washington 98504-2525

March 6, 2019

James A. Richman, Attorney
City of Spokane
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3326

RE: City of Spokane's SD12-963-142, University District Pedestrian Bike project, surplus property

Dear Mr. Richman,

In response to your letter dated February 6, 2019. The Public Works Board has approved to authorize the city to sell certain properties in connection to the SD12-963-142 grant issued for the University District Pedestrian Bike project. Furthermore, the city is allowed to keep the sale proceeds to finance other non-motorized public transportation projects in the city.

If you have any questions regarding this letter, please contact me at 360-725-3088 or via email at connie.rivera@commerce.wa.gov.

Sincerely,

Connie Rivera
Program Manager

PAT J. DALTON
SENIOR ASSISTANT CITY ATTORNEY

ASSISTANT CITY ATTORNEYS

SALVATORE J. FAGGIANO	NATHANIEL J. ODLE
MATTHEW M. FOLSOM	MICHAEL J. PICCOLO
MARGARET HARRINGTON	JAMES A. RICHMAN
MARY F. MURAMATSU	ELIZABETH L. SCHOEDEL
MARIMAR I. ODLE	TIMOTHY E. SZAMBELAN



OFFICE OF THE CITY ATTORNEY
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3326
509.625.6225
509.625.6277 FAX

MICHAEL C. ORMSBY
CITY ATTORNEY

February 6, 2019

Via e-mail:
Connie.Rivera@commerce.wa.gov

Ms. Connie Rivera
Program Manager, Public Works Board
Local Government Division
Washington State Department of Commerce
1011 Plum Street SE
Olympia, WA 98504

Re: Public Works Trust Fund Capital Grant Agreement Number SD12-963-142
2012 Jobs Now Act – University District Pedestrian/Bicycle Bridge \$3,200,000
Proposal to Sell Surplus Real Property Acquired with Grant Funds

Dear Connie:

Please accept the following as the City of Spokane's request for Board approval of the proposed sale of certain properties acquired in connection with Public Works Trust Fund Capital Grant Agreement Number SD12-963-142, relating to the University District Pedestrian/Bicycle Bridge in the City of Spokane, Washington (the "Bridge Project"). The Bridge Project is complete and the properties in question are now surplus to the City's needs.

Background

In May 2012, the City was awarded a state grant in the 2012 Capital Budget in the amount of \$3.2 million. The Public Works Board was assigned to administer the grant funds, and thereafter the City of Spokane and the Public Words Board entered into the Capital Agreement referenced above "to undertake a legislatively-approved project that furthers the goals and objectives of Washington State." Pursuant to that agreement, the Board reimbursed the City for eligible costs related to the Bridge Project, including right-of-way acquisition. The City also invested at least \$531,408.01 in local funds in the Bridge Project.

Project-related right-of-way acquisitions included certain properties located (i) at 502 E Riverside Avenue and 433 E Sprague Avenue (referred to as the "Nowlan Property"), and (ii) at 304 E. Riverside Avenue and 15 N. Grant Street (referred to as the "Judd Family

35173.1218

35173.1302

35173.1216

35173.1301

Trucking Property"). The properties are depicted in attached Exhibit A. The Judd Family Trucking acquisition also included a large triangular piece made up of several parcels across Riverside Avenue and along the Burlington Northern Santa Fe railroad right-of-way, also depicted in Exhibit A.

As is often the case in acquiring right-of-way for a public works project, neither property owner was interested in selling a portion of their property. Accordingly, the City had to acquire more property than was actually needed for completion of the Bridge Project, leaving the City with surplus property after completion of the Bridge Project.

Section 1.14 of the Capital Agreement referenced above provides:

The Contractor understands and agrees that any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract shall be held and used by the Contractor for the purposes stated in Attachment I: SCOPE OF WORK for a period of at least ten (10) years from the date the final payment is made.

For a period of at least ten (10) years from the date the final payment is made, in the event that the Contractor decides to change or transfer ownership of any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract, the Contractor agrees that any such decision or action must be submitted in writing and approved by the Board in writing at least thirty (30) days prior to the execution of such decision or action. . . .

Proposed Purchase and Sale of Surplus Properties

The Bridge Project is now complete, and two buyers have approached the City seeking to acquire the surplus property. One buyer seeks to acquire a portion of the Nowlan Property as generally depicted in Exhibit A, consisting of approximately 12,000 square feet. The City originally paid \$295,000.00 to acquire the Nowlan Property, and the buyer has agreed to pay \$204,000.00 for the surplus portions of this property. The buyer has indicated that its immediate plans for the property are to satisfy the City's minimum parking requirements for a 180,000 square foot mixed-use commercial development. That project is under review by the City and occupancy of the building for its intended office use is contingent on the buyer providing the required parking. The buyer's long range plans for the property are to develop a mixed-use office/retail/research building on the property. The buyer's immediate and long range uses of the property are consistent with that and will enhance both the City's University District and the legislatively-approved Bridge Project.

The other buyer seeks to acquire those portions of the Judd Family Trucking Property depicted in Exhibit A. This property consists of approximately .55 acres or 23,958 square feet of land. The City originally paid \$775,482.56 to acquire the Judd Family Trucking Property, which included the triangular portion described above which has been

integrated into the Bridge Project. The buyer has agreed to pay \$595,125.00 for the surplus portion of this property, and has indicated it is seeking to assemble property in order to construct a large parking structure, a project that will enhance the University District and the legislatively-approved Bridge Project.

Use of Sale Proceeds

Assuming the Board approves the foregoing purchases and sales, unless the City receives other direction from the Board, the City proposes to deposit proceeds from the sale of the surplus properties into the City's arterial street fund to help in financing other non-motorized public transportation projects in the City.

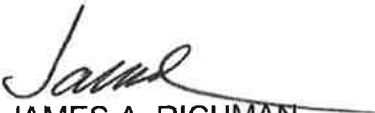
Request

The City of Spokane respectfully asks the Board to approve the proposed purchase and sales of the surplus properties outlined above. The legislatively-approved Bridge Project is complete and the surplus properties are not needed by the City for any public purpose. The sale would put the properties back on the tax rolls, and proceeds from the sales would assist the City in financing other public transportation projects. In addition, development of the surplus properties, as indicated by the potential buyers, would be consistent with the City's vision for areas near the Bridge Project's landings, and will further catalyze the type of development envisioned in the City's University District.

Thank you for your thoughtful consideration of this request. If you have any questions, or if there is other information or materials that we can provide to assist the Board with its decision, please contact the undersigned at 509-625-6238.

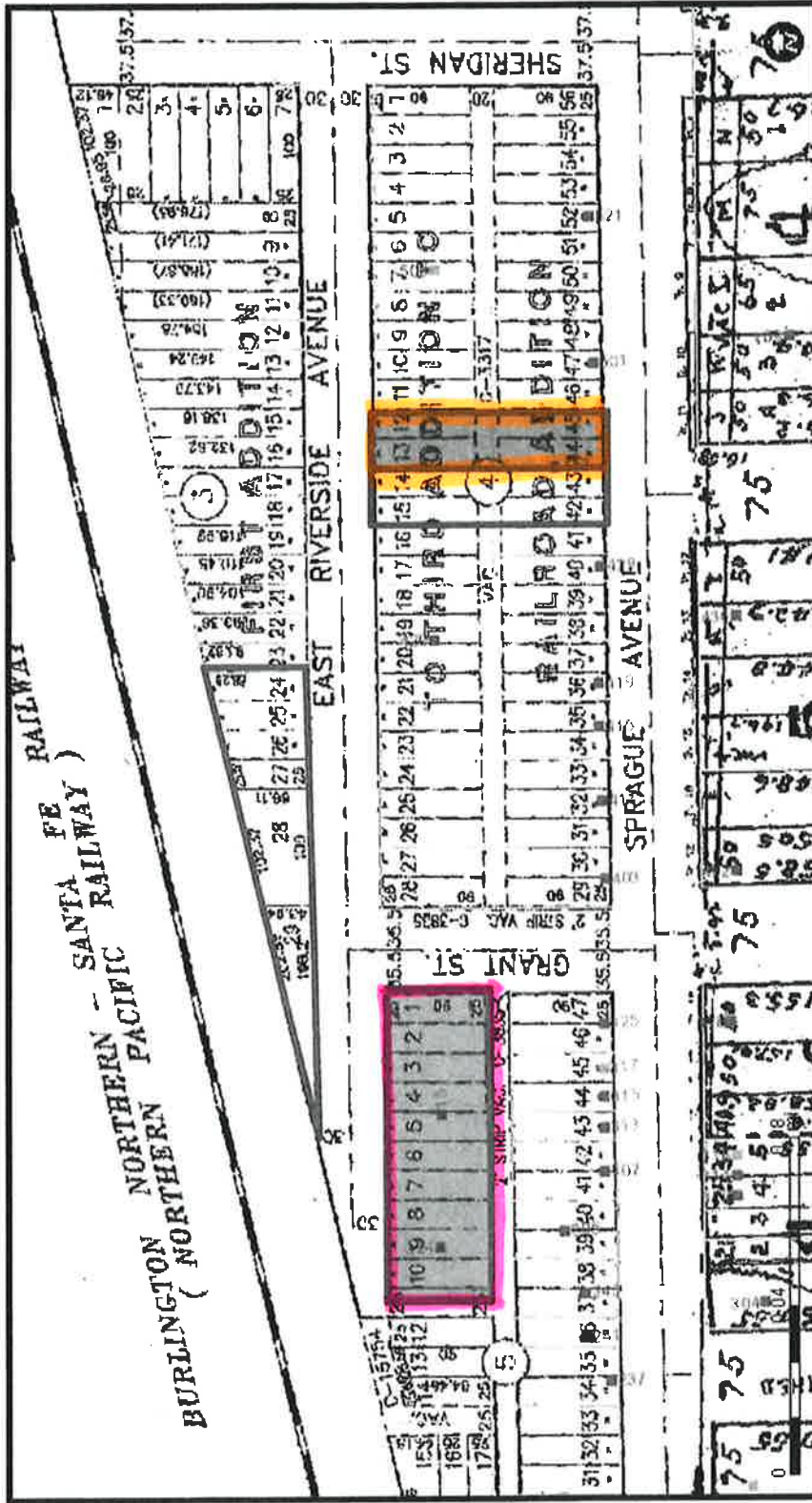
Very truly yours,

OFFICE OF THE CITY ATTORNEY
MICHAEL C. ORMSBY, City Attorney


JAMES A. RICHMAN
Assistant City Attorney

Enc. / Attachments: Exhibit A

Exhibit 'A'



City of Spokane GIS

- Legend**
- Original Purchase Areas:**
- Judd Family Trucking ☐
 - Nolan Carburetor ☐
- Areas to be Sold:**
- Judd Family Trucking ☐
 - Nolan Carburetor ☐

THIS IS NOT A LEGAL DOCUMENT.
 THE CITY OF SPOKANE, IDAHO, HAS COMPILED
 THIS MAP FROM PUBLIC RECORDS AND IS NOT
 GUARANTEEING THE ACCURACY OF THE
 INFORMATION SHOWN ON THIS MAP. THE
 CITY OF SPOKANE, IDAHO, IS NOT
 RESPONSIBLE FOR ANY LOSS OR DAMAGE
 RESULTING FROM THE USE OF THIS MAP.



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

October 31, 2012

Katherine Miller
City of Spokane
W 808 Spokane Falls Blvd
Spokane, WA 99201-3334

RE: Public Works Trust Fund Capital Grant Agreement Number SD12-963-142

Dear Ms. Katherine Miller:

Enclosed is a fully executed Trust Fund Grant Agreement for your Public Works Trust Fund Grant Number SD12-963-142.

This contract is for University District Pedestrian Bike. Please keep this original document with the other local records related to your project.

We are enclosing drawing instructions and A19 vouchers for requesting funds and will email the electronic version, (if needed), for your completion once funds are ready to be expended.

Please send A19 invoices to: Eric Tompkins
Department of Commerce
Attn: Contracts Administration Unit
P. O. Box 42525
Olympia, WA 98504-2525

Denise Fry
1-360-725-2741

I will be your project manager and look forward to working with you and your staff on this project. If you have any questions or need additional information, please do not hesitate to call me at (360) 725-3091 or email me at Eric.Tompkins@commerce.wa.gov.

Sincerely,

Eric Tompkins
Contracts Administration Unit
Project Manager

Enclosures

DIRECT APPROPRIATIONS GRANT RECIPIENTS IMPORTANT INFORMATION - MUST READ

INSTRUCTIONS FOR COMPLETING VOUCHERS IN ORDER TO RECEIVE GRANT FUNDS!

General Information

The Grant Agreement describes the points at which your grant funds may be disbursed to you. This is referenced in your grant agreement, Section 1.9 Billing Procedure and Payment.

- The GRANTEE, using the Invoice Voucher template, initiates disbursements
- Funds will be disbursed on a reimbursement-basis only. Expenses incurred after the date shown on your contract Declarations Page as **Earliest Date for Construction Reimbursement**, are eligible for reimbursement.
- Disbursement requests must include documentation that supports evidence of costs incurred. Documentation may include bills or receipts from contractors
- Each disbursement request may include costs incurred over an extended period
- The grant agreement places conditions on the fund disbursements
- Reimbursement requests may only be submitted once a month

Disbursements for **construction activities** are not allowed until documentation has been received by the Contracts Administration Unit (CAU) indicating that the following conditions have been met:

- Proof of compliance with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act, as described in Section 1.16 of the executed Direct Appropriations Grant contract, and
- A signed Notice of Contract Award and Notice to Proceed, which follows the formal award of a construction contract (a blank copy is attached), and
- A completed Project Status Report; and
- Other conditions as required.


If you have any questions regarding these loan conditions, please contact your CAU Regional Project Manager, Eric Tompkins at (360) 725-3091 or eric.tompkins@commerce.wa.gov

First Invoice Voucher and Subsequent Invoice Vouchers

1. Place the disbursement request amount on the appropriate line.
2. Update the **Voucher Number** and **Total Amounts** values if you are not using the electronic voucher file available through the Contracts Administration Unit.
3. Attach supporting documentation including a current Project Status Report.
Please make sure the conditions listed above have been met, otherwise the loan disbursement will be delayed.
4. Sign the Voucher in the upper right hand corner (no black ink) and return it to the following address:

Attn: Eric Tompkins
Contracts Administration Unit
Dept. of Commerce
PO Box 42525
Olympia WA 98504-2525

Staff will review your disbursement request upon receipt. You will receive funds within 30 days of the request.

 WASHINGTON STATE DEPARTMENT OF COMMERCE		AGENCY NUMBER <div style="font-size: 1.2em; font-weight: bold;">1030</div>		Short Code	Commerce Contract Number <div style="font-size: 1.2em; font-weight: bold;">SD12-963-142</div>
Form A19-1A		VOUCHER DISTRIBUTION DEPARTMENT OF COMMERCE PO BOX 42525 OLYMPIA, WA 98504-2525			
VENDOR OR CLAIMANT (Warrant is to be payable to:) <div style="font-size: 1.1em;"> City of Spokane 808 W. Spokane Falls Blvd. Spokane WA, 99201-3343 </div>			INSTRUCTIONS TO VENDOR OR CLAIMANT: Submit this form to claim payment for materials, merchandise, or services. Show complete detail for each item. <small>Vendor's Certificate: The individual signing this voucher below warrants they have the authority to do so as authorized and on the behalf of the entity identified in the Vendor/Client section. The individual signing below certifies under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race creed, color, national origin, handicap, religion or Vietnam era or disabled veterans status.</small>		
Contact Person: Phone: Contract Period REPORT PERIOD			By: _____ <div style="text-align: right;">(SIGN IN BLUE INK)</div> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> (TITLE) (DATE) </div>		
Original Contract Amount Application Fee (if any)		<div style="text-align: right; font-weight: bold;">\$3,200,000</div> <div style="text-align: right; font-weight: bold;">\$48,000</div>			
Date	DESCRIPTION	Budget	Previously Requested	Amount of This Invoice	Award Remaining Balance
	Net Contract Amount	\$3,152,000			\$3,152,000
Totals				\$0.00	\$3,152,000

Match: Year / Dollars / Coding				PROGRAM APPROVAL (the individual signing this voucher warrants they have the authority to sign this voucher)				DATE	
DOC DATE		CURRENT DOC. NO.		REFERENCE DOC NO.		VENDOR NUMBER and SUFFIX			
ACCOUNT NO.				ASD NUMBER		VENDOR MESSAGE			
TRANS CODE	MASTER	INDEX	SUB SUB OBJ	GL	ACCT	SUBSID	AMOUNT	INVOICE	
SIGNATURE OF ACCOUNTING PREPARER FOR PAYMENT						DATE		WARRANT TOTAL	
ACCOUNTING APPROVAL FOR PAYMENT						DATE			



**Washington State
Public Works Board**

Post Office Box 42525
Olympia, Washington 98504-2525

May 10, 2012

City of Spokane
Katherine Miller
808 W Spokane Falls Blvd
Spokane, WA 99201

RE: 2012 Jobs Now Act - University District Pedestrian/Bike - \$3,200,000

Dear Ms. Miller:

Congratulations on being awarded a state grant in the 2012 Capital Budget. The Public Works Board (the Board) has been assigned to administer your grant funds.

Funds for your project were included in the budget at the request of the Governor or Legislature. Now that the capital budget has been signed into law, our role is to release these funds in a way that meets the intent of the Legislature and conforms to state regulations. We strive to do so expeditiously and will make the process as simple as possible for you.

Before you can receive the funds, a contract will need to be executed between your organization and the Board. In order to get the contracting process started, please follow these steps:

1. Complete the attached Contract Readiness Survey, and have the person who is authorized to sign contracts sign the Grantee Certification page. Please note that there will be an administrative cost charged to the grant. We will keep you informed on what the amount will be;
2. Attach documentation for committed funds (copies of award letters, council appropriations, etc.), if applicable;
3. Complete the attached LEED certification declaration;
4. Attach a copy of the project request form/packet that you submitted to the Legislature;

Send the above documents by **May 31** to:

Chris Gagnon
Washington State Department of Commerce
Public Works Board
PO Box 42525
Olympia, WA 98504-2525
or
Christina.gagnon@commerce.wa.gov

Katherine Miller
May 10, 2012
Page Two

Please note that this is a cost reimbursement grant. Once your contract is executed, funds may be disbursed for reimbursement of costs incurred associated with your project's scope of work. Funds may be retroactively reimbursed back to April 23, 2012.

Once we receive your complete set of documents, this office will begin preparing your contract. We may contact you for further information.

We look forward to working with you on this project, and helping to put Washington's residents to work. If you have any questions or need additional information, please contact Chris Gagnon at (360) 725-3158; Christina.gagnon@commerce.wa.gov, or Myra Baldini at (360) 725-3152; Myra.baldini@commerce.wa.gov.

Sincerely,

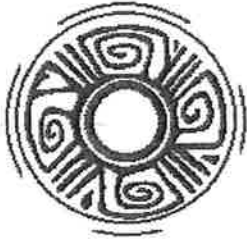


Chris Gagnon
Infrastructure Finance Specialist



Myra Baldini
Fund Manager and Underwriter

Enclosures



**Washington State
Public Works Board**

Washington State Dept of Commerce
1011 Plum St
P.O. Box 42525
Olympia, WA 98504-2525

Capital Agreement between:

City of Spokane

and

Public Works Board

For:

Project Name: **University District Pedestrian Bike**
Contract Number: **SD12-963-142**
Loan Type: Main Street Direct Appropriation

Execution/Start Date: _____ **Date of Contract Execution** _____



Department of Commerce
Innovation is in our nature.

DECLARATIONS

CLIENT INFORMATION

Legal Name:	City of Spokane
Contract Number:	SD12-963-142
Federal Tax Identification Number:	916001280
State Wide Vendor Number:	SWV0003387-05

PROJECT INFORMATION

Project Title:	University District Pedestrian Bike
Project City:	Spokane
Project State:	Washington
Project Zip Code:	99201-3343

GRANT INFORMATION

Grant Amount:	\$3,152,000.00
Appropriation Number:	ESB 5127, Section 305
Contract End Date:	06/30/2015
Biennium:	2011-13
Biennium Close Date:	6/30/2013
Earliest Date for Construction Reimbursement:	4/23/2012

SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

None.

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CONTRACT FACE SHEET

Contract Number: SD12-963-142

Washington State Department of Commerce
PUBLIC WORKS BOARD
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS


1. Contractor City of Spokane 808 W. Spokane Falls Blvd. Spokane, WA 99201-3343		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative		4. Public Works Board Representative	
5. Contract Amount \$3,152,000.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Contract Execution Date	8. Contract End Date 06/30/2015
9. Federal Funds (as applicable) N/A		Federal Agency N/A	CFDA Number N/A
10. Tax ID # 916001280	11. SWV # SWV0003387-05	12. UBI #	13. DUNS #

14. Contract Purpose

The Board and the Contractor have entered into this Contract to undertake a legislatively-approved project that furthers the goals and objectives of Washington State Direct Appropriations Program.

The Board, defined as the Washington State Public Works Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including ATTACHMENT I: PROJECT SCOPE OF WORK; ATTACHMENT II: CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES; and ATTACHMENT III: CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS (if applicable).


FOR THE CONTRACTOR


Signature

David A. Condon
Print Name Mayor
City of Spokane

Title

10.18.2012
Date

Attest: 

Approved as to form:


Assistant City Attorney

FOR THE PUBLIC WORKS BOARD


John LaRocque, Executive Director
10/22/12
Date

APPROVED AS TO FORM ONLY

Rob McKenna
Attorney General
Signature on File
Kathryn Wyatt
Assistant Attorney General



CONTRACT TERMS AND CONDITIONS

PUBLIC WORKS BOARD GRANT PROGRAMS—DIRECT APPROPRIATION PROJECTS

Part 1. SPECIAL TERMS AND CONDITIONS

1.1. DEFINITIONS

As used throughout this Washington State Capital Budget Direct-Appropriation Contract the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Washington State Capital Budget Direct-Appropriation Contract.
- B. "Contractor" shall mean the local government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- D. "Declarations " and "Declared" shall refer to the project information, grant terms and conditions as stated on the Declarations Page of this Grant Contract, displayed within the contract in **THIS STYLE** for easier identification.

1.2. AUTHORITY

Acting under the authority of Chapter 43.155 RCW, the Board has awarded the Contractor a Washington State Capital Budget Direct-Appropriation grant for a legislatively-approved project pursuant to the legislative **APPROPRIATION NUMBER** and **BIENNIUM** as shown on the Declarations Page..

1.3. PURPOSE

The Board and the Contractor have entered into this Contract to undertake a legislatively-approved project that furthers the goals and objectives of Washington State. The project will be undertaken by the Contractor and will include the activities described in **Attachment I: SCOPE OF WORK**. The project must be undertaken in accordance with the grant terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

1.4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

1.5. GRANT AMOUNT

The Board shall pay an amount not to exceed the awarded **GRANT AMOUNT** as shown on the attached Declarations Page for the eligible costs necessary for or incidental to the performance of work as set forth in the described in **Attachment I: SCOPE OF WORK**.

1.6. CERTIFICATION OF FUNDS

This section has been deleted but title retained for document continuity.

1.7. MODIFICATION TO THE PROJECT COSTS

This section has been deleted but title retained for document continuity.

1.8. PROJECT EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

Payments to the Contractor shall be made on a reimbursement basis only. For the purposes of this Contract, eligible costs shall be construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days. Only costs incurred on or after the **EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT** as shown in the Declarations, are eligible for reimbursement under this Contract.

The Contractor may be reimbursed for eligible costs related to the activities identified in **Attachment I: SCOPE OF WORK**.

- A. Real property and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the project;
- B. Design, engineering, architectural, and planning;
- C. Archaeological/historical review;
- D. Construction management and construction observation (from external sources only);
- E. Construction costs including, but not limited to, the following:
 - i. Site preparation and improvements;
 - ii. Permits and fees;
 - iii. Labor and materials;
 - iv. Taxes on project goods and services;
 - v. Capitalized equipment;
 - vi. Information technology infrastructure; and
 - vii. Landscaping.
- F. Insurance premiums as required in Section 1.19;
- G. Other costs authorized through the legislation.

1.9. BILLING PROCEDURES AND PAYMENT

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum payable under this Contract. When requesting reimbursement for costs incurred or expenditures made, the Contractor shall submit a signed and completed Invoice Voucher (Form A-19), referencing the **Attachment I: SCOPE OF WORK** project activity performed, and any appropriate documentation. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each Invoice Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report of project status to date. The Board will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, the Board shall promptly remit a warrant to the Contractor.

The final Invoice Voucher payment shall not occur prior to the completion of all project activities as identified in **Attachment I: SCOPE OF WORK**. A sum not to exceed ten percent (10%) of the grant amount will be retained until all project activities are complete and a Certified Project Completion Report is completed and submitted by the Contractor, per Section 1.10.

The Contractor shall submit all Invoice Vouchers and any required documentation to:

Contracts Administration Unit
Department of Commerce
PO Box 42525
Olympia, WA 98504-2525

The Board will pay the Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Board not more often than monthly.

Payment shall be considered timely if made by the Board within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the Board.

Duplication of Billed Costs. The Contractor shall not bill the Board for services performed under this Contract, and the Board shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs. The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

1.10. CERTIFIED PROJECT COMPLETION REPORT AND FINAL PAYMENT

The Contractor shall complete a Certified Project Completion Report when activities identified in **Attachment I: SCOPE OF WORK** are complete.

The Contractor shall provide the following information to the Board:

- A. A certified statement that the project, as described in **Attachment I: SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in **Attachment I: SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the grant amount including the ten percent (10%) retainage, as described in Section 1.9. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in **Attachment I: SCOPE OF WORK** and the Board's receipt and acceptance of the Certified Project Completion Report.

1.11. REPORTS

The Contractor shall furnish the Board with Project Status Reports when submitting Invoice Vouchers (as described in Section 1.9), a Certified Project Completion Report at project completion

(as described in Section 1.10), and other reports as the Board may require. Failure to file reports requested may result in termination of this Contract.

1.12. EVALUATION AND MONITORING

The Contractor shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the Board, including site inspections, if necessary.

The Contractor may be asked by the Board to provide photographs, either hard copy or electronically, which visually depict the progress made on the project.

The Board or the State Auditor and any of their representatives shall have full access to and the right to examine all of the Contractor's records with respect to all matters covered in this Contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Contract. Such rights last for six (6) years from the date final payment is made hereunder.

1.13. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Board makes no claim to any real property improved or constructed with funds awarded under this Contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Contract. This provision does not extend to claims that the Board may bring against the Contractor in recapturing funds expended in violation of this Contract.

1.14. CHANGE OF OWNERSHIP OR USE FOR CONTRACTOR-OWNED PROPERTY

The Contractor understands and agrees that any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract shall be held and used by the Contractor for the purposes stated in **Attachment I: SCOPE OF WORK** for a period of at least ten (10) years from the date the final payment is made.

For a period of at least ten (10) years from the date the final payment is made, in the event that the Contractor decides to change or transfer ownership of any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract, the Contractor agrees that any such decision or action must be submitted in writing and approved by the Board in writing at least thirty (30) days prior to the execution of such decision or action.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the grant as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject asset was authorized. Repayment shall be made pursuant to Section 1.20. Recapture Provision.

1.15. CHANGE OF USE FOR LEASED PROPERTY

The Contractor understands and agrees that any facility leased by the Contractor that is constructed, renovated, or otherwise improved using state funds under this Contract shall be used by the Contractor for the purposes stated in **Attachment I: SCOPE OF WORK** for a period of at least ten (10) years from the date the final payment is made.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the grant as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 1.20. Recapture Provision.

1.16. HISTORICAL AND CULTURAL ARTIFACTS

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as a substitute for completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the Board and the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately; then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to **Attachment I: SCOPE OF WORK**.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend **Attachment I: SCOPE OF WORK**, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1.17. SIGNAGE, MARKERS, AND PUBLICATIONS

If, during the period covered by this Contract, the Contractor displays or circulates any communication, publication, or donor recognition identifying the financial participants in the project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

1.18. PREVAILING WAGE LAW

The project funded under this Contract is subject to state prevailing wage law (Chapter 39.12 RCW). The Contractor is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine the prevailing wages that must be paid. The Board is not responsible for determining the prevailing wages applying to this project or for any prevailing wage payments that may be required by law.

1.19. INSURANCE

A. Private Organizations

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State of Washington should there be any claims, suits, actions, costs, damages, or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or its subcontractors, or agents of either, while performing under the terms of this Contract.

The insurance required shall be issued by an insurance company authorized to do business within the State of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the State of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give the Board thirty (30) calendar days advance notice of any insurance cancellation or modification.

The Contractor shall submit to the Board within fifteen (15) calendar days of the Contract start date, a certificate of insurance, which outlines the coverage and limits required under this insurance section. During the term of the Contract, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its subcontractors, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors, and Omissions Insurance. The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under Contract to the Contractor. The State of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- i. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Contractor as beneficiary.
- ii. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.

The Contractor shall provide, at the Board's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that the Board will be provided thirty (30) days advance written notice of cancellation.

B. Self-Insured Contractors

With prior approval from the Board, the Contractor may provide insurance coverage under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from the Board, the Contractor shall provide:

- i. a description of its self-insurance program, and
- ii. a certificate and/or letter of coverage that outlines coverage, limits, and deductibles.

All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by:

- i. Governmental Accounting Standards Board (GASB),
- ii. Financial Accounting Standards Board (FASB), and
- iii. The Washington State Auditor's annual instructions for financial reporting.

Contractors participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The State of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Contractor shall provide annually to the Board a summary of coverages and a letter of self-insurance, evidencing continued coverage under Contractor's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Contract.

Employers Liability ("Stop Gap") Insurance. In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident of \$1,000,000 each employee for bodily injury or disease.

Excess Coverage. By requiring insurance herein, the Board does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the Board in this Contract.

Unemployment and Industrial Insurance. The Contractor shall be in full compliance with all state unemployment and industrial insurance laws while performing work under this Contract. The Board will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of this Contract.

Protection of Project Property, Contractor's Assumption of Risk. The Contractor shall continuously maintain adequate protection of all the project work from damage and shall protect the property from injury or loss arising in connection with this Contract. The entire work of the Contractor shall be at the sole risk of the Contractor. The Contractor may elect to secure fire, extended coverage, and vandalism insurance or all-risk insurance to cover the project work during the course of construction. The Contractor shall take all necessary precautions for the safety of employees working on the project, and shall comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injuries to persons, on, about, or adjacent to the premises where the work is being performed.

1.20. RECAPTURE PROVISION

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Contract, the Board reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the Contractor of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the Board is required to institute proceedings to enforce this recapture provision, the Board shall be entitled to its cost thereof, including reasonable attorney's fees.

1.21. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Contract are withdrawn, reduced, or limited in any way by the Washington State Governor or Legislature during the Contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of the Board, and shall meet and renegotiate the Contract accordingly.

1.22. REAPPROPRIATION

The parties hereto understand and agree that any state funds, including the ten percent (10%) retainage as described in Section 1.9, not expended by the **BIENNIUM CLOSE DATE** listed on the Declarations Page will lapse on that date unless specifically reappropriated by the Washington State Legislature, in a budget or budget amendment proposed by the Legislature or Governor, and approved as law. Commerce will make all necessary efforts to seek reappropriation of funds into the next biennium following the declared **BIENNIUM**. If funds are so reappropriated, Commerce's obligation under the terms of this Contract shall be contingent upon the terms of such reappropriation.

Part 2. GENERAL TERMS AND CONDITIONS

2.1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- B. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract.
- C. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- D. "State" shall mean the state of Washington.
- E. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

2.3. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

2.4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

2.5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

2.6. APPROVAL

This contract shall be subject to the written approval of the Board's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

2.7. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Board.

2.8. ATTORNEY'S FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

2.9. AUDIT

A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

THE BOARD reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the BOARD requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. STATE FUNDS

Contractors expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

- Grantor agency name
- State program name
- BARS account number
- Grantor
- Agency contract number
- Contract award amount including amendments (total grant award)
- Beginning balance
- Current year revenues
- Current year expenditures
- Ending balance
- Program total

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the Board.

C. Documentation Requirements

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or by sending a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the BOARD.
- Copy of the Management Letter.

2.10. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

2.11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by the BOARD that is designated as "confidential" by the BOARD;
2. All material produced by the Contractor that is designated as "confidential" by the BOARD; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the BOARD or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the BOARD with its policies and procedures on confidentiality. The BOARD may require changes to such policies and procedures as they apply to this Contract whenever the BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period

specified by the BOARD. Upon request, the Contractor shall immediately return to the BOARD any Confidential Information that the BOARD reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Contractor shall notify the BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

2.12. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

2.13. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the BOARD. The BOARD shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the BOARD effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the BOARD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the BOARD.

The Contractor shall exert all reasonable effort to advise the BOARD, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the BOARD with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The BOARD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

2.14. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

2.15. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Chair of the BOARD, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;

- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

2.16. DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

2.17. ETHICS/CONFLICTS OF INTEREST

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

2.18. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

2.19. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the BOARD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, THE BOARD, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

2.20. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or the BOARD. The Contractor will not hold itself out as or claim to be an officer or employee of the BOARD or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

2.21. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, The BOARD may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The BOARD may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the BOARD under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

2.22. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

2.23. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

2.24. LIMITATION OF AUTHORITY

- Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

2.25. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

2.26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the BOARD. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

2.27. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

2.28. PREVAILING WAGE LAWS

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request.

2.29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

2.30. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the BOARD's name is mentioned, or language used from which the connection with the state of Washington's or the BOARD's name may reasonably be inferred or implied, without the prior written consent of the BOARD.

2.31. RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, The BOARD reserves the right to recapture funds in an amount to compensate the BOARD for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the BOARD. In the alternative, The BOARD may recapture such funds from payments due under this contract.

2.32. RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

2.33. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

2.34. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

2.35. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, The BOARD may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

2.36. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

2.37. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the BOARD.

If the BOARD approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the BOARD in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the BOARD if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the BOARD for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the BOARD and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

2.38. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

2.39. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

2.40. TERMINATION FOR CAUSE / SUSPENSION

In event the BOARD determines that the Contractor failed to comply with any term or condition of this Contract, the BOARD may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the BOARD upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the BOARD may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the BOARD to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the BOARD determines that the Contractor did not fail to comply with the terms of the Contract or when the BOARD determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

2.41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the BOARD may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the BOARD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

2.42. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by the BOARD, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Assign to the BOARD all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the BOARD; and
- D. Preserve and transfer any materials, contract deliverables and/or the BOARD property in the Contractor's possession as directed by the BOARD.

Upon termination of the Contract, the BOARD shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The BOARD may withhold any amount due as the BOARD reasonably determines is necessary to protect the BOARD against potential loss or liability resulting from the termination. The BOARD shall pay any withheld amount to the Contractor if the BOARD later determines that loss or liability will not occur.

The rights and remedies of the BOARD under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

2.43. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of THE BOARD.

**ATTACHMENT I:
PROJECT SCOPE OF WORK**

**PUBLIC WORKS BOARD
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS**

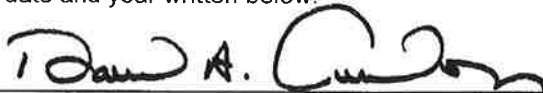
**Contractor: City of Spokane
Contract Number: SD12-963-142
Project Title: University District Pedestrian Bike**

The project's scope of work is comprised of the following activities:

Design and Right-of-way for the University District Pedestrian/Bicycle Bridge to provide a connection between Spokane University District's Riverpoint campus and Innovation Partnership Zone and the area to the south that is comprised of housing, commercial properties, and the regional hospitals. Costs may include, but are not limited to, engineering, design drawings, engineering estimate and specifications, environmental/cultural review/approval, and right-of-way acquisition.

If the above scope of work includes engineering, planning, or design activities, the Contractor shall make all plans and documents funded in whole or in part by this Contract available for the Board's review upon reasonable request.

The Contractor, by its signature below, certifies that the project's scope of work and performance measures set forth above have been reviewed and approved by the Contractor's governing body as of the date and year written below.



SIGNATURE

NAME David A. Condon
Mayor
City of Spokane

TITLE

DATE 10-18-2012

**ATTACHMENT II:
CERTIFICATION OF THE PAYMENT AND REPORTING OF
PREVAILING WAGES**

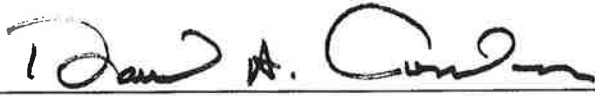
**PUBLIC WORKS BOARD
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS**

**Contractor: City of Spokane
Contract Number: SD12-963-142**

The Contractor, by its signature below, certifies that all contractors and subcontractors performing work on the project as described in ATTACHMENT I: PROJECT SCOPE OF WORK shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the project funded by this Contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request.

If any state funds are used by the Contractor for the purpose of construction, applicable State Prevailing Wages must be paid.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body as of the date and year written below.



SIGNATURE

NAME David A. Condon
 Mayor
 City of Spokane

TITLE

DATE 10-18-2012

**ATTACHMENT III:
CERTIFICATION OF THE INTENT TO ENTER THE LEADERSHIP IN
ENERGY AND ENVIRONMENTAL DESIGN (LEED)
CERTIFICATION PROCESS**

**PUBLIC WORKS BOARD
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS**

**Contractor: City of Spokane
Contract Number: SD12-963-142**

The Contractor, by its signature below, certifies that it will enter into the Leadership in Energy and Environmental Design (LEED) certification process, as stipulated in RCW 39.35D, as applicable to the project described in ATTACHMENT I: PROJECT SCOPE OF WORK funded by this Contract. The Contractor shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to the Board.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body or board of directors, as applicable, as of the date and year written below.


SIGNATURE

NAME David A. Condon
Mayor
City of Spokane

TITLE _____

DATE 10.18.2012

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

04/15/2019

<u>Date Rec'd</u>	3/27/2019
<u>Clerk's File #</u>	OPR 2019-0269
<u>Renews #</u>	

<u>Submitting Dept</u>	PUBLIC WORKS	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	DAN KEGLEY 625-7821	<u>Project #</u>	
<u>Contact E-Mail</u>	DKEGLEY@SPOKANECITY.ORG	<u>Bid #</u>	55-352-19
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	CR 20429
<u>Agenda Item Name</u>	5200 - UTILITY CONCRETE REPAIR SERVICES CONTRACT		

Agenda Wording

Contract with Wm. Winkler Company (Newman Lake, WA) for Utility Concrete Repair Services not to exceed \$270,000.00 (including tax) to be used on an as-needed basis by the Street, Wastewater Maintenance, and Water & Hydroelectric Services departments.

Summary (Background)

Request for Public Works Bids #55-352-19 for removal and/or replacement of damaged curb and gutter sections, cement concrete curbs, approaches, and ADA curb ramps on an as-needed basis was issued March 6, 2019 to more than 150 email contacts. One (1) bid was received by the closing deadline on March 20, 2019. Award is correspondingly recommended to Wm. Winkler Company for the 2019 service season. The contract will include annual renewal options up to a total term of four (4) years.

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

Expense	\$ 270,000.00	# As needed
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	SIMMONS, SCOTT M.	<u>Study Session</u>	
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u>	UEC 4/8/2019
<u>Finance</u>	ALBIN-MOORE, ANGELA	<u>Distribution List</u>	
<u>Legal</u>	ODLE, MARI	brian@wmwinkler.com; mhanke@wmwinkler.com	
<u>For the Mayor</u>	ORMSBY, MICHAEL	sjohnson@spokanecity.org	
<u>Additional Approvals</u>		tprince@spokanecity.org	
<u>Purchasing</u>	PRINCE, THEA	aduffey@spokanecity.org	
		wateraccounting@spokanecity.org	
		seweraccounting@spokanecity.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Neighborhood Council)

Summary (Background)

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

Briefing Paper

Urban Experience Committee

Division & Department:	Public Works; 1100 Street, 4310 Wastewater Maintenance, 4100 Water & Hydroelectric Services Departments
Subject:	Utility Concrete Repair Services Contract
Date:	8 April 2019
Author (email & phone):	Dan Kegley, dkegley@spokanecity.org , x7821
City Council Sponsor:	---
Executive Sponsor:	---
Committee(s) Impacted:	PIES
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Funding for this contract is available in the Street, Wastewater Maintenance, and Water & Hydroelectric Services department budgets, as applicable.
Strategic Initiative:	Innovative Infrastructure
Deadline:	Both Wastewater Maintenance and Water & Hydroelectric Services have utility cuts currently pending concrete repair.
Outcome: (deliverables, delivery duties, milestones to meet)	This contract is needed to support completion of utility cuts remaining from another contractor's default at the close of 2018 and in anticipation of utility cuts for the 2019 service season.
Background/History: <i>Request for Public Works Bids #55-352-19 for removal and/or replacement of damaged curb and gutter sections, cement concrete curbs, approaches, and ADA curb ramps on an as-needed basis was issued March 6, 2019 to more than 150 email contacts. One (1) bid was received by the closing deadline on March 20, 2019. Award is correspondingly recommended to Wm. Winkler Company for the 2019 service season. The contract will include annual renewal options up to a total term of four (4) years.</i>	
Executive Summary: <ul style="list-style-type: none"> Award Recommended to Wm. Winkler Company (Newman Lake, WA) Total Contract Value: Not to Exceed \$270,000.00 including tax Contract Term: Through 2019 with optional annual renewals up to a total term of four (4) years Purchase Competed on Public Works Bid Request #55-352-19 	
Budget Impact: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If new, specify funding source: --- Other budget impacts: ---	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Specify changes required: --- Known challenges/barriers: ---	



CITY OF SPOKANE - PURCHASING
Spokane, Washington

BID TABULATION

Bid Number	55-352-19
Description	Utility Concrete Repair Services

	Wm. Winkler Company	
SCHEDULE A	Unit Price	Unit of Measure
Minimum Set-Up Fee	\$ 1,000.00	Each
Cement Concrete Curb	\$ 130.00	Linear Foot
Cement Concrete Sidewalk	\$ 49.00	Square Yard
Cement Concrete Driveway	\$ 56.00	Square Yard
Cement ADA Curb Ramp	\$ 200.00	Square Yard
Exposed Aggregate Concrete	\$ 90.00	Square Yard
Emergency Service (Completed Within 24 Hours)	\$ 3,000.00	Each

SCHEDULE B	Unit Price	Unit of Measure
Minimum Set-Up Fee	\$ 1,565.00	Each
Remove Cement Concrete or Asphalt Sidewalk or Driveway	\$ 37.65	Square Yard
Remove Existing Curb or Asphalt	\$ 37.65	Square Yard
Cement Concrete Curb	\$ 168.00	Linear Foot
Cement Concrete Sidewalk	\$ 86.65	Square Yard
Cement Concrete Driveway	\$ 93.65	Square Yard
Cement ADA Curb Ramp	\$ 238.00	Square Yard
Exposed Aggregate Concrete	\$ 130.00	Square Yard
Emergency Service (Completed Within 24 Hours)	\$ 3,820.00	Each

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



City of Spokane

PUBLIC WORKS CONTRACT

Title: **UTILITY CONCRETE REPAIR SERVICES**

This Contract is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **WM. WINKLER COMPANY**, whose address is 5516 North Starr Road, Newman Lake, Washington 99025 as ("Contractor"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the purpose of this Contract is for the **REMOVAL AND/OR REPLACEMENT OF DAMAGED CURB AND GUTTER SECTIONS, CEMENT CONCRETE CURBS, APPROACHES, AND ADA CURB RAMPS ON AN AS-NEEDED BASIS** for the City; and*

WHEREAS, the Contractor was selected through RFB No. 55-352-19 issued by the City.

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

1. TERM OF CONTRACT.

This Contract shall begin on April 15, 2019 and ends on December 31, 2019 unless amended by written agreement or terminated earlier under the provisions.

2. TIME OF BEGINNING AND COMPLETION.

The Contractor shall begin the work outlined in the "Scope of Work" ("Work") as outlined above. The City will acknowledge in writing when the Work is complete. Time limits established under this Contract shall not be extended because of delays for which the Contractor is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Contractor's control. Contract renewals may be initiated by the City of Spokane, subject to mutual agreement. This contract may be renewed for up to three (3) annual seasons with the total contract period not to exceed four (4) years. Pricing adjustments may be negotiated at the time of contract renewal only. Justification for proposed cost increases on the part of the Contractor shall include demonstrable increases in the current prevailing wages as adopted by the Department of Labor and Industries, written proof of material cost increase, etc. The City shall reserve the right to request a written explanation of proposed costs including details such as labor, material, overhead, and mark-up percentages before accepting any increase. This may include a request to furnish such details for the original contract pricing. The City shall have absolute authority to accept or reject any requested pricing adjustments.

3. SCOPE OF WORK.

The Contractor's General Scope of Work for this Contract is described in the City of Spokane Invitation to Bid and Contractor's Response, Exhibit A, which is attached to and made a part of this Contract. In the event of a conflict or discrepancy in the Contract documents, this City Public Works Contract controls. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization and other items of work

and costs necessary for the proper execution and completion of the work described in the specifications entitled **UTILITY CONCRETE REPAIR SERVICES**.

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

4. COMPENSATION / PAYMENT.

Total compensation for Contractor's services under this Contract shall be a maximum amount not to exceed **TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$270,000.00)**, including applicable taxes, unless modified by a written amendment to this Contract. This is the maximum amount to be paid under this Contract for the work described in Section 3 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Contract.

The Contractor shall submit applications for payment to the Spokane Street, Wastewater Maintenance, or Water and Hydroelectric Services departments in accordance with whichever department initially requested service. Payment submission contacts shall be provided to the Contractor upon project kick-off. All invoices should include the Department Contract No. "OPR XXXX-XXXX" and an approved L & I Intent to Pay Prevailing Wage number. The final invoice should include an approved Affidavit of Wages Paid number. Payment will not be made without this documentation included on the invoice. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76. Five percent (5%) of the Contract price may be retained by the City, in accord with RCW 60.28 for a minimum of forty five (45) days after final acceptance, as a trust fund for the protection and payment of: the claims of any person arising under the Contract; and the State with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from the Contractor. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

5. CONTRACT DOCUMENTS.

The contract documents are this Contract, the Contractor's completed bid proposal form, contract provisions, contract plans, standard specifications, standard plans, addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file in the Spokane Water and Hydroelectric Services, and are incorporated into this Contract by reference, as if they were set forth at length.

6. BONDS.

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

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

8. STATE PREVAILING WAGES.

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

9. TAXES, FEES AND LICENSES.

- A. Contractor shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Contract. It is the Contractor's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Contract shall be included in the project budgets.

10. CITY OF SPOKANE BUSINESS LICENSE.

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

11. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.

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

13. DEBARMENT AND SUSPENSION.

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

14. INDEMNIFICATION.

The Contractor shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Contractor's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Contractor to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the

Contractor's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Contractor, its agents or employees. The Contractor specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, the Contractor specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Contractor recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

15. INSURANCE.

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

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

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

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

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

D. **Property Insurance** if materials and supplies are furnished by the Contractor. The amount of the insurance coverage shall be the value of the materials and supplies of the completed value of improvement. Hazard or XCU (explosion, collapse, underground) insurance should be provided if any hazard exists.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Contractor 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 Contractor's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the thirty (30) day cancellation clause, and the deduction or retention level. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

16. SUBCONTRACTOR RESPONSIBILITY.

A. The Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350. The

responsibility criteria are listed in the request for bids document. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the City, the Contractor shall promptly provide documentation to the City demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.

- B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. If applicable, have:
 - a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department number, as required in Title 50 RCW;
 - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

17. INDEPENDENT CONTRACTOR.

The Contractor is an independent Contractor. This Contract does not intend the Contractor to act as a City employee. The City has neither direct nor immediate control over the Contractor nor the right to control the manner or means by which the Contractor works. Neither the Contractor nor any Contractor employee shall be an employee of the City. This Contract prohibits the Contractor to act as an agent or legal representative of the City. The Contractor is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Contractor shall pay all income and other taxes as due.

18. ASSIGNMENT AND SUBCONTRACTING.

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

19. TERMINATION.

Either party may terminate this Contract, with or without cause, by thirty (30) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all work previously authorized and performed prior to the termination date.

20. STANDARD OF PERFORMANCE.

The standard of performance applicable to Contractor's services will be the degree of skill and diligence normally employed by professional contractors in the region performing the same or similar Contracting services at the time the work under this Contract are performed.

21. ANTI KICK-BACK.

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

22. CONSTRUAL.

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

23. CONTRACTOR'S ACKNOWLEDGEMENT AND WARRANTY.

The Contractor acknowledges that it is familiar with the nature of and is qualified to perform the work required by this Contract.

The Contractor guarantees and warranties all work, labor and materials under this Contract shall be in accord with the Contract documents. If any unsatisfactory condition or defect develops within that time, the Contractor will immediately place the work in a condition satisfactory to the City and repair all damage caused by the condition or defect. The Contractor will repair or restore to the City's satisfaction, in accordance with the contract documents and at its expense, all property damaged by his performance under this Contract. This warranty is in addition to any manufacturers' or other warranty in the Contract documents.

24. MISCELLANEOUS PROVISIONS.

- A. **Amendments/Modifications:** The City may modify this Contract and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the City, and the Contract time and compensation will be adjusted accordingly.
- B. The Contractor, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers.
- C. This Contract shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the

breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Contractor. If conflict occurs between Contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Contract to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Contract.
- I. Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

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

WM. WINKLER COMPANY

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments that are part of this Contract:

Exhibit A – Invitation to Bid and Contractor's Response
Payment Bond
Performance Bond
Exhibit B – Certification Regarding Debarment



CITY OF SPOKANE - PURCHASING
Spokane, Washington

REQUEST FOR PUBLIC WORKS BIDS

City of Spokane, Washington

GENERAL INFORMATION

Bid Number	55-352-19	Due Date	Wednesday, March 20, 2019
Bid Title	Utility Concrete Repair Services		

All relevant documentation must be submitted by 3:00 pm (Pacific Time) on the noted due date in order to be considered.

Project Contact	Samantha Johnson, Procurement Specialist - Water/Wastewater Maintenance Utilities
Contact Information	Direct: 509.625.7937 Email: sjohnson@spokanecity.org

CONTRACTOR INFORMATION

Legal Company Name	Wm. Winkler Company		
Physical Address	5516 N. Starr Rd., Newman Lake, WA 99025		
Mailing Address	PO Box 430, Newman Lake, WA 99025		
Website	wmwinkler.com		
Phone	509-489-6100	Fax	509-484-0646
Contact Name	Brian J. Winkler		Phone 509-489-6100
Title	President	Email	brian@wmwinkler.com

COMPLETION OF THE CONTRACTOR INFORMATION SECTION ACKNOWLEDGES AGREEMENT TO FURNISH THE ITEMS LISTED BELOW AT THE PRICES QUOTED, SUBJECT TO THE TERMS AND CONDITIONS OF THIS BID REQUEST.

BACKGROUND & PURPOSE

The City of Spokane Street Department is responsible for street maintenance and improvement citywide, just as Wastewater Maintenance is responsible for the City's sewer and stormwater systems and Water & Hydroelectric Services is responsible for the City's water system. As the City continues to expand geographically and, therefore, infrastructurally, it is increasingly vital for department staff to be able to focus on their respective responsibilities in support of citizens.

In service of their usual duties, the Street, Wastewater Maintenance, and Water & Hydroelectric Services departments have occasion to require repair services to concrete curbs, gutters, and approaches throughout the City of Spokane. In anticipation of that need and in accordance with the City's competitive procurement requirements, those departments are seeking public works bids to award a contract for concrete repair services for the 2019 construction season.

The winning Contractor will provide services at the request of these departments as defined below (note: additional types of service may not be added to this contract and must be competed separately). Reliable service is essential to allow personnel in these departments to perform their duties and to support safe City infrastructure.

PROJECT DETAILS

SCOPE OF WORK

Removal and/or replacement of damaged curb and gutter sections, cement concrete curbs, approaches, and ADA curb ramps on an as-needed basis in accordance with these contract provisions and City Standard Specifications. Performance of this work will require:

1. Ability to complete concrete repair of the specified product within a maximum of thirty (30) calendar days of notice to proceed in accordance with the pricing provided below.
2. Ability to be responsive to emergencies (completed within twenty-four hours) as priced below.
3. Strong customer service and communication by telephone, email, or some combination thereof.
4. Clean and complete service. Before invoicing, the Contractor shall ensure the service area (property/street) is free from debris. If applicable, temporary asphalt shall be replaced after pouring curb sections.
5. Removal of forms as soon as possible after concrete is poured and cured.
6. Attendance of a minimum of one (1) "kick-off" meeting after award determination to meet department contacts and establish project relationships (date/time TBD at City facility TBD). Additional meetings may be requested to support good communication and facilitate project performance.
7. Coordination of projects across three (3) City departments: Street, Wastewater Maintenance, and Water & Hydroelectric Services. Projects are department specific and the Contractor shall communicate with and invoice each department separately, though actual work may be completed in tandem, as the Contractor sees fit.

8. Monthly invoicing to each department for work completed.

9. Completion of work, whenever possible, in the most timely and cost efficient manner for the citizens of Spokane. If projects across multiple departments may be combined to achieve reductions in timeline and/or price, the Contractor shall make every reasonable effort to do so.

Unless otherwise stated, the Contractor will be responsible for the furnishing of all labor, supervision, materials, tools, construction equipment, transportation, and other items of work and costs necessary for the proper performance and completion of the described work. The apparent silence or omission in these specifications as to any detail of the work to be completed or materials to be furnished means that the region's best general practice shall prevail and material and workmanship of the best quality shall be used.

Contractors are expected to be familiar with current WSDOT specifications.

The Contractor shall be responsible for obtaining at its expense any related or necessary permits required by regulatory agencies.

The winning Contractor shall receive a unit priced contract and, upon complete and accepted performance by the Contractor, the City shall issue payment in the applicable amount set forth in Schedules A & B below for the actual volume performed. Quantities are contingent on unknown events which may necessitate service to existing or new utilities.

FUNDING

The annual value of this work is estimated not to exceed \$200,000.00 across all three (3) departments. Any contract awarded as a result of this procurement is contingent upon the availability of funding.

CONTRACT TERM & RENEWALS

This contract shall be awarded to the low, responsive bidder with the most favorable service completion timeline through the end of 2019. Contract renewals or extensions may be initiated by the City of Spokane, subject to mutual agreement. This contract may be renewed for up to four (4) annual seasons with the total contract period not to exceed five (5) years.

GUARANTEE

The Contractor guarantees all work, labor and materials for one (1) year following final acceptance. If any unsatisfactory condition or defect develops within that time, the Contractor shall immediately place the work in a satisfactory condition, and further repair all damage caused by the condition or defect at its sole expense. This guarantee shall not apply to work which has been abused or neglected by the City.

CONTRACTOR RESPONSIBILITIES

The Contractor shall comply with all Federal, State, and Local laws.

The Contractor is responsible for all property damage and for all clean up and restoration costs associated with any material spill. Should the Contractor cause any damage to public or private property, the Contractor will be required to make immediate repairs. However, the City may elect to make repairs or replacements of

damaged property and deduct the cost of such from money due or to become due the Contractor under any contracts resulting from this bid.

Contractors found to have overstated their availability for service may be subject to any demonstrable liquidated damages born by the City of Spokane as a result of delays in the completion of this project.

POLYCHLORINATED BIPHENYLS (PCBs)

In accordance with SMC 7.06.172(A), the respondent certifies the products quoted and to be supplied (to include product packaging) do not contain polychlorinated biphenyls (PCBs). Moreover and consistent with SMC 7.06.172(B), the City of Spokane, at its sole discretion, may require (at no cost to the City) the apparent successful bidder to provide testing data (prior to contract execution or issue of purchase order) from an accredited laboratory or testing facility documenting the proposed products and or product packaging polychlorinated biphenyl levels.

	Yes	No	Don't Know
As far as you know, has this product type been tested for PCBs by a WA State accredited lab using EPA Method 1668c (or equivalent as updated)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If so, were PCBs found at a measureable level?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
As far as you know, has this actual product been tested for PCBs by a WA State accredited lab using EPA Method 1668 (or equivalent as updated)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If so, attach the results or note from whom the results can be obtained.	We can supply specific information for each product if awarded.		
Do you have reason to believe the product contains measureable levels of PCBs?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Do you have reason to believe the product packaging contains measureable levels of PCBs?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

BID PRICING

5500-352-2019 Utility Concrete Repair Services

"Minimum Set Up Fee" as referred to below is defined as a curb ten (10) linear feet and smaller and/or sidewalk/driveway 40 square feet or smaller.

Two (2) pricing schedules are requested: Schedule A - Pricing for City-Prepared Sites, Schedule B - Pricing for Contractor-Prepared Sites.

The undersigned firm has read and understands the specifications for the above project and proposes to do the described work at the following prices:

SCHEDULE A (CITY PREPARED)

Classification	Unit Price	Unit of Measure
Minimum Set-Up Fee	1,000.00	Each
Cement Concrete Curb	130.00	Linear Foot
Cement Concrete Sidewalk	49.00	Square Yard

Cement Concrete Driveway	56.00	Square Yard
Cement ADA Curb Ramp	200.00	Square Yard
Exposed Aggregate Concrete	90.00	Square Yard
Emergency Service (Completed within 24 Hours)	3,000.00	Each

SCHEDULE B (CONTRACTOR PREPARED)

Classification	Unit Price	Unit of Measure
Minimum Set-Up Fee	1,565.00	Each
Remove Cement Concrete or Asphalt Sidewalk or Driveway	37.65	Square Yard
Remove Existing Curb or Asphalt	37.65	Square Yard
Cement Concrete Curb	168.00	Linear Foot
Cement Concrete Sidewalk	86.65	Square Yard
Cement Concrete Driveway	93.65	Square Yard
Cement ADA Curb Ramp	238.00	Square Yard
Exposed Aggregate Concrete	130.00	Square Yard
Emergency Service (Completed within 24 Hours)	3,820.00	Each

Service Completion Timeline (Specify the standard number of calendar days required to complete projects from Notice to Proceed):

SERVICE COMPLETION TIMELINE	TBD
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CONTRACTOR RESPONSIBILITY


Washington State Contractor's Registration No.	WMWINC*935LA
U.B.I. Number	602 703 784
Washington Employment Security Department Number	364626 00 9
Washington Excise Tax Registration Number	602 703 784

City of Spokane Business Registration Number	T11099851BUS
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The firm agrees that its Bid will NOT be withdrawn for a minimum of forty five (45) calendar days after the stated submittal date.

The undersigned Bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date for this Project, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Firm Name	Wm. Winkler Company		
Address	PO Box 430/5516 N. Starr Rd., Newman Lake, WA 99025		
Signature			
Title	President	Phone	509-489-6100

SUBCONTRACTOR LIST

5500-352-2019 Utility Concrete Repair Services

No subcontractors will be used on this project.	<input checked="checked" type="checkbox"/>
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Proposed Subcontractors/Suppliers to be used on this project:

Contractor/Supplier	Interstate Concrete & Asphalt		
Type of Work/Product	Concrete Supplier (Material Only)	Amount	\$ As Required / As Needed
Contractor's Registration No.			

Contractor/Supplier			
Type of Work/Product		Amount	\$
Contractor's Registration No.			

Signature		Date	3/20/19
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Completion and submission of the first six (6) pages of this document shall constitute legal acknowledgement and acceptance of all further details and terms of this bid request; including public works requirements.

BID SECURITY

Submitted bids shall be accompanied by cash, a bid bond, certified or cashiers check payable to the order of the City of Spokane, in an amount not less than five percent (5%) of the total bid amount (\$200,000.00). Bid bonds must through a surety company authorized to do business as a surety in Washington State. As soon as the bid prices have been compared, the City will release the bid security of all except the three (3) lowest responsible bidders. When the construction agreement is signed and returned with executed performance and payment bonds, the other bid security will be released.

PAYMENT TERMS

Payment shall be made via direct deposit/ACH (except as provided by state law) according to net30 terms after receipt of the services ordered. A completed ACH application is required before a City contract will be issued. If the City objects to all or any portion of an invoice, it shall notify the contractor and reserve the right to pay only that portion of the invoice not in dispute. In that event, all parties shall immediately make every effort to settle the disputed amount.

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 and being the holder of a valid annual business registration or temporary business registration as provided in this chapter. The supplier 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 supplier 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.

TERMS & CONDITIONS

1. Prior to the award of contract, the Contractor shall be required to submit evidence of sufficient facilities, equipment, experience and financial ability to insure completion of the work, unless waived by the City.
2. Award of contract, when made by the City, will be to the low responsive-responsible Contractor. Unsuccessful firms will not automatically be notified of results.
3. The City reserves the right to reject any or all Bids, to waive minor deviations from the specifications, to waive minor informalities in Bid process whenever it is in the City's best interest, and to accept or reject all or part of this Request for Bids, at the prices shown.
4. The respondent certifies that his/her firm has not entered into any agreement of any nature whatsoever to fix, maintain, increase or reduce the prices or competition regarding the items covered by this Bid invitation.

REGISTERED CONTRACTOR

The Contractor shall be a Washington State registered or licensed Contractor, as well as licensed with the Washington Department of Agriculture, at time of bid submittal.

SUBCONTRACTORS

The Contractor shall not award any portion the work to any subcontractor without the City's prior approval. The Contractor shall be fully responsible to the City for the acts, errors, and omissions of its

subcontractors. No contractual relationship shall be created between any subcontractor and the City.

INSURANCE

During the term of the Contract, the Contractor shall maintain in force at its own expense, the below insurance coverage(s):

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

General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. It shall include premises and operations, independent contractors, products and completed operations, personal injury liability, and contractual liability coverage for the indemnity provided under the 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 the contract; Acceptable supplementary Umbrella insurance coverage, combined with the Contractor's General Liability insurance policy must be a minimum of \$1,500,000, in order to meet the insurance coverages required under this Contract;

Property Insurance if materials and supplies are furnished by the Contractor. The amount of the insurance coverage shall be the value of the materials and supplies of the completed value of the improvement. Hazard or XCU (Explosion, Collapse, Underground) Insurance should be provided if any hazard exists; and

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 insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the City. The Contractor shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns the signed Contract. The certificate shall specify the City of Spokane as "additional insured", and all of the parties who are additional insured; as well as applicable policy endorsements and the deduction or retention level. Insuring companies or entities are subject to City acceptance.

PUBLIC WORKS REQUIREMENTS

The scope of work ("Work") for this Project constitutes a public work under state law. Contractors are warned to take into consideration statutory legal requirements, particularly, the payment of State prevailing wages, securing of a payment/performance bond form as surety, and sales tax implications in making their bids.

PREVAILING WAGES - LOCAL AND STATE ASSISTED CONSTRUCTION

The State prevailing rate of wages to be paid to all workmen, laborers or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 of the Revised Code of Washington (RCW) and the rules and regulations of the Washington State Department of Labor and Industries (L & I).

The State of Washington prevailing wage rates applicable for this public works project, which is located in Spokane County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>.

Based on the Bid submittal deadline for this Project, the applicable effective date for State prevailing wages for this Project is Wednesday, March 20, 2019.

If apprentices are to be used, they must be registered with the State Apprenticeship Council; otherwise, they are to be paid State prevailing journeyman wages.

The fee for the approval of 1) "Statements of Intent to Pay Prevailing Wages" and 2) "Affidavits of Wages Paid" is forty dollars (\$40) for each form. The Contractor is responsible for payment of these fees and shall make all applications directly to L & I. Reimbursement for the paid fees will be added to the amounts due the Contractor, if the Contractor submits to the City prior to final acceptance of the work a list of its subcontractors and has their "Statements of Intent to Pay Prevailing Wages" on file.

PREVAILING WAGES - CONTRACT EXTENSIONS

For contract extensions, the Contractor is responsible for updating prevailing wage rates annually, using the rates in effect at the beginning of each contract year (not calendar year), and intents and affidavits for prevailing wages paid must be submitted annually for all work completed by Contractor and/or Subcontractors during the previous 12 months. RCW 35.22.620.

Pricing adjustments may be negotiated at the time of contract renewal only. Justification for proposed cost increases on the part of the Contractor shall include demonstrable increases in the current prevailing wages as adopted by the Department of Labor and Industries, written proof of material cost increase, etc. The City shall reserve the right to request a written explanation of proposed costs including details such as labor, material, overhead, and mark-up percentages before accepting any increase. This may include a request to furnish such details for the original contract pricing. The City shall have absolute authority to accept or reject any requested pricing adjustments.

CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

Before award of a public works contract, the bidder under consideration for award of a public works project must submit to the public agency a sworn statement that they have not willfully violated wage payment laws within the past three years in order to be considered a responsible bidder. (See RCW 39.04.350 as modified by SSB 5301, Laws of 2017, ch. 258.). This form is titled "Certification of Compliance with Wage Payment Statutes." This form must be submitted upon request by City.

WASHINGTON RETAIL SALES TAX

General Construction Retail sales tax, when applicable, will be paid as a separate item, and shall not be included in the bid price. Sales tax shall be added on the amounts due the Contractor and the Contractor shall be responsible for making payment to the State. The City reserves the right to claim any exemption authorized by law.

Public Street Improvements If the technical requirements in the specifications indicate that all or a portion of the Work is a "public street improvement" as defined by state law, the Contractor shall include all contractor-paid taxes, including use taxes on materials in its Bid price. The City will NOT pay retail sales tax as a separate item.

PERFORMANCE BOND

The Contractor shall furnish, at its sole expense, a performance and payment bond equal to one hundred percent (100%) of the contract price. The bond shall insure faithful and complete performance of the contract and payment of all obligations to laborers and material men arising from the Project. The bond shall be executed by a Surety company authorized to do business in Washington State, and shall remain in effect for one (1) year following final acceptance of the Work. Unless approved by the City, the Surety's name shall appear on the United States Treasury Department's list of authorized Sureties - Circular 570.

RETAINAGE

Pursuant to chapter 60.28 RCW, the City will retain five percent (5%) from the monies earned by the Contractor. This Retainage shall be held as a trust fund for the protection and payment: (1) to the State of taxes and fees owed by the Contractor; and (2) of any person, mechanic, subcontractor or material man who performs any labor or furnishes any supplies toward the Work. Release of Retainage will be made at a minimum of forty five (45) days following final acceptance of the Work provided the following conditions are met:

- a. The City has received from the Contractor and each subcontractor a copy of the "Statement of Intent to Pay Prevailing Wages" and an "Affidavit of Wages Paid", approved by the State Department of Labor and Industries (L & I).
- b. On contracts greater than \$35,000, the City has received releases from the State Departments of Revenue (DOR), Labor & Industries and Employment Security.
- c. No claims, as provided by law, have been filed against the Retainage.

In the event a claim is filed, the Contractor shall be paid a portion of the Retainage, which is less than the amount sufficient to pay the claim and potential legal costs.

BID SUBMISSION

The first six (6) pages of this bid request, along with bid bond, any supporting documents, and project addenda, must be submitted by 3:00pm (Pacific Time) on Wednesday, March 20, 2019 in order to be considered.

All submissions must be completed by an authorized person of Contractor's firm.

Submissions must be delivered in hard copy.

Submit one copy of all relevant documentation in a sealed envelope. On the front of the envelope, clearly indicate the following information:

55-352-19 UTILITY CONCRETE REPAIR SERVICES
DUE: WEDNESDAY, MARCH 20, 2019 3:00PM
NAME OF CONTRACTOR

Mail or hand deliver the response inside another envelope addressed to:

CITY OF SPOKANE - WATER & HYDROELECTRIC SERVICES

ATTN: SAMANTHA JOHNSON
914 E. NORTH FOOTHILLS DRIVE
SPOKANE, WA 99207

The main entrance to this building is off the south side of Foothills Drive. Guest parking is available across the street and visitors are permitted between the hours of 8:00am and 4:00pm (Pacific Time). Responses may be left with Reception as the requestor is not always on site.

Respondents choosing to mail their responses shall be responsible for ensuring their submission is received prior to the project due date and time. Respondents shall also be responsible for obtaining confirmation from the requestor that their submission has been received.

All bids shall be typed or printed in ink, prepared on the document furnished by the Purchaser and completed by an authorized person of Contractor's firm. **When printing this document, use recycled paper and both sides of paper sheets whenever practicable.** If errors are made, they may be crossed out. Corrections shall be printed in ink or typewritten adjacent and initialed in ink by the person completing the bid. IF THE BIDS CONTAIN ANY OMISSION, ERASURES, ALTERATIONS, ADDITIONS, OR ITEMS NOT CALLED FOR IN THE BID, OR CONTAIN IRREGULARITIES OF ANY KIND, IT MAY CONSTITUTE SUFFICIENT CAUSE FOR REJECTION.

PAYMENT BOND

We, **WM. WINKLER COMPANY**, as principal, and _____, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$270,000.00)**, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all work and furnish all materials for the **UTILITY CONCRETE REPAIR SERVICES**. If the principal shall:

- A. pay all laborers, mechanics, subcontractors, material suppliers and all person(s) who shall supply such person or subcontractors; and pay all taxes and contributions, increases and penalties as authorized by law; and
- B. comply with all applicable federal, state and local laws and regulations;

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

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

SIGNED AND SEALED on _____.

**WM. WINKLER COMPANY,
AS PRINCIPAL**

By: _____
Title: _____

_____,
AS SURETY

By: _____
Its Attorney in Fact

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

[illegible]

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

DATED: _____

Signature of Notary Public

My appointment expires _____

Approved as to form:

Assistant City Attorney

PERFORMANCE BOND

We, **WM. WINKLER COMPANY**, as principal, and _____, as Surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$270,000.00)**, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all the work and furnish all materials for the **UTILITY CONCRETE REPAIR SERVICES**. If the principal shall:

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

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

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

SIGNED AND SEALED on _____

**WM. WINKLER COMPANY,
AS PRINCIPAL**

By: _____
Title: _____

_____,
AS SURETY

By: _____
Its Attorney in Fact

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

STATE OF WASHINGTON)
) ss.
County of _____)

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

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

ATTACHMENT B

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

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

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

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

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

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

04/15/2019

<u>Date Rec'd</u>	3/26/2019
<u>Clerk's File #</u>	OPR 2019-0270
<u>Renews #</u>	

Submitting Dept	HOUSING & HUMAN SERVICES	Cross Ref #	
Contact Name/Phone	REBEKAH TUNO 6321	Project #	
Contact E-Mail	RTUNO@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	1680 - FY 2018 CONTINUUM OF CARE (COC) GRANT PROGRAM AWARDS		

Agenda Wording

CHHS seeks acceptance of the CoC Program Award of \$3,778,347 from the U.S. Department of Housing and Urban Development (HUD) and authority to enter into contract with the awarded projects once appropriate documents are received from HUD.

Summary (Background)

Each year the CHHS Department competes nationally through the HUD Continuum of Care Program for renewal funding for HUD funded projects that support housing and services for persons experiencing homelessness. See attached briefing paper for further detail.

<u>Fiscal Impact</u>	Grant related? YES	<u>Budget Account</u>
	Public Works? NO	
Revenue	\$ 3,778,347	# 1541-95575-99999-33114-73910
Expense	\$ 3,778,347	# 1541-95575-65410-54201-XXXXX
Select	\$	#
Select	\$	#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	KEENAN, KELLY	<u>Study Session</u>
<u>Division Director</u>	CORTRIGHT, CARLY	<u>Other</u> PS&CH 4/8/2019
<u>Finance</u>	HUGHES, MICHELLE	Distribution List
<u>Legal</u>	DALTON, PAT	rtuno@spokanecity.org
<u>For the Mayor</u>	ORMSBY, MICHAEL	tdanzig@spokanecity.org
Additional Approvals		kburnett@spokanecity.org
<u>Purchasing</u>		Cbrown@spokanecity.org
<u>GRANTS &</u>	BROWN, SKYLER	kkeenana@spokanecity.org
		chhsaccounting@spokanecity.org
		hmis@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Neighborhood Council)

Summary (Background)

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

Briefing Paper

Public Safety & Community Health Committee

Division & Department:	Neighborhood & Business Services – Community, Housing, & Human Services Department
Subject:	FY 2018 Continuum of Care (CoC) Program Awards
Date:	March 20, 2019
Author (email & phone):	Rebekah Tuno, rtuno@spokanecity.org , x6321
City Council Sponsor:	N/A
Executive Sponsor:	Kelly Keenan
Committee(s) Impacted:	Public Safety & Community Health
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	2015-2020 Strategic Plan to End Homelessness; 2015-2020 Consolidated Community Development and Housing Plan
Strategic Initiative:	Safe and Healthy/Reduce Homelessness
Deadline:	45 days from satisfying all issues and conditions to execute grant agreement with HUD.
Outcome: (deliverables, delivery duties, milestones to meet)	CHHS seeks acceptance of the CoC Program Award of \$3,778,347 from the U.S. Department of Housing and Urban Development and authority to enter into contract with the awarded projects once appropriate documents are received from HUD.

Background/History:

Each year the CHHS Department competes nationally through the HUD Continuum of Care Program for renewal funding for HUD funded projects that support housing and services for persons experiencing homelessness. Continuums are required to review and rank renewal and new projects submitted for funding through the local competition process. For the two new project applications, one serving chronic homeless and the other intending to serve victims of domestic violence, applicant agencies presented their new project request to CoC subcommittee members to determine community prioritization for these two projects. For each new and renewal project, staff reviewed their respective policies and procedures submitted. The CoC RFP & Evaluation committee, assembled to review project level performance to determine the initial ranking of each renewal project into Tier 1 and Tier 2. The committee took into consideration the following factors: initial ranking, project scores, populations served, cost per household and each project's contribution to our systematic plan to address the goals of ending: Veteran Homelessness, Chronic Homelessness, Family and Youth Homelessness as defined in the FY 2018 CoC Competition NOFA. The CoC Board utilized the initial ranking list recommendations and recommendations regarding prioritization for new projects to create the final ranking list submitted to HUD.

Executive Summary:

- HUD released their Notice of Funding Availability (NOFA) on June 20, 2018 and awards were announced on January 26, 2019.
- Tier 1 awards provide \$3,275,785 for 18 renewal projects, two of which are 4 project consolidations combined into 2 separate projects.
- Tier 2 projects were not funded. These projects are:
 - WA0122 (\$183,006) serves single adults and supports 13 units with rental assistance and supportive services. The agency holding this project will operate through its current project term (FY 2017 cycle) which ends 7/31/19. Staff is working with agency staff to determine the ramp down of this project.

- WA0113 (\$191,635) is shared between two agencies to provide transitional housing for youth (12 units with supportive services). One portion serves pregnant and/or parenting youth 18-21 years old and the second portion serves youth 18-24 years. Each portion of this project is operated separately by its respective agency. Staff is working with agency staff to determine the ramp down of this project. The agencies sharing these project funds will operate through its current project term (FY 2017 cycle) which ends 7/31/19.
- The CoC applied for one new PSH project to serve chronically homeless under the PSH Bonus funds available under the NOFA (\$110,270) and one new RRH project to serve victims fleeing domestic violence (\$282,140).
- The CoC Planning Grant retained by the City of Spokane as the Collaborative Applicant was awarded at \$110,152. This total is provided by HUD based on CoC funding award allocations from the previous year. This project is not required to be ranked.
- Total funding decreased slightly from \$3,785,801 to \$3,778,347 due to the award of two new projects and the loss of 2 projects. The total amount lost is \$7,454.
- The FY 2018 Priority List is attached.
- The full HUD listing of both new and renewal project allocations is attached. Variance in awards versus ARD amounts provided in the final priority list is due to FMR increases.
- The grant agreement with HUD is still pending. CHHS is requesting approval to move forward with subgranting funds to sponsors once the grant agreement is received and processed. This will avoid any delay in subcontracting funds.
- The CoC Project Review, Scoring & Ranking Procedures are available upon request.

Budget Impact:

Approved in current year budget? ☒ Yes ☐ No

Annual/Reoccurring expenditure? ☒ Yes ☐ No

If new, specify funding source: N/A

Other budget impacts: (revenue generating, match requirements, etc.): All projects require 25% match of all expenditures excluding leasing.

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No

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

Specify changes required: N/A

Known challenges/barriers: N/A

FY 2018 CoC Final Priority List

FY 2018 Continuum of Care Competition Priority List								Tier 1	\$3,455,110.00
	Rank	Grant Number	Project Type	Population Served	Average Performance Scores	Application Checklist Score	Total Score	ARD	Tier1/2 Threshold: 2 Consolidations, <i>IF</i> DV Project is funded under DV Bonus Dollars
Tier 1	1	WA0329	HMIS	System	N/A	N/A	N/A	\$177,489.00	
	2	NEW	RRH	Domestic Violence	N/A	75.57	75.57	\$281,829.00	
	3	WA0109	TH	Single women + households with children	51.54	43.30	94.84	\$64,529.00	\$242,018.00
	4	WA0373	SSO-CE	Families Coordinated Entry	50.27	43.13	93.40	\$80,000.00	\$322,018.00
	5	NEW	PSH	Single men + Single women	N/A	93.33	93.33	\$110,269.50	\$432,287.50
	6	WA0125	SSO-SO	Single women only	47.72	44.34	92.06	\$21,861.00	\$454,148.50
	7	WA288 C	RRH	Households with Children	47.18	43.22	90.40	\$458,268.00	\$912,416.50
	8	WA0302	RRH	Households with Children	47	43.22	90.22	\$279,650.00	
	9	WA0353	RRH	Households with Children	45.54	43.22	88.76	\$331,177.00	\$1,243,593.50
	10	WA0374 C	PSH	Single men + Single women	46.54	42.00	88.54	\$347,186.00	\$1,590,779.50
	11	WA0130	PSH	Single men + Single women	47.81	40.03	87.84	\$216,226.00	\$1,807,005.50
	12	WA0111	PSH	Single men + Single women	46.9	40.03	86.93	\$299,868.00	\$2,106,873.50
	13	WA0128	PSH	Single women only	46.27	40.03	86.30	\$55,665.00	\$2,162,538.50
	14	WA0129	PSH	Single men + single women	46.27	40.03	86.30	\$302,665.00	\$2,465,203.50
	15	WA0330	SSO-CE	Singles Coordinated Entry	45.27	40.78	86.05	\$148,000.00	\$2,613,203.50
	16	WA0218	PSH	Single men + Single women	45.81	40.03	85.84	\$136,888.00	\$2,750,091.50
	17	WA0332	PSH	Single men + Single women	45.33	40.03	85.36	\$177,491.00	\$2,927,582.50
	18	WA0285	PSH	Single men + Single women	42.9	42.00	84.90	\$192,186.00	
	19	WA0127	SSO-E5	Minor Youth	40.63	43.59	84.22	\$22,555.00	\$2,950,137.50
	20	WA0331	RRH	Single men + Single women	44.81	35.81	80.62	\$226,020.00	\$3,176,157.50
	21	WA0126	TH	Youth/Families	41.09	41.19	82.28	\$75,144.00	\$3,251,301.50
	22	WA0119	RRH	Single men + Single women	43.36	35.81	79.17	\$159,976.00	\$3,411,277.50
Tier 2	23	WA0122	RRH	Single men + Single women	42.45	35.81	78.26	\$183,006.00	\$3,594,283.50
	24	WA0113(1)	TH	Young Adults	46.81	36.23	83.04	\$191,635.00	\$3,785,918.50
		WA0113(2)	TH	Young Adults/Families	43.36	38.80	82.16		
Total of ranking								\$4,539,583.50	
Project Consolidations:								Partner consolidation projects:	Over Tier 1 Line
WA0374 & WA0285				WA0374 C	\$	347,186.00	WA0285	\$192,186.00	\$139,173.50
WA0288 & WA0302				WA0288 C	\$	458,268.00	WA0302	\$279,650.00	76%
									% of 122 budget
Project Consolidations & Ranking: - Project consolidations are labeled as the project that scored the highest in the ranking of each group requested to be consolidated. To distinguish this consolidated project it is given the letter "C" at the end. - If HUD approves of the consolidation, the single, secondary partner project is removed and only the consolidated project is awarded funds. - If HUD does NOT award funds to the consolidated project the consolidated project is removed and the single projects are evaluated by HUD and awarded accordingly. These secondary projects must remain in the ranking list. - HUD requires the additional single projects of each consolidation to be included so it can be evaluated should HUD decide to not award the consolidated project. This prevents any loss of funding should it not be awarded. - The Tier 1 line is not impacted by this artificial additional consolidated project and its combined budget funds. The ARD is not impacted by this process either.							Actual LESS partner project included in consolidation project totals	\$4,067,747.50	

FY 2018 HUD CoC Award Allocations

WA-502 - Spokane City & County CoC

State

CoC Name

<u>Project Name</u>	<u>Program</u>	<u>Awarded Amount</u>
CCEW PSH II CoC 2018 (New)	CoC	\$110,270
City of Spokane CoC Planning Project CoC 2018	CoC	\$110,152
WA0109 Catholic Charities SMS TH CoC 18	CoCR	\$84,529
WA0111 VOA PSH Off Site CoC 2018	CoCR	\$299,844
WA0119 SNAP Small Cities Rapid Rehousing CoC 2018	CoCR	\$159,984
WA0125 Transitions / Women's Hearth CoC 2018	CoCR	\$21,881
WA0126 VOA Alexandria's House CoC 2018	CoCR	\$75,144
WA0127 VOA Crosswalk CoC 2018	CoCR	\$22,555
WA0128 VOA Hope House CoC 2018	CoCR	\$55,665
WA0129 VOA Off-Site PSH CoC 2018	CoCR	\$302,665
WA0130 VOA / Samaritan 05-06 CoC 2018	CoCR	\$216,226
WA0218 VOA Samaritan III CoC 2018	CoCR	\$136,888
WA0285 CCEW PSH Consolidation CoC 2018	CoCR	\$347,186
WA0288 CCEW RRH for Families Consolidation CoC 2018	CoCR	\$457,876
WA0329 City of Spokane HMIS Project CoC 2018	CoCR	\$177,489
WA0330 Coordinated Assessment - SHCA CoC 2018	CoCR	\$148,000
WA0331 Rapid Rehousing for Households without Children CoC 2018	CoCR	\$216,655
WA0332 VOA Scattered Site 2 CoC 2018	CoCR	\$177,491
WA0353 Rapid Rehousing for Households with Children CoC 2018	CoCR	\$315,747
WA0373 Homeless Families Coordinated Assessment (HFCA) CoC 2018	CoCR	\$80,000
YWCA RRH for Survivors of Domestic Violence CoC 2018 (New)	CoC	\$282,140

WA-502 Total :	\$3,778,347
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**Agenda Sheet for City Council Meeting of:**

04/15/2019

<u>Date Rec'd</u>	3/26/2019
<u>Clerk's File #</u>	OPR 2019-0271
<u>Renews #</u>	

Submitting Dept	HOUSING & HUMAN SERVICES	Cross Ref #	
Contact Name/Phone	MATT DAVIS 6815	Project #	
Contact E-Mail	MRDAVIS@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	1680 - CONSOLIDATED HOMELESS GRANT (CHG) APPLICATION		

Agenda Wording

CHHS is requesting permission to reapply for the Consolidated Homeless Grant from the WA State Department of Commerce and to subgrant the funds to partner agencies in accordance with the City's Strategic Plan to End Homelessness.

Summary (Background)

The Department of Commerce released the application to current grantees of the Consolidate Homeless Grant in February with an application deadline of April 29, 2019. If awarded, the grant period will be July 1, 2019 to June 30, 2021. See attached briefing paper for further detail.

<u>Fiscal Impact</u>	Grant related? YES	<u>Budget Account</u>
	Public Works? NO	
Neutral \$ 0		# N/A
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	KEENAN, KELLY	<u>Study Session</u>
<u>Division Director</u>	CORTRIGHT, CARLY	<u>Other</u> PS&CH 4/8/2019
<u>Finance</u>	HUGHES, MICHELLE	Distribution List
<u>Legal</u>	DALTON, PAT	mrDavis@spokanecity.org
<u>For the Mayor</u>	ORMSBY, MICHAEL	tdanzig@spokanecity.org
Additional Approvals		kburnett@spokanecity.org
<u>Purchasing</u>		Cbrown@spokanecity.org
<u>GRANTS &</u>	BROWN, SKYLER	Kkeenana@spokanecity.org
		chhsaccounting@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Neighborhood Council)

Summary (Background)

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

Briefing Paper

Public Safety & Community Health Committee

Division & Department:	Neighborhood and Business Services – Community, Housing, and Human Services Department
Subject:	Consolidated Homeless Grant (CHG) Application
Date:	3/15/19
Author (email & phone):	Matt Davis (mrDavis@spokanecity.org ext. 6815)
City Council Sponsor:	N/A
Executive Sponsor:	Kelly Keenan
Committee(s) Impacted:	Public Safety and Community Health
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	2015-2020 Strategic Plan to End Homelessness; 2015-2020 Consolidated Plan for Community Development
Strategic Initiative:	Safe & Healthy/Reduce Homelessness
Deadline:	The CHG Application Deadline is April 29, 2019
Outcome: (deliverables, delivery duties, milestones to meet)	CHHS is requesting permission to reapply for the Consolidated Homeless Grant from the WA state Department of Commerce and to subgrant the funds to partner agencies in accordance with the City's Strategic Plan to End Homelessness.
Background/History: The Department of Commerce released the application to current grantees of the Consolidate Homeless Grant in February with an application deadline of April 29, 2019. If awarded, the grant period will be July 1, 2019 to June 30, 2021.	
Executive Summary: <ul style="list-style-type: none"> Due to the CHHS Department's status as collaborative applicant for HUD's Continuum of Care grant for Spokane County and our adoption of HUD Homeless System Performance Measures in current sub contract agreements, Commerce has asked the City of Spokane to apply for the System Demonstration version of CHG, which allows a greater degree of flexibility in program implementation. The current anticipated allocation to the City is unknown at this point, but CHHS has estimated an annual allocation based on past funding levels and included this amount in the anticipated funding available to award successful proposals received in the recent 5-year RFP. Spokane County also administers a portion of CHG for non-City beneficiaries. CHHS staff are collaborating with County staff to establish a plan to administer the CHG program in the next biennium to more effectively serve all County beneficiaries and better support our community service providers to do so. 	
Budget Impact: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If new, specify funding source: N/A Other budget impacts: N/A	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Specify changes required: None. Known challenges/barriers: None.	

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

04/15/2019

Date Rec'd

3/26/2019

Clerk's File #

ORD C35757

Renews #

Submitting Dept

PUBLIC DEFENDER

Cross Ref #

Contact Name/Phone

KATHY KNOX 835-5972

Project #

Contact E-Mail

KKNOX@SPOKANECITY.ORG

Bid #Agenda Item Type

Special Budget Ordinance

Requisition #Agenda Item Name

0700 - SBO OFFICE OF PUBLIC DEFENSE GRANT AMENDMENT

Agenda Wording

A Special Budget Ordinance to add revenue and corresponding expenditure accounts to the Public Defender's budget for the additional funds from the Office of Public Defense (OPD) Grant for public defense travel and training.

Summary (Background)

This is the second amendment to the 2018/2019 OPD grant (GRT18507.)

Fiscal Impact

Grant related? YES

Budget Account

Public Works? NO

Revenue \$ 2,499

0700-95558-99999-33412-99999

Expense \$ 2,499

0700-95558-15930-54902-99999

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

KNOX, KATHY

Study Session

PSC 4/8/19

Division DirectorOtherFinance

HUGHES, MICHELLE

Distribution ListLegal

DALTON, PAT

llok@spokanecity.org

For the Mayor

ORMSBY, MICHAEL

rkokot@spokanecity.org

Additional Approvals

sbrown@spokanecity.org

PurchasingGRANTS &

BROWN, SKYLER



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

providing direction for district-based improvement activities and stakeholder priorities for future projects.

Summary (Background)

in order to further revitalization of the University District, and most of the projects identified in the 2004 plan are now either completed or well underway. In 2018, UDDA and UDPDA hired a team of consultants led by Community Attributes, Inc. to assist with and updated of the University District Strategic Master Plan. Outreach to business, community, and institutional stakeholders in the district included interviews, a two-day charrette/design workshop, and an online survey with 413 responses. The plan update envisions the University District as a globally-recognized "innovation district" focused on emerging strengths in education, research, and health care. The plan also includes a section focusing on the South University District subarea, identifying barriers to possible development within the subarea and goal areas and action items needed to implement

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

Distribution List

sbishop@spokanecity.org	

ORDINANCE NO C35757 _____

An ordinance amending Ordinance No. C-35703, passed by the City Council December 10, 2018, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2019, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2019, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2019 budget Ordinance No. C-35703, as above entitled, and which passed the City Council December 10, 2018, it is necessary to make changes in the appropriations of the General Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

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

The City of Spokane does ordain:

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

FROM:	0700-95558	General Fund – Public Defender	
	99999-33412	Other Judicial Grants	<u>\$2,499</u>
TO:	0700-95558	General Fund – Public Defender	
	15930-54902	Registration/Schooling	<u>\$2,499</u>

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to accept the additional Office of Public Defense (OPD) Grant to provide public defense training, 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

Second Amendment to Grant Agreement No. GRT18507

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

1. Grantee City of Spokane 824 N Monroe Street Spokane, WA 99201	2. Grantee Representative Kathy Knox Public Defender 824 N Monroe Street Spokane, WA 99201
3. Office of Public Defense (OPD) 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957	4. OPD Representative Katrin Johnson Managing Attorney Office of Public Defense 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957
5. Additional Grant Amount \$2,499	6. Grant Period January 1, 2018 through December 31, 2019
7. Amendment Purpose <p>This Amendment serves to provide Grantee additional funds in the amount of two thousand four hundred ninety-nine dollars (\$2,499) for costs associated with registration and travel for public defense training. The funds available through this Amendment constitute a one-time disbursement.</p> <p>The Chapter 10.101 RCW city grants are competitive grants for the purpose of improving the quality of public defense services in Washington municipalities.</p>	
The Office of Public Defense (OPD) and Grantee, as defined above, acknowledge and accept the change described in section 7 of this Amendment. All other terms and conditions remain in full force and effect.	
FOR THE GRANTEE  Name, Title Mayor 3/19/19 Date	FOR OPD  Joanne I. Moore, Director 3/22/19 Date

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

04/15/2019

<u>Date Rec'd</u>	3/26/2019
<u>Clerk's File #</u>	RES 2019-0027
<u>Renews #</u>	

Submitting Dept	ASSET MANAGEMENT	Cross Ref #	
Contact Name/Phone	DAVID STEELE 625-6064	Project #	
Contact E-Mail	DSTEELE@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	5900 -RESOLUTION & PURCHASE & SALE AGREEMENT - AVISTA		

Agenda Wording

A resolution approving the sale of surplus city property.

Summary (Background)

The City of Spokane acquired these parcels as part of the Right-of-Way acquisition for the U-District Pedestrian Bridge South landing area for \$349,000. With the completion of the project, those portions of the acquired property that are no longer needed for the ongoing function or maintenance of the completed bridge have been deemed surplus. This sale agreement completes the disposition process for a portion of the original properties, with the remainder being retained as future Right-of-Way.

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

Revenue	\$ 204,000.00	# 3200 95023 99999 39510 99999
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Select	\$	#
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Select	\$	#
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Select	\$	#
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Approvals	Council Notifications
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<u>Dept Head</u>	HARRIS, CURTIS	<u>Study Session</u>	
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<u>Division Director</u>	SANDERS, THERESA	<u>Other</u>	date
--------------------------	------------------	--------------	------

<u>Finance</u>	HUGHES, MICHELLE	Distribution List
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<u>Legal</u>	RICHMAN, JAMES	eraea@spokanecity.org
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<u>For the Mayor</u>	ORMSBY, MICHAEL	dstele@spokanecity.org
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Additional Approvals	publicworksaccounting@spokanecity.org
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<u>Purchasing</u>	cwoff@spokanecity.org
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Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

For those portions included in this sale agreement, the buyer has agreed to a purchase price of \$204,000.00.

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

RESOLUTION

A RESOLUTION APPROVING THE SALE OF SURPLUS CITY PROPERTY

WHEREAS, the City of Spokane is the owner of certain property located in the City of Spokane, County of Spokane, State of Washington, and more particularly described in Exhibit A hereto ("Property"); and

WHEREAS, pursuant to Chapter 12.10 of the Spokane Municipal Code, the Real Estate Review Committee reviewed the Property and reserved recommendation on whether to surplus the Property because of questions about possible need for use as public right-of-way, etc.; and

WHEREAS, the City Council now finds that the Property is no longer needed for a public use of the City of Spokane and is hereby declared to be surplus; and

WHEREAS, RCW 35.22.280(3) authorizes the City to dispose of surplus property upon commercially reasonable means; and

WHEREAS, the City of Spokane is required to seek fair market value for the Properties.

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

1. The Property is hereby declared to be surplus City property no longer needed for the present and foreseeable public uses of the City.

2. The purchase and sale agreement attached hereto as Exhibit B is hereby approved and the Mayor is authorized to execute the same on the City's behalf and is further authorized to execute such additional documents as may be needed in order to close the transactions provided for in said purchase and sale agreement.

ADOPTED by the Spokane City Council this _____ day of _____, 2019.

City Clerk

Approved as to form:

Assistant City Attorney

EXHIBIT A

THAT PORTION OF SPOKANE COUNTY TAX PARCEL 35173.1218 LEGALLY DESCRIBED AS:
LTS 12 & 13 OF BLK 4; FIRST ADDITION TO THIRD ADDITION TO RAILROAD ADDITION;
TOGETHER WITH N1/2 VAC ALLEY S OF & ADJ TO SD LTS

THAT PORTION OF SPOKANE COUNTY TAX PARCEL 35173.1216 LEGALLY DESCRIBED AS:
LTS 44 & 45 OF BLK 4; FIRST ADDITION TO THIRD ADDITION TO RAILROAD ADDITION;
TOGETHER WITH S1/2 VAC ALLEY N OF & ADJ TO SD LTS

EXHIBIT B

Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

This Agreement is entered into as of January 14, 2019 (the "Effective Date"), by and between the CITY OF SPOKANE, a Washington municipal corporation ("Seller"), and AVISTA CORPORATION, a Washington Corporation ("Buyer" or "Avista").

Whereas, the parties are desirous of entering into an agreement whereby the Buyer will purchase property owned by the Seller, consistent with Buyer's Proposal.

NOW, THEREFORE, in consideration of the respective agreements set forth below and for valuable consideration, the receipt and sufficiency of which is acknowledged, Seller and Buyer agree as follows:

1. Sale of Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the real property located at 433 East Sprague Street and 502 East Riverside Avenue, situated in the City and County of Spokane, State of Washington, and legally described as:

THAT PORTION OF SPOKANE COUNTY TAX PARCEL 35173.1218 LEGALLY DESCRIBED AS:

LTS 12 & 13 OF BLK 4; FIRST ADDITION TO THIRD ADDITION TO RAILROAD ADDITION;
TOGETHER WITH N1/2 VAC ALLEY S OF & ADJ TO SD LTS

THAT PORTION OF SPOKANE COUNTY TAX PARCEL 35173.1216 LEGALLY DESCRIBED AS:

LTS 44 & 45 OF BLK 4; FIRST ADDITION TO THIRD ADDITION TO RAILROAD ADDITION;
TOGETHER WITH S1/2 VAC ALLEY N OF & ADJ TO SD LTS

(collectively, the "Property").

2. Earnest Money. Within five (5) working days of the execution of this Agreement by both Seller and Buyer, Buyer shall deliver to Spokane County Title Company in Spokane, Washington ("Title Company"), as escrow agent for the closing of this transaction, Five Thousand and 00/100 Dollars (\$5,000.00), to be paid or delivered as earnest money (the "Earnest Money") in part payment for the Purchase Price of the Property. The Title Company will hold the Earnest Money for the benefit of the parties pursuant to the terms of this Agreement.

Interest will accrue on the Earnest Money for the benefit of Buyer; provided, however, that if Buyer forfeits the Earnest Money to Seller pursuant to the terms of this Agreement, then all interest accrued on the Earnest Money will be paid to Seller.

3. Purchase Price. The purchase price for the Property (the "Purchase Price") will be Two Hundred Four Thousand and 00/100 Dollars (\$204,000.00), of which the Earnest Money is a part. The Purchase Price, including the Earnest Money, will be paid to Seller in cash through escrow at closing.

4. Title to the Property.

4.1 Conveyance. At closing Seller shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged statutory warranty deed (the "Deed"), free and clear of all defects and encumbrances and subject only to those exceptions that Buyer approves pursuant to Section 4.2 below (the "Permitted Exceptions").

4.2 Preliminary Commitment. Seller shall order a preliminary commitment for an owner's standard coverage policy of title insurance in the amount of the Purchase Price to be issued by the Title Company and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment"). Within fifteen (15) days of Seller's delivery of a copy of the Preliminary Comment to Buyer, Buyer shall advise Seller by written notice of the exceptions to title, if any, that are disapproved by Buyer ("Disapproved Exceptions"). All monetary encumbrances other than nondelinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Exceptions or (ii) Seller elects not to remove Disapproved Exceptions. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Exceptions. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer.

If Seller elects not to remove any nonmonetary Disapproved Exemptions, Buyer will have until the expiration of the Feasibility Study Period to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives notice that it will cause one or more nonmonetary exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Buyer will have the right to either (i) elect to terminate this Agreement by written notice to Seller or (ii) proceed with the purchase, with an abatement of the Purchase Price equal to the actual cost of removing from title those exceptions not approved by Buyer, and to take the Property subject to those exceptions. If Buyer elects to terminate this Agreement under this Section 6.2,

the escrow will be terminated, the Earnest Money shall be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

4.3 Title Policy. Seller shall cause Title Company to issue to Buyer at closing a standard coverage owner's policy of title insurance insuring Buyer's title to the Property in the full amount of the Purchase Price subject only to the Permitted Exceptions (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

5. Conditions to Closing.

5.1 Due Diligence Materials. Seller shall provide to Buyer, or make available to Buyer for inspection, as soon as possible (but in any event no later than fifteen (15) days after the Effective Date) all materials relating to the Property specified in this Section 5.1 that exist and that are in Seller's actual possession or that Seller knows exist and to which Seller has access (collectively, the "Due Diligence Materials"). If Seller thereafter discovers any additional items that should have been included among the due diligence materials, Seller shall promptly deliver them to Buyer. Due Diligence Materials will include:

5.1.1 copies of any existing and proposed easements, covenants, restrictions, agreements or other documents that, to Seller's knowledge, affect title to the Property and that are not disclosed by the Preliminary Commitment;

5.1.2 all surveys, plats or plans relating to the Property;

5.1.3 all leases for the Property, or any portion thereof, if any, which remain in effect;

5.1.4 all existing service contracts pertaining to items such as janitorial, trash removal, maintenance, snow removal, laundry service, extermination and similar services, if any;

5.1.5 all labor contracts affecting the Property, if any;

5.1.6 all warranties and guarantees affecting any portion of the Property;

5.1.7 notice of any existing or threatened litigation affecting or relating to the Property and copies of any pleadings with respect to that litigation;

5.1.8 (i) all governmental permits and approvals obtained or held by Seller and relating to (A) the construction, operation, use or occupancy of any part of the Property or (B) zoning, land-use, subdivision, environmental, building and construction laws and regulations restricting, regulating or otherwise affecting the use, occupancy or enjoyment of the Property (collectively, "Permits") and (ii) any notices of violation of any Permits, or of any of the laws and regulations described in this Section 5.1.8; and

5.1.9 (i) all environmental assessment reports with respect to the Property that were performed or that are being performed by or for Seller and remain in the possession of or reasonably available to Seller, (ii) any raw data that relates to the environmental condition of the Property, (iii) any governmental correspondence, orders, requests for information or action and other legal documents that relate to the presence of Hazardous Material (as defined in Section 13 below) on, in or under the Property, and (iv) any other information material to the environmental condition or potential contamination of the Property.

5.2 Feasibility Study.

5.2.1 Thirty day period. During the period ending on the date which is Thirty (30) days following the Effective Date (the "Feasibility Study Period"), Buyer may conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer's intended use (the "Feasibility Study").

The Feasibility Study may include all inspections and studies Buyer deems necessary or desirable, in its sole discretion. Buyer and Buyer's agents, representatives, consultants, architects and engineers will have the right, from time to time, during the Feasibility Study Period to enter onto the Property and make borings, drive test piles and conduct any other test and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Buyer's intended use. Such tests and inspections are to be performed in a manner not disruptive to tenants or to the operation of the Property. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released.

5.2.2 Termination of Agreement. Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not

suitable for Buyer's intended use or does not meet Buyer's intended investment objectives. Buyer's right to terminate must be exercised by delivering written notice of its election to Seller on or before the expiration of the Feasibility Study Period, or the Extension Period if exercised. In the event Buyer does not complete the purchase, Buyer shall return the Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this Section 5.2.2, the Earnest Money will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for Buyer's obligations to indemnify Seller under Sections 5.2.1 and 5.2.4 hereof.

5.2.3 Confidentiality of studies and reports. Prior to closing of the purchase of the Property, Buyer will not distribute or divulge the information or materials it and its agents and consultants may generate in connection with the Feasibility Study to other persons except as may be required by law or as may be necessary or desirable in connection with Buyer's evaluation of the Property and its suitability; provided, that during this time period no information or materials concerning wetlands or environmental matters will be divulged to any governmental entity without Seller's written consent, unless required by law. If Buyer elects not to purchase the Property, Buyer agrees that, except as may be required by law, it will not further divulge or further distribute the information and materials except with Seller's consent.

Notwithstanding the foregoing, if Buyer elects not to purchase the Property, and if Seller requests copies of the written reports and studies prepared for Buyer in connection with its Feasibility Study, then Buyer will deliver to Seller copies of the final reports and studies. Buyer will, in that event, cooperate reasonably with Seller to coordinate Seller's communications with the consultants, provided Buyer will not be obligated to bear any costs or expend more than a reasonable period of time in doing so.

5.2.4 Buyer's indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to person, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer or its agents or employees in exercising its rights under the right of entry granted in this Section 5, except for claims caused by Seller's negligence.

5.3 Buyer's contingencies. Buyer's obligation to purchase the Property is expressly contingent upon the following:

5.3.1 Feasibility Study. Buyer's approval of the suitability of the Property as a result of the Feasibility Study;

5.3.2 Environmental condition. Buyer's approval, prior to expiration of the Feasibility Study Period, of the environmental condition of the Property pursuant to Section 11 below;

5.3.3 Title Policy. Buyer's receipt of Title Company's firm commitment to issue, upon closing, the Title Policy as described in Section 4.3;

5.3.4 Regulatory Approvals. Buyer's receipt of such regulatory approvals as are reasonably required for Buyer's intended use of the Property; and

5.3.5 Seller's compliance. Seller's timely performance of all of its obligations under this Agreement; provided, Seller will be given notice of any failure on its part to perform any such obligations and will have a period of time that is reasonable under the circumstance to cure its nonperformance; and

The foregoing conditions contained in Section 5.3 are collectively referred to in this Agreement as "Buyer's Contingencies." The parties shall diligently attempt to timely satisfy all of the Buyer's Contingencies.

5.4 Satisfaction/waiver of Buyer's Contingencies. Buyer's Contingencies are solely for the benefit of Buyer. The parties shall diligently attempt to timely satisfy all of the Buyer's Contingencies. If any of Buyer's Contingencies are not timely satisfied, Buyer will have the right at its sole election either to waive any of them in writing and proceed with the purchase or to terminate this Agreement. If Buyer elects to terminate this Agreement, the escrow will be terminated, the Earnest Money must immediately be returned to Buyer (except as provided in Section 5.2), all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the cost of terminating the escrow.

6. Closing Date. This transaction will be closed in escrow by the Title Company acting as escrow agent ("Escrow Agent"). The closing will be held at the offices of the Title Company on or before 5:00 p.m. Pacific Time, on February 28, 2019 (the "Closing Date"). If closing does not occur on or before February 28, 2019, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Earnest Money to the party entitled to receive it as provided in this Agreement, and return all documents to the party that deposited them.

7. Closing.

7.1 Seller's Escrow Deposits. On or before the Closing Date, Seller shall deposit into escrow the following:

7.1.1 the duly executed and acknowledged Deed;

7.1.2 a duly executed and acknowledged Real Estate Tax Affidavit; and

7.1.3 any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered.

7.2 Buyer's Escrow Deposits. On or before the Closing Date, Buyer shall deposit into escrow the following:

7.2.1 cash in an amount sufficient to pay the Purchase Price and Buyer's share of closing costs;

7.2.2 a duly executed and completed Real Estate Excise Tax Affidavit; and

7.2.3 any other documents or instruments Buyer is obligated to provide pursuant to this Agreement (if any) in order to close this transaction.

7.3 Additional Instruments and Documentation. Seller and Buyer shall each deposit any other instruments and documents that are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.

7.4 Closing Costs.

7.4.1 Seller's Costs. Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price and one-half of Title Company's escrow fee. It is understood between the parties that pursuant to WAC 458-61-420(c) this sale will be exempt from the Washington State real estate excise tax, and Buyer agrees to cooperate with Seller in executing such documents as are required to qualify Seller for such exemption.

7.4.2 Buyer's Costs. Buyer shall pay the additional premium, if any, attributable to the extended coverage owner's policy of title insurance (if

elected by Buyer) and any endorsements required by Buyer, the cost of recording the Deed and one-half of Title Company's escrow fee.

7.5 Foreign Investment in Real Property Tax Act. The parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder (the "Regulations").

8. Adjustments and Prorations. The following adjustments and prorations will be made as of the Closing Date (with Buyer either responsible for or entitled to a credit for, as the case may be, the actual Closing Date).

8.1 Property Taxes. All property taxes payable in the year of closing and assessments approved by Buyer, if any, will be prorated as of the Closing Date.

8.2 Utilities. All gas, electric and other utility charges will be prorated as of the Closing Date.

9. Covenants.

9.1 Seller's Covenants.

9.1.1 Covenant to Maintain. Prior to the Closing Date, Seller shall maintain, repair, manage and operate the Property in a businesslike manner in accordance with Seller's prior practices and Seller shall not dissipate any portion of the Property.

9.1.2 Contracts Prior to Closing. Seller shall not enter into any leases, contracts of sale or other agreements that are inconsistent with this Agreement without Buyer's prior written consent.

10. Representations and Warranties.

10.1 Seller's Representations and Warranties. Except as specifically provided in this Agreement, Seller makes no warranty or representation, express or implied, with respect to the condition of the Property or its suitability for any particular purpose.

10.1.1 Seller has full power and authority to convey the Property to Buyer.

10.1.2 Seller has not received notice of any special assessment or condemnation proceedings affecting the Property.

10.1.3 To the best of Seller's knowledge, there is no litigation pending or threatened against Seller (or any basis for any claim) that arises out of the ownership of the Property and that might materially and detrimentally affect (i) the use or operation of the Property for Buyer's intended use, or (ii) the ability of Seller to perform its obligations under this Agreement.

10.1.4 The Parties acknowledge and understand that the City plans to extend Sherman Street along the western boundary of the Property.

10.2 Waiver of Seller Disclosure Statement. Buyer expressly waives Buyer's right to receive from Seller a signed and dated Real Property Transfer Disclosure Statement as contemplated by Chapter 64.06 RCW.

10.3 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that Buyer is a limited liability company, duly organized and validly existing under the laws of the state of Washington; this Agreement and all documents executed by Buyer that are to be delivered to Seller at closing are, or at the time of closing will be (i) duly authorized, executed and delivered by Buyer, (ii) legal, valid and binding obligations of Buyer, and (iii) in compliance with all provisions of all agreements and judicial orders to which Buyer is a party or to which Buyer is subject.

11. Hazardous Materials. The City makes no representation regarding the physical condition of the Property and/or regarding any Hazardous Materials Condition, as defined below, affecting the Property. Buyer takes the Property "AS IS" with all physical defects, including those that cannot be observed by casual inspection. Seller will have no obligation to repair or remedy any physical defects of the Property. Buyer may, at its sole cost, expense, and liability, conduct an environmental site assessment of the Property during the Feasibility Period. For the purposes of this paragraph, "Hazardous Materials" shall include, but not be limited to, substances defined as "Hazardous Substances," "Hazardous Materials", "Hazardous Waste," "Toxic Substances", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Section 9601 et seq., the Model Toxic Control Act of the State of Washington and all regulations adopted and publications promulgated pursuant to such laws, collectively "Environmental Laws". A "Hazardous Materials Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of Hazardous Materials that would require remediation and/or removal under applicable Federal, State or local law. In the event Buyer notifies Seller prior to the Closing Date that the Property is affected by a Hazardous Materials Condition and such notice is accompanied by a report from an engineering company with experience in evaluating such matters, Buyer may either (a) terminate this contract, or (b) proceed to Closing notwithstanding such contamination. In the event Buyer elects to terminate this contract pursuant to this paragraph, Buyer shall receive a refund of the entire Earnest Money, plus any interest accrued thereon. To the extent allowed by law, the environmental due diligence

investigation provided for herein and any information or documents produced or collected by the environmental consultant in connection with this investigation shall be considered to be confidential information by the Buyer and City until Closing. Prior to Closing, or in the event Closing does not occur, Buyer shall not disclose such information to any third party or initiate or have any direct contact with any governmental agencies in connection with the environmental investigation without the prior written consent of the City's Director of Asset Management. Buyer may disclose said information to its employees, attorneys, consultants, lenders, and others who have a need to know and use the information in connection with this transaction, and may disclose said information if required to do so by law, or by court order. If the environmental investigation reveals any conditions that applicable laws require to be reported to any governmental agency, the City shall have the responsibility to make such reports or disclosures, but Buyer shall have the right to do so in the event the City fails to do so within any time period required by applicable law.

12. Eminent Domain. If all or any part of the Property is taken by condemnation or eminent domain and the value of the portion of the Property so taken exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00), Buyer may, upon written notice to Seller, elect to terminate this Agreement, and in such event all monies theretofore paid on account must be returned to Buyer, and neither party will have any further liability or obligation under this Agreement. If all or any portion of the Property has been or is hereafter condemned or taken by eminent domain and this Agreement is not canceled, Seller's right, title and interest in and to any awards in condemnation or eminent domain, or damages of any kind, to which Seller may have become entitled or may thereafter be entitled by reason of any exercise of the power of condemnation or eminent domain with respect to the Property or any portion thereof shall accrue to Buyer.

13. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date.

14. Events of Default.

14.1 By Seller. If there is an event of default under this Agreement by Seller (including a breach of any representation, warranty or covenant), Buyer will be entitled (a) in addition to all other remedies available at law or in equity, to seek specific performance of Seller's obligations under this Agreement or (b) to terminate this Agreement by written notice to Seller and Escrow Agent. If Buyer terminates this Agreement, the escrow will be terminated, the entire Deposit must immediately be returned to Buyer, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement except that Seller shall pay any costs of

terminating the escrow and any cancellation fee for the Preliminary Commitment.

14.2 By Buyer. IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY, THE EARNEST MONEY DEPOSIT MADE BY BUYER WILL BE FORFEITED TO SELLER AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER FOR SUCH FAILURE.

Seller's Initials

Buyer's Initials

15. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by Mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Seller: City of Spokane
Attn: Charlie Wolf
808 W Spokane Falls Blvd
Spokane, WA 99201

With a copy to: James Richman
Office of the City Attorney
808 W Spokane Falls Blvd
Spokane, WA 99201

Buyer: Avista Corporation
Attn: Joe Pfening
P.O.Box 3727 MSC- 25

Spokane, WA 99220

Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit at any post office in the United States of America, and if delivered via facsimile, the same day as verified, provided that any verification that occurs after 5 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9 a.m. on the following business day.

17. Brokers and Finders. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or a finder's fee as procuring cause of the purchase and sale contemplated by this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim. Avista's Real Estate Advisor, Joe Pfening, is a Licensed Real Estate Broker who is waiving any right to commissions or finders fees to the purchase of these properties.

17. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

19. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Washington.

20. Entire Agreement. This Agreement and the exhibits to it constitute the entire agreement between the parties with respect to the purchase and sale of the Property, and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth.

21. Attorney Fees. Each party shall pay its own legal fees relating to negotiation and drafting of this Agreement and the documents to be executed at closing. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not substantially prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and

reasonable attorney fees incurred in connection with any federal, state or bankruptcy court proceeding.

22. Time of the Essence. Time is of the essence of this Agreement.

23. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of a subsequent breach of the same covenant.

24. Nonmerger. The terms and provisions of this Agreement, including, without limitation, all indemnification obligations will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

26. Assignment. Buyer may assign its rights under this Agreement at any time prior to Closing to be formed limited partnership in which Buyer is a majority owner.

27. Governmental Approval. Buyer acknowledges and agrees that this Agreement does not bind the City of Spokane until it is signed by the Mayor following approval by the Spokane City Council in open public meeting.

In witness whereof, the Buyer and Seller have signed this Agreement effective as of the date first hereinabove written.

AVISTA CORPORATION

CITY OF SPOKANE

By: _____
Its: _____

By: _____
Mayor

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

STATE OF WASHINGTON :
:ss.
County of Spokane :

On this ____ day of _____, 20__, before me personally appeared David Condon and Terri Pfister, to me known to be the Mayor and the City Clerk, respectively, of the CITY OF SPOKANE, a municipal corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State
of Washington, residing at Spokane
My Appointment expires _____

STATE OF WASHINGTON :
:ss.
County of Spokane :

On this ____ day of _____, 20__, before me personally appeared _____, to me known to be the _____ of AVISTA CORPORATION, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public in and for the State
of Washington, residing at Spokane
My Appointment expires _____



**Washington State
Public Works Board**

Post Office Box 42525
Olympia, Washington 98504-2525

March 6, 2019

James A. Richman, Attorney
City of Spokane
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3326

RE: City of Spokane's SD12-963-142, University District Pedestrian Bike project, surplus property

Dear Mr. Richman,

In response to your letter dated February 6, 2019. The Public Works Board has approved to authorize the city to sell certain properties in connection to the SD12-963-142 grant issued for the University District Pedestrian Bike project. Furthermore, the city is allowed to keep the sale proceeds to finance other non-motorized public transportation projects in the city.

If you have any questions regarding this letter, please contact me at 360-725-3088 or via email at connie.rivera@commerce.wa.gov.

Sincerely,

Connie Rivera
Program Manager

PAT J. DALTON
SENIOR ASSISTANT CITY ATTORNEY

ASSISTANT CITY ATTORNEYS

SALVATORE J. FAGGIANO	NATHANIEL J. ODLE
MATTHEW M. FOLSOM	MICHAEL J. PICCOLO
MARGARET HARRINGTON	JAMES A. RICHMAN
MARY F. MURAMATSU	ELIZABETH L. SCHOEDEL
MARIMAR I. ODLE	TIMOTHY E. SZAMBELAN



OFFICE OF THE CITY ATTORNEY
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3326
509.625.6225
509.625.6277 FAX

MICHAEL C. ORMSBY
CITY ATTORNEY

February 6, 2019

Via e-mail:
Connie.Rivera@commerce.wa.gov

Ms. Connie Rivera
Program Manager, Public Works Board
Local Government Division
Washington State Department of Commerce
1011 Plum Street SE
Olympia, WA 98504

Re: Public Works Trust Fund Capital Grant Agreement Number SD12-963-142
2012 Jobs Now Act – University District Pedestrian/Bicycle Bridge \$3,200,000
Proposal to Sell Surplus Real Property Acquired with Grant Funds

Dear Connie:

Please accept the following as the City of Spokane's request for Board approval of the proposed sale of certain properties acquired in connection with Public Works Trust Fund Capital Grant Agreement Number SD12-963-142, relating to the University District Pedestrian/Bicycle Bridge in the City of Spokane, Washington (the "Bridge Project"). The Bridge Project is complete and the properties in question are now surplus to the City's needs.

Background

In May 2012, the City was awarded a state grant in the 2012 Capital Budget in the amount of \$3.2 million. The Public Works Board was assigned to administer the grant funds, and thereafter the City of Spokane and the Public Words Board entered into the Capital Agreement referenced above "to undertake a legislatively-approved project that furthers the goals and objectives of Washington State." Pursuant to that agreement, the Board reimbursed the City for eligible costs related to the Bridge Project, including right-of-way acquisition. The City also invested at least \$531,408.01 in local funds in the Bridge Project.

Project-related right-of-way acquisitions included certain properties located (i) at 502 E Riverside Avenue and 433 E Sprague Avenue (referred to as the "Nowlan Property"), and (ii) at 304 E. Riverside Avenue and 15 N. Grant Street (referred to as the "Judd Family

35173.1218

35173.1302

35173.1216

35173.1301

Trucking Property"). The properties are depicted in attached Exhibit A. The Judd Family Trucking acquisition also included a large triangular piece made up of several parcels across Riverside Avenue and along the Burlington Northern Santa Fe railroad right-of-way, also depicted in Exhibit A.

As is often the case in acquiring right-of-way for a public works project, neither property owner was interested in selling a portion of their property. Accordingly, the City had to acquire more property than was actually needed for completion of the Bridge Project, leaving the City with surplus property after completion of the Bridge Project.

Section 1.14 of the Capital Agreement referenced above provides:

The Contractor understands and agrees that any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract shall be held and used by the Contractor for the purposes stated in Attachment I: SCOPE OF WORK for a period of at least ten (10) years from the date the final payment is made.

For a period of at least ten (10) years from the date the final payment is made, in the event that the Contractor decides to change or transfer ownership of any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract, the Contractor agrees that any such decision or action must be submitted in writing and approved by the Board in writing at least thirty (30) days prior to the execution of such decision or action. . . .

Proposed Purchase and Sale of Surplus Properties

The Bridge Project is now complete, and two buyers have approached the City seeking to acquire the surplus property. One buyer seeks to acquire a portion of the Nowlan Property as generally depicted in Exhibit A, consisting of approximately 12,000 square feet. The City originally paid \$295,000.00 to acquire the Nowlan Property, and the buyer has agreed to pay \$204,000.00 for the surplus portions of this property. The buyer has indicated that its immediate plans for the property are to satisfy the City's minimum parking requirements for a 180,000 square foot mixed-use commercial development. That project is under review by the City and occupancy of the building for its intended office use is contingent on the buyer providing the required parking. The buyer's long range plans for the property are to develop a mixed-use office/retail/research building on the property. The buyer's immediate and long range uses of the property are consistent with that and will enhance both the City's University District and the legislatively-approved Bridge Project.

The other buyer seeks to acquire those portions of the Judd Family Trucking Property depicted in Exhibit A. This property consists of approximately .55 acres or 23,958 square feet of land. The City originally paid \$775,482.56 to acquire the Judd Family Trucking Property, which included the triangular portion described above which has been

integrated into the Bridge Project. The buyer has agreed to pay \$595,125.00 for the surplus portion of this property, and has indicated it is seeking to assemble property in order to construct a large parking structure, a project that will enhance the University District and the legislatively-approved Bridge Project.

Use of Sale Proceeds

Assuming the Board approves the foregoing purchases and sales, unless the City receives other direction from the Board, the City proposes to deposit proceeds from the sale of the surplus properties into the City's arterial street fund to help in financing other non-motorized public transportation projects in the City.

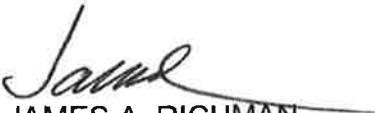
Request

The City of Spokane respectfully asks the Board to approve the proposed purchase and sales of the surplus properties outlined above. The legislatively-approved Bridge Project is complete and the surplus properties are not needed by the City for any public purpose. The sale would put the properties back on the tax rolls, and proceeds from the sales would assist the City in financing other public transportation projects. In addition, development of the surplus properties, as indicated by the potential buyers, would be consistent with the City's vision for areas near the Bridge Project's landings, and will further catalyze the type of development envisioned in the City's University District.

Thank you for your thoughtful consideration of this request. If you have any questions, or if there is other information or materials that we can provide to assist the Board with its decision, please contact the undersigned at 509-625-6238.

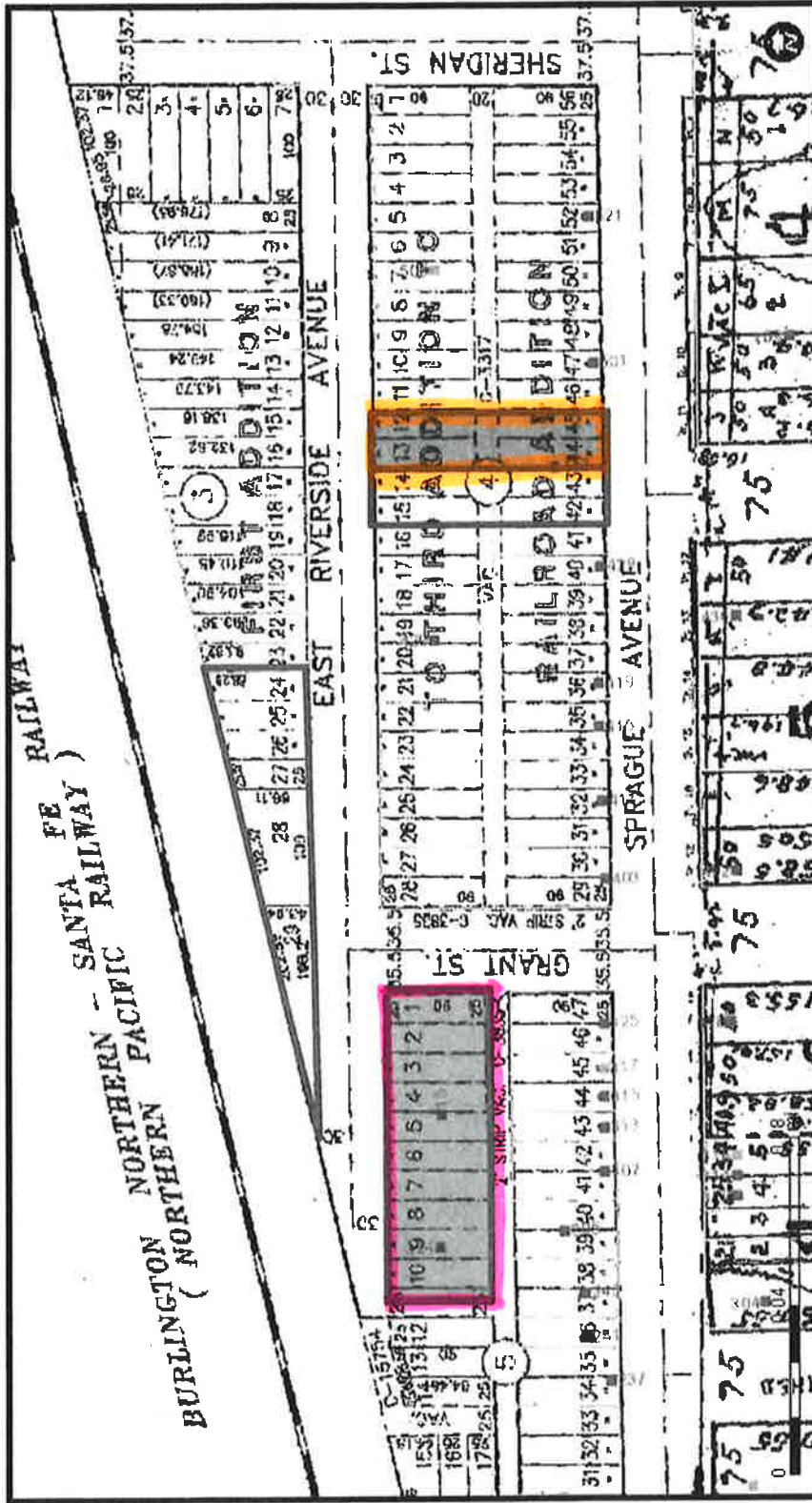
Very truly yours,

OFFICE OF THE CITY ATTORNEY
MICHAEL C. ORMSBY, City Attorney


JAMES A. RICHMAN
Assistant City Attorney

Enc. / Attachments: Exhibit A

Exhibit 'A'



City of Spokane GIS

- Legend**
- Original Purchase Areas:**
- Judd Family Trucking ☐
 - Nolan Carburetor ☐
- Areas to be Sold:**
- Judd Family Trucking ☐
 - Nolan Carburetor ☐

THIS IS NOT A LEGAL DOCUMENT.
 THE CITY OF SPOKANE, IDAHO, HAS COMPILED
 THIS MAP FROM PUBLIC RECORDS AND IS NOT
 GUARANTEEING THE ACCURACY OF THE
 INFORMATION SHOWN ON THIS MAP. THE
 CITY OF SPOKANE, IDAHO, IS NOT
 RESPONSIBLE FOR ANY LOSS OR DAMAGE
 RESULTING FROM THE USE OF THIS MAP.



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

October 31, 2012

Katherine Miller
City of Spokane
W 808 Spokane Falls Blvd
Spokane, WA 99201-3334

RE: Public Works Trust Fund Capital Grant Agreement Number SD12-963-142

Dear Ms. Katherine Miller:

Enclosed is a fully executed Trust Fund Grant Agreement for your Public Works Trust Fund Grant Number SD12-963-142.

This contract is for University District Pedestrian Bike. Please keep this original document with the other local records related to your project.

We are enclosing drawing instructions and A19 vouchers for requesting funds and will email the electronic version, (if needed), for your completion once funds are ready to be expended.

Please send A19 invoices to: Eric Tompkins
Department of Commerce
Attn: Contracts Administration Unit
P. O. Box 42525
Olympia, WA 98504-2525

Denise Fry
1-360-725-2741

I will be your project manager and look forward to working with you and your staff on this project. If you have any questions or need additional information, please do not hesitate to call me at (360) 725-3091 or email me at Eric.Tompkins@commerce.wa.gov.

Sincerely,

Eric Tompkins
Contracts Administration Unit
Project Manager

Enclosures

DIRECT APPROPRIATIONS GRANT RECIPIENTS IMPORTANT INFORMATION - MUST READ

INSTRUCTIONS FOR COMPLETING VOUCHERS IN ORDER TO RECEIVE GRANT FUNDS!

General Information

The Grant Agreement describes the points at which your grant funds may be disbursed to you. This is referenced in your grant agreement, Section 1.9 Billing Procedure and Payment.

- The GRANTEE, using the Invoice Voucher template, initiates disbursements
- Funds will be disbursed on a reimbursement-basis only. Expenses incurred after the date shown on your contract Declarations Page as **Earliest Date for Construction Reimbursement**, are eligible for reimbursement.
- Disbursement requests must include documentation that supports evidence of costs incurred. Documentation may include bills or receipts from contractors
- Each disbursement request may include costs incurred over an extended period
- The grant agreement places conditions on the fund disbursements
- Reimbursement requests may only be submitted once a month

Disbursements for **construction activities** are not allowed until documentation has been received by the Contracts Administration Unit (CAU) indicating that the following conditions have been met:

- Proof of compliance with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act, as described in Section 1.16 of the executed Direct Appropriations Grant contract, and
- A signed Notice of Contract Award and Notice to Proceed, which follows the formal award of a construction contract (a blank copy is attached), and
- A completed Project Status Report; and
- Other conditions as required.


If you have any questions regarding these loan conditions, please contact your CAU Regional Project Manager, Eric Tompkins at (360) 725-3091 or eric.tompkins@commerce.wa.gov

First Invoice Voucher and Subsequent Invoice Vouchers

1. Place the disbursement request amount on the appropriate line.
2. Update the **Voucher Number** and **Total Amounts** values if you are not using the electronic voucher file available through the Contracts Administration Unit.
3. Attach supporting documentation including a current Project Status Report.
Please make sure the conditions listed above have been met, otherwise the loan disbursement will be delayed.
4. Sign the Voucher in the upper right hand corner (no black ink) and return it to the following address:

Attn: Eric Tompkins
Contracts Administration Unit
Dept. of Commerce
PO Box 42525
Olympia WA 98504-2525

Staff will review your disbursement request upon receipt. You will receive funds within 30 days of the request.

 WASHINGTON STATE DEPARTMENT OF COMMERCE		AGENCY NUMBER <div style="border: 1px solid black; padding: 5px; text-align: center; font-weight: bold;">1030</div>		Short Code <div style="border: 1px solid black; padding: 5px;"></div>	Commerce Contract Number <div style="border: 1px solid black; padding: 5px; text-align: center; font-weight: bold;">SD12-963-142</div>
Form A19-1A		VOUCHER DISTRIBUTION DEPARTMENT OF COMMERCE PO BOX 42525 OLYMPIA, WA 98504-2525			
VENDOR OR CLAIMANT (Warrant is to be payable to:) <div style="margin-top: 20px;"> City of Spokane 808 W. Spokane Falls Blvd. Spokane WA, 99201-3343 </div>			INSTRUCTIONS TO VENDOR OR CLAIMANT: Submit this form to claim payment for materials, merchandise, or services. Show complete detail for each item. Vendor's Certificate: The individual signing this voucher below warrants they have the authority to do so as authorized and on the behalf of the entity identified in the Vendor/Client section. The individual signing below certifies under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race creed, color, national origin, handicap, religion or Vietnam era or disabled veterans status.		
Contact Person: Phone: Contract Period REPORT PERIOD			By: _____ <div style="text-align: right;">(SIGN IN BLUE INK)</div> <div style="display: flex; justify-content: space-between;"> <div>(TITLE)</div> <div>(DATE)</div> </div>		
Original Contract Amount Application Fee (if any)		\$3,200,000 \$48,000			
Date	DESCRIPTION	Budget	Previously Requested	Amount of This Invoice	Award Remaining Balance
	Net Contract Amount	\$3,152,000			\$3,152,000
Totals				\$0.00	\$3,152,000

Match: Year / Dollars / Coding				PROGRAM APPROVAL (the individual signing this voucher warrants they have the authority to sign this voucher)				DATE	
DOC DATE		CURRENT DOC. NO.		REFERENCE DOC NO.		VENDOR NUMBER and SUFFIX			
ACCOUNT NO.				ASD NUMBER		VENDOR MESSAGE			
TRANS CODE	MASTER	INDEX	SUB OBJ	SUB OBJ	GL	ACCT	SUBSID	AMOUNT	INVOICE
SIGNATURE OF ACCOUNTING PREPARER FOR PAYMENT						DATE		WARRANT TOTAL	
ACCOUNTING APPROVAL FOR PAYMENT						DATE			



**Washington State
Public Works Board**

Post Office Box 42525
Olympia, Washington 98504-2525

May 10, 2012

City of Spokane
Katherine Miller
808 W Spokane Falls Blvd
Spokane, WA 99201

RE: 2012 Jobs Now Act - University District Pedestrian/Bike - \$3,200,000

Dear Ms. Miller:

Congratulations on being awarded a state grant in the 2012 Capital Budget. The Public Works Board (the Board) has been assigned to administer your grant funds.

Funds for your project were included in the budget at the request of the Governor or Legislature. Now that the capital budget has been signed into law, our role is to release these funds in a way that meets the intent of the Legislature and conforms to state regulations. We strive to do so expeditiously and will make the process as simple as possible for you.

Before you can receive the funds, a contract will need to be executed between your organization and the Board. In order to get the contracting process started, please follow these steps:

1. Complete the attached Contract Readiness Survey, and have the person who is authorized to sign contracts sign the Grantee Certification page. Please note that there will be an administrative cost charged to the grant. We will keep you informed on what the amount will be;
2. Attach documentation for committed funds (copies of award letters, council appropriations, etc.), if applicable;
3. Complete the attached LEED certification declaration;
4. Attach a copy of the project request form/packet that you submitted to the Legislature;

Send the above documents by **May 31** to:

Chris Gagnon
Washington State Department of Commerce
Public Works Board
PO Box 42525
Olympia, WA 98504-2525
or
Christina.gagnon@commerce.wa.gov

Katherine Miller
May 10, 2012
Page Two

Please note that this is a cost reimbursement grant. Once your contract is executed, funds may be disbursed for reimbursement of costs incurred associated with your project's scope of work. Funds may be retroactively reimbursed back to April 23, 2012.

Once we receive your complete set of documents, this office will begin preparing your contract. We may contact you for further information.

We look forward to working with you on this project, and helping to put Washington's residents to work. If you have any questions or need additional information, please contact Chris Gagnon at (360) 725-3158; Christina.gagnon@commerce.wa.gov, or Myra Baldini at (360) 725-3152; Myra.baldini@commerce.wa.gov.

Sincerely,

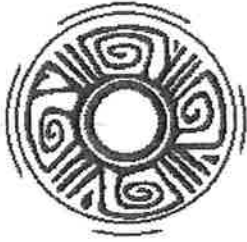


Chris Gagnon
Infrastructure Finance Specialist



Myra Baldini
Fund Manager and Underwriter

Enclosures



**Washington State
Public Works Board**

Washington State Dept of Commerce
1011 Plum St
P.O. Box 42525
Olympia, WA 98504-2525

Capital Agreement between:

City of Spokane

and

Public Works Board

For:

Project Name: **University District Pedestrian Bike**

Contract Number: **SD12-963-142**

Loan Type: Main Street Direct Appropriation

Execution/Start Date: _____ **Date of Contract Execution** _____



Department of Commerce
Innovation is in our nature.

DECLARATIONS

CLIENT INFORMATION

Legal Name:	City of Spokane
Contract Number:	SD12-963-142
Federal Tax Identification Number:	916001280
State Wide Vendor Number:	SWV0003387-05

PROJECT INFORMATION

Project Title:	University District Pedestrian Bike
Project City:	Spokane
Project State:	Washington
Project Zip Code:	99201-3343

GRANT INFORMATION

Grant Amount:	\$3,152,000.00
Appropriation Number:	ESB 5127, Section 305
Contract End Date:	06/30/2015
Biennium:	2011-13
Biennium Close Date:	6/30/2013
Earliest Date for Construction Reimbursement:	4/23/2012

SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

None.

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CONTRACT FACE SHEET

Contract Number: SD12-963-142

Washington State Department of Commerce
PUBLIC WORKS BOARD
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS


1. Contractor City of Spokane 808 W. Spokane Falls Blvd. Spokane, WA 99201-3343		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative		4. Public Works Board Representative	
5. Contract Amount \$3,152,000.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Contract Execution Date	8. Contract End Date 06/30/2015
9. Federal Funds (as applicable) N/A		Federal Agency N/A	CFDA Number N/A
10. Tax ID # 916001280	11. SWV # SWV0003387-05	12. UBI #	13. DUNS #

14. Contract Purpose

The Board and the Contractor have entered into this Contract to undertake a legislatively-approved project that furthers the goals and objectives of Washington State Direct Appropriations Program.

The Board, defined as the Washington State Public Works Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including ATTACHMENT I: PROJECT SCOPE OF WORK; ATTACHMENT II: CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES; and ATTACHMENT III: CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS (if applicable).


FOR THE CONTRACTOR


Signature

David A. Condon
Print Name Mayor
City of Spokane

Title

10.18.2012
Date

Attest: 

Approved as to form:


Assistant City Attorney

FOR THE PUBLIC WORKS BOARD


John LaRocque, Executive Director

10/22/12
Date

APPROVED AS TO FORM ONLY

Rob McKenna
Attorney General

Signature on File
Kathryn Wyatt
Assistant Attorney General



CONTRACT TERMS AND CONDITIONS

PUBLIC WORKS BOARD GRANT PROGRAMS—DIRECT APPROPRIATION PROJECTS

Part 1. SPECIAL TERMS AND CONDITIONS

1.1. DEFINITIONS

As used throughout this Washington State Capital Budget Direct-Appropriation Contract the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Washington State Capital Budget Direct-Appropriation Contract.
- B. "Contractor" shall mean the local government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- D. "Declarations" and "Declared" shall refer to the project information, grant terms and conditions as stated on the Declarations Page of this Grant Contract, displayed within the contract in **THIS STYLE** for easier identification.

1.2. AUTHORITY

Acting under the authority of Chapter 43.155 RCW, the Board has awarded the Contractor a Washington State Capital Budget Direct-Appropriation grant for a legislatively-approved project pursuant to the legislative **APPROPRIATION NUMBER** and **BIENNIUM** as shown on the Declarations Page..

1.3. PURPOSE

The Board and the Contractor have entered into this Contract to undertake a legislatively-approved project that furthers the goals and objectives of Washington State. The project will be undertaken by the Contractor and will include the activities described in **Attachment I: SCOPE OF WORK**. The project must be undertaken in accordance with the grant terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

1.4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

1.5. GRANT AMOUNT

The Board shall pay an amount not to exceed the awarded **GRANT AMOUNT** as shown on the attached Declarations Page for the eligible costs necessary for or incidental to the performance of work as set forth in the described in **Attachment I: SCOPE OF WORK**.

1.6. CERTIFICATION OF FUNDS

This section has been deleted but title retained for document continuity.

1.7. MODIFICATION TO THE PROJECT COSTS

This section has been deleted but title retained for document continuity.

1.8. PROJECT EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

Payments to the Contractor shall be made on a reimbursement basis only. For the purposes of this Contract, eligible costs shall be construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days. Only costs incurred on or after the **EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT** as shown in the Declarations, are eligible for reimbursement under this Contract.

The Contractor may be reimbursed for eligible costs related to the activities identified in **Attachment I: SCOPE OF WORK**.

- A. Real property and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the project;
- B. Design, engineering, architectural, and planning;
- C. Archaeological/historical review;
- D. Construction management and construction observation (from external sources only);
- E. Construction costs including, but not limited to, the following:
 - i. Site preparation and improvements;
 - ii. Permits and fees;
 - iii. Labor and materials;
 - iv. Taxes on project goods and services;
 - v. Capitalized equipment;
 - vi. Information technology infrastructure; and
 - vii. Landscaping.
- F. Insurance premiums as required in Section 1.19;
- G. Other costs authorized through the legislation.

1.9. BILLING PROCEDURES AND PAYMENT

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum payable under this Contract. When requesting reimbursement for costs incurred or expenditures made, the Contractor shall submit a signed and completed Invoice Voucher (Form A-19), referencing the **Attachment I: SCOPE OF WORK** project activity performed, and any appropriate documentation. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each Invoice Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report of project status to date. The Board will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, the Board shall promptly remit a warrant to the Contractor.

The final Invoice Voucher payment shall not occur prior to the completion of all project activities as identified in **Attachment I: SCOPE OF WORK**. A sum not to exceed ten percent (10%) of the grant amount will be retained until all project activities are complete and a Certified Project Completion Report is completed and submitted by the Contractor, per Section 1.10.

The Contractor shall submit all Invoice Vouchers and any required documentation to:

Contracts Administration Unit
Department of Commerce
PO Box 42525
Olympia, WA 98504-2525

The Board will pay the Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Board not more often than monthly.

Payment shall be considered timely if made by the Board within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the Board.

Duplication of Billed Costs. The Contractor shall not bill the Board for services performed under this Contract, and the Board shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs. The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

1.10. CERTIFIED PROJECT COMPLETION REPORT AND FINAL PAYMENT

The Contractor shall complete a Certified Project Completion Report when activities identified in **Attachment I: SCOPE OF WORK** are complete.

The Contractor shall provide the following information to the Board:

- A. A certified statement that the project, as described in **Attachment I: SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in **Attachment I: SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the grant amount including the ten percent (10%) retainage, as described in Section 1.9. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in **Attachment I: SCOPE OF WORK** and the Board's receipt and acceptance of the Certified Project Completion Report.

1.11. REPORTS

The Contractor shall furnish the Board with Project Status Reports when submitting Invoice Vouchers (as described in Section 1.9), a Certified Project Completion Report at project completion

(as described in Section 1.10), and other reports as the Board may require. Failure to file reports requested may result in termination of this Contract.

1.12. EVALUATION AND MONITORING

The Contractor shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the Board, including site inspections, if necessary.

The Contractor may be asked by the Board to provide photographs, either hard copy or electronically, which visually depict the progress made on the project.

The Board or the State Auditor and any of their representatives shall have full access to and the right to examine all of the Contractor's records with respect to all matters covered in this Contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Contract. Such rights last for six (6) years from the date final payment is made hereunder.

1.13. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Board makes no claim to any real property improved or constructed with funds awarded under this Contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Contract. This provision does not extend to claims that the Board may bring against the Contractor in recapturing funds expended in violation of this Contract.

1.14. CHANGE OF OWNERSHIP OR USE FOR CONTRACTOR-OWNED PROPERTY

The Contractor understands and agrees that any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract shall be held and used by the Contractor for the purposes stated in **Attachment I: SCOPE OF WORK** for a period of at least ten (10) years from the date the final payment is made.

For a period of at least ten (10) years from the date the final payment is made, in the event that the Contractor decides to change or transfer ownership of any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract, the Contractor agrees that any such decision or action must be submitted in writing and approved by the Board in writing at least thirty (30) days prior to the execution of such decision or action.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the grant as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject asset was authorized. Repayment shall be made pursuant to Section 1.20. Recapture Provision.

1.15. CHANGE OF USE FOR LEASED PROPERTY

The Contractor understands and agrees that any facility leased by the Contractor that is constructed, renovated, or otherwise improved using state funds under this Contract shall be used by the Contractor for the purposes stated in **Attachment I: SCOPE OF WORK** for a period of at least ten (10) years from the date the final payment is made.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the grant as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 1.20. Recapture Provision.

1.16. HISTORICAL AND CULTURAL ARTIFACTS

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as a substitute for completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the Board and the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately; then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to **Attachment I: SCOPE OF WORK**.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend **Attachment I: SCOPE OF WORK**, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1.17. SIGNAGE, MARKERS, AND PUBLICATIONS

If, during the period covered by this Contract, the Contractor displays or circulates any communication, publication, or donor recognition identifying the financial participants in the project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

1.18. PREVAILING WAGE LAW

The project funded under this Contract is subject to state prevailing wage law (Chapter 39.12 RCW). The Contractor is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine the prevailing wages that must be paid. The Board is not responsible for determining the prevailing wages applying to this project or for any prevailing wage payments that may be required by law.

1.19. INSURANCE

A. Private Organizations

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State of Washington should there be any claims, suits, actions, costs, damages, or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or its subcontractors, or agents of either, while performing under the terms of this Contract.

The insurance required shall be issued by an insurance company authorized to do business within the State of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the State of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give the Board thirty (30) calendar days advance notice of any insurance cancellation or modification.

The Contractor shall submit to the Board within fifteen (15) calendar days of the Contract start date, a certificate of insurance, which outlines the coverage and limits required under this insurance section. During the term of the Contract, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its subcontractors, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors, and Omissions Insurance. The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under Contract to the Contractor. The State of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- i. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Contractor as beneficiary.
- ii. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.

The Contractor shall provide, at the Board's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that the Board will be provided thirty (30) days advance written notice of cancellation.

B. Self-Insured Contractors

With prior approval from the Board, the Contractor may provide insurance coverage under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from the Board, the Contractor shall provide:

- i. a description of its self-insurance program, and
- ii. a certificate and/or letter of coverage that outlines coverage, limits, and deductibles.

All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by:

- i. Governmental Accounting Standards Board (GASB),
- ii. Financial Accounting Standards Board (FASB), and
- iii. The Washington State Auditor's annual instructions for financial reporting.

Contractors participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The State of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Contractor shall provide annually to the Board a summary of coverages and a letter of self-insurance, evidencing continued coverage under Contractor's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Contract.

Employers Liability ("Stop Gap") Insurance. In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident of \$1,000,000 each employee for bodily injury or disease.

Excess Coverage. By requiring insurance herein, the Board does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the Board in this Contract.

Unemployment and Industrial Insurance. The Contractor shall be in full compliance with all state unemployment and industrial insurance laws while performing work under this Contract. The Board will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of this Contract.

Protection of Project Property, Contractor's Assumption of Risk. The Contractor shall continuously maintain adequate protection of all the project work from damage and shall protect the property from injury or loss arising in connection with this Contract. The entire work of the Contractor shall be at the sole risk of the Contractor. The Contractor may elect to secure fire, extended coverage, and vandalism insurance or all-risk insurance to cover the project work during the course of construction. The Contractor shall take all necessary precautions for the safety of employees working on the project, and shall comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injuries to persons, on, about, or adjacent to the premises where the work is being performed.

1.20. RECAPTURE PROVISION

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Contract, the Board reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the Contractor of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the Board is required to institute proceedings to enforce this recapture provision, the Board shall be entitled to its cost thereof, including reasonable attorney's fees.

1.21. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Contract are withdrawn, reduced, or limited in any way by the Washington State Governor or Legislature during the Contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of the Board, and shall meet and renegotiate the Contract accordingly.

1.22. REAPPROPRIATION

The parties hereto understand and agree that any state funds, including the ten percent (10%) retainage as described in Section 1.9, not expended by the **BIENNIUM CLOSE DATE** listed on the Declarations Page will lapse on that date unless specifically reappropriated by the Washington State Legislature, in a budget or budget amendment proposed by the Legislature or Governor, and approved as law. Commerce will make all necessary efforts to seek reappropriation of funds into the next biennium following the declared **BIENNIUM**. If funds are so reappropriated, Commerce's obligation under the terms of this Contract shall be contingent upon the terms of such reappropriation.

Part 2. GENERAL TERMS AND CONDITIONS

2.1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- B. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract.
- C. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- D. "State" shall mean the state of Washington.
- E. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

2.3. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

2.4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

2.5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

2.6. APPROVAL

This contract shall be subject to the written approval of the Board's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

2.7. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Board.

2.8. ATTORNEY'S FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

2.9. AUDIT

A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

THE BOARD reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the BOARD requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. STATE FUNDS

Contractors expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

- Grantor agency name
- State program name
- BARS account number
- Grantor
- Agency contract number
- Contract award amount including amendments (total grant award)
- Beginning balance
- Current year revenues
- Current year expenditures
- Ending balance
- Program total

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the Board.

C. Documentation Requirements

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or by sending a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the BOARD.
- Copy of the Management Letter.

2.10. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

2.11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by the BOARD that is designated as "confidential" by the BOARD;
2. All material produced by the Contractor that is designated as "confidential" by the BOARD; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the BOARD or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the BOARD with its policies and procedures on confidentiality. The BOARD may require changes to such policies and procedures as they apply to this Contract whenever the BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period

specified by the BOARD. Upon request, the Contractor shall immediately return to the BOARD any Confidential Information that the BOARD reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Contractor shall notify the BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

2.12. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

2.13. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the BOARD. The BOARD shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the BOARD effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the BOARD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the BOARD.

The Contractor shall exert all reasonable effort to advise the BOARD, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the BOARD with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The BOARD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

2.14. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

2.15. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Chair of the BOARD, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;

- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

2.16. DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

2.17. ETHICS/CONFLICTS OF INTEREST

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

2.18. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

2.19. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the BOARD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, THE BOARD, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

2.20. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or the BOARD. The Contractor will not hold itself out as or claim to be an officer or employee of the BOARD or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

2.21. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, The BOARD may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The BOARD may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the BOARD under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

2.22. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

2.23. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

2.24. LIMITATION OF AUTHORITY

- Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

2.25. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

2.26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the BOARD. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

2.27. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

2.28. PREVAILING WAGE LAWS

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request.

2.29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

2.30. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the BOARD's name is mentioned, or language used from which the connection with the state of Washington's or the BOARD's name may reasonably be inferred or implied, without the prior written consent of the BOARD.

2.31. RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, The BOARD reserves the right to recapture funds in an amount to compensate the BOARD for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the BOARD. In the alternative, The BOARD may recapture such funds from payments due under this contract.

2.32. RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

2.33. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

2.34. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

2.35. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, The BOARD may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

2.36. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

2.37. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the BOARD.

If the BOARD approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the BOARD in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the BOARD if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the BOARD for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the BOARD and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

2.38. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

2.39. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

2.40. TERMINATION FOR CAUSE / SUSPENSION

In event the BOARD determines that the Contractor failed to comply with any term or condition of this Contract, the BOARD may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the BOARD upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the BOARD may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the BOARD to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the BOARD determines that the Contractor did not fail to comply with the terms of the Contract or when the BOARD determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

2.41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the BOARD may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the BOARD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

2.42. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by the BOARD, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Assign to the BOARD all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the BOARD; and
- D. Preserve and transfer any materials, contract deliverables and/or the BOARD property in the Contractor's possession as directed by the BOARD.

Upon termination of the Contract, the BOARD shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The BOARD may withhold any amount due as the BOARD reasonably determines is necessary to protect the BOARD against potential loss or liability resulting from the termination. The BOARD shall pay any withheld amount to the Contractor if the BOARD later determines that loss or liability will not occur.

The rights and remedies of the BOARD under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

2.43. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of THE BOARD.

**ATTACHMENT I:
PROJECT SCOPE OF WORK**

**PUBLIC WORKS BOARD
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS**

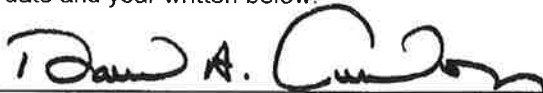
**Contractor: City of Spokane
Contract Number: SD12-963-142
Project Title: University District Pedestrian Bike**

The project's scope of work is comprised of the following activities:

Design and Right-of-way for the University District Pedestrian/Bicycle Bridge to provide a connection between Spokane University District's Riverpoint campus and Innovation Partnership Zone and the area to the south that is comprised of housing, commercial properties, and the regional hospitals. Costs may include, but are not limited to, engineering, design drawings, engineering estimate and specifications, environmental/cultural review/approval, and right-of-way acquisition.

If the above scope of work includes engineering, planning, or design activities, the Contractor shall make all plans and documents funded in whole or in part by this Contract available for the Board's review upon reasonable request.

The Contractor, by its signature below, certifies that the project's scope of work and performance measures set forth above have been reviewed and approved by the Contractor's governing body as of the date and year written below.



SIGNATURE

NAME David A. Condon
Mayor
City of Spokane

TITLE

DATE 10-18-2012

**ATTACHMENT II:
CERTIFICATION OF THE PAYMENT AND REPORTING OF
PREVAILING WAGES**

**PUBLIC WORKS BOARD
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS**

**Contractor: City of Spokane
Contract Number: SD12-963-142**

The Contractor, by its signature below, certifies that all contractors and subcontractors performing work on the project as described in ATTACHMENT I: PROJECT SCOPE OF WORK shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the project funded by this Contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request.

If any state funds are used by the Contractor for the purpose of construction, applicable State Prevailing Wages must be paid.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body as of the date and year written below.



SIGNATURE

NAME David A. Condon
 Mayor
 City of Spokane

TITLE

DATE 10-18-2012

**ATTACHMENT III:
CERTIFICATION OF THE INTENT TO ENTER THE LEADERSHIP IN
ENERGY AND ENVIRONMENTAL DESIGN (LEED)
CERTIFICATION PROCESS**

**PUBLIC WORKS BOARD
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS**

**Contractor: City of Spokane
Contract Number: SD12-963-142**

The Contractor, by its signature below, certifies that it will enter into the Leadership in Energy and Environmental Design (LEED) certification process, as stipulated in RCW 39.35D, as applicable to the project described in ATTACHMENT I: PROJECT SCOPE OF WORK funded by this Contract. The Contractor shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to the Board.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body or board of directors, as applicable, as of the date and year written below.


SIGNATURE

NAME David A. Condon
Mayor
City of Spokane

TITLE _____

DATE 10.18.2012

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

04/15/2019

<u>Date Rec'd</u>	3/29/2019
<u>Clerk's File #</u>	RES 2019-0028
<u>Renews #</u>	

Submitting Dept	PLANNING	Cross Ref #	
Contact Name/Phone	CHRISTOPHER 625-6194	Project #	
Contact E-Mail	CGREEN@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Resolutions	Requisition #	
Agenda Item Name	0650 - 2019 UPDATE OF THE UNIVERSITY DISTRICT STRATEGIC MASTER PLAN		

Agenda Wording

A resolution recognizing the 2019 update of the University District Strategic Master Plan as a declaration of the district's desired future condition,

Summary (Background)

In 2004, the City of Spokane Office of Economic Development and a consultant team developed the University District Strategic Master Plan, which identified a list of infrastructure, capacity building, and policy initiatives to catalyze revitalization of the 770-acre University District area. Since adoption of the plan, two organizations, the University District Development Authority (UDDA) and University District Public Development Authority (UDPDA) (www.spokaneudistrict.org) have been founded

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

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

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	MEULER, LOUIS	<u>Study Session</u>	
<u>Division Director</u>	CORTRIGHT, CARLY	<u>Other</u>	Urban Experience - 4-8-
<u>Finance</u>	HUGHES, MICHELLE	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE	cgreen@spokanecity.org	
<u>For the Mayor</u>	ORMSBY, MICHAEL	htrautman@spokanecity.org	
<u>Additional Approvals</u>		lmeuler@spokanecity.org	
<u>Purchasing</u>		ccortright@spokanecity.org	
		tsanders@spokanecity.org	
		lgilberts@spokaneudistrict.org	
		ajones@spokaneudistrict.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

providing direction for district-based improvement activities and stakeholder priorities for future projects.

Summary (Background)

in order to further revitalization of the University District, and most of the projects identified in the 2004 plan are now either completed or well underway. In 2018, UDDA and UDPDA hired a team of consultants led by Community Attributes, Inc. to assist with and updated of the University District Strategic Master Plan. Outreach to business, community, and institutional stakeholders in the district included interviews, a two-day charrette/design workshop, and an online survey with 413 responses. The plan update envisions the University District as a globally-recognized "innovation district" focused on emerging strengths in education, research, and health care. The plan also includes a section focusing on the South University District subarea, identifying barriers to possible development within the subarea and goal areas and action items needed to implement

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

Distribution List

sbishop@spokanecity.org	

Continuation of Wording, Summary, and Distribution

Agenda Item Name:

Agenda Wording (character max)

Summary (Background) (character max)

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

RESOLUTION NO. 2019-0028

A RESOLUTION RECOGNIZING THE 2019 UPDATE OF THE UNIVERSITY DISTRICT STRATEGIC MASTER PLAN AS A DECLARATION OF THE DISTRICT'S DESIRED FUTURE CONDITION, PROVIDING DIRECTION FOR DISTRICT-BASED IMPROVEMENT ACTIVITIES AND STAKEHOLDER PRIORITIES FOR FUTURE PROJECTS.

WHEREAS, the City of Spokane has identified the University District as a key geographic area for economic growth and development, meeting criteria for inclusion in the City's Targeted Area Development Strategy adopted by Council Resolution 2010-0049; and

WHEREAS, in 2004, the City of Spokane Office of Economic Development and a consultant team developed the *University District Strategic Master Plan*; and

WHEREAS a majority of the priority projects identified in the 2004 University District Strategic Master Plan have since been completed or are substantially in progress, including the University District Gateway Bridge, Martin Luther King, Jr. Way Extension, Division Street Gateway project, and establishment of the University District Development Association (UDDA) and University District Public Development Authority (UDPDA); 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, the UDPDA utilized the above supplemental funding allocation to secure the services of Community Attributes, Incorporated and MAKERS Architecture and Urban Design ("the consultants") for the purpose of further studying the area, and involving the property owners and public in creating the plan and preparing a limited scope update of the University District Strategic Master Plan; and

WHEREAS, the University District Strategic Master Plan update incorporates and builds on existing community planning documents and studies encompassing the district and contains a description of the district's history, character, existing conditions, and opportunities, and provides guidance for future actions directed at the development of a vibrant and healthy residential and business community; and

WHEREAS, the UDPDA and consultants conducted interviews with eight key stakeholders representing a variety of resident, business, and institutional interests in the District; and

WHEREAS, the UDPDA and consultants held a studio workshop on September 11 and 12, 2018, and an open house meeting on September 12, 2018 for the

purposes of collecting information from stakeholders and the public and developing the features of the plan; and

WHEREAS, the UDPDA, consultants, and City of Spokane distributed a survey on issues and priorities for three sub-areas within the district, which received 413 responses, 63% of whom live or work in the district; and

WHEREAS, staff briefed the Plan Commission at a meeting on March 27, 2019 and briefed the City Council Urban Experience Committee at their meeting on April 8, 2019; and

WHEREAS, the University District Strategic Master Plan update includes a "South Subarea Needs Assessment and Action Plan," which identifies barriers to development within three distinct sub-districts and recommends action items to identify these barriers; and

WHEREAS, as prescribed in SMC 04.12.010, this resolution does not represent a recommendation of the Plan Commission regarding a legislative action to adopt changes to the Spokane Municipal Code, the Official Zoning Map, or the text or the maps of the Comprehensive Plan; and

WHEREAS, the University District Strategic Master Plan update does not direct nor commit City resources for action or project implementation; and

WHEREAS, the plan documents the desires of the community stakeholders for City decision-makers as they consider future funding and implementation measures for City plans and projects, in the vicinity of the University District; and,

WHEREAS, the Board of Directors of the UDPDA met on March 5, 2019 and voted to support the plan update; and, --

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL that the 2019 update of the University District Strategic Master Plan is recognized as a written record of the UDPDA and district stakeholders' ongoing desire and effort to continue building a vibrant, healthy, active, safe, and connected University District.

ADOPTED by the City Council this _____ day of _____, 2019.

City Clerk

Approved as to form:

Assistant City Attorney



*University District Development Association and
Public Development Authority*

STRATEGIC MASTER PLAN UPDATE AND SOUTH SUBAREA ACTION PLAN

Summary



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PURPOSE

Unprecedented yet much-anticipated growth has begun to transform Spokane’s University District. Healthy and sustained growth can create record amounts of jobs, innovations, and equitable wealth for the region. A reaffirmed vision and updated plan are necessary to steward this singular opportunity.

This Summary of the [University District Strategic Master Plan Update \(UDSMP-U\)](#) provides developers, community members, property owners, municipal partners, institutions, and other interested parties concise data and analysis to encourage the continued growth of the University District. The University District Public Development Authority (UDPDA), University District Development Association (UDDA), and the City of Spokane are looking at redevelopment opportunities, a University District South Subarea Action Plan, and outstanding Priority Projects (page 15) to maintain the District’s momentum.

BACKGROUND

The University District, located east of Spokane's Downtown, has 770 acres divided into three distinct sections bounded in part by the Spokane River and the BNSF railroad corridor (Exhibit 1). The District is home to nearly 12,000 undergraduate and graduate students in two medical schools and six notable higher education institutions, including Community Colleges of Spokane, Eastern Washington University, Gonzaga University, University of Washington, Washington State University Health Sciences Spokane, and Whitworth University.

In 1987, a group of Spokane regional leaders launched the ***Momentum*** initiative which created a vision to transform a desolate railyard into a campus for thousands of students and researchers. Thanks to foresight, intentional community and institutional collaboration, and strategic planning over the following decades the University District has benefited from more than \$1 billion in public and private investments including the iconic University District Gateway Bridge (that unites the academic core with the Medical District to the south), new development and revitalization at the south landing of the bridge, nearly a dozen new institutional buildings, and an arterial (MLK Jr. Way) that opens up and connects the entire community.

The tremendous momentum in the District over the past 15 years is due in no small part to transformative City and County incentives and community-wide collaboration that resulted in a pivotal document: the [2004 University District Strategic Master Plan \(UDSMP\)](#). Building off the UDSMP's significant success and accomplishments, the UDPDA and UDDA commissioned an update, the [UDSMP-U](#), to confirm the vision for the area, identify opportunities to further implement that vision, and provide tools to continue unifying and engaging public and private stakeholders.

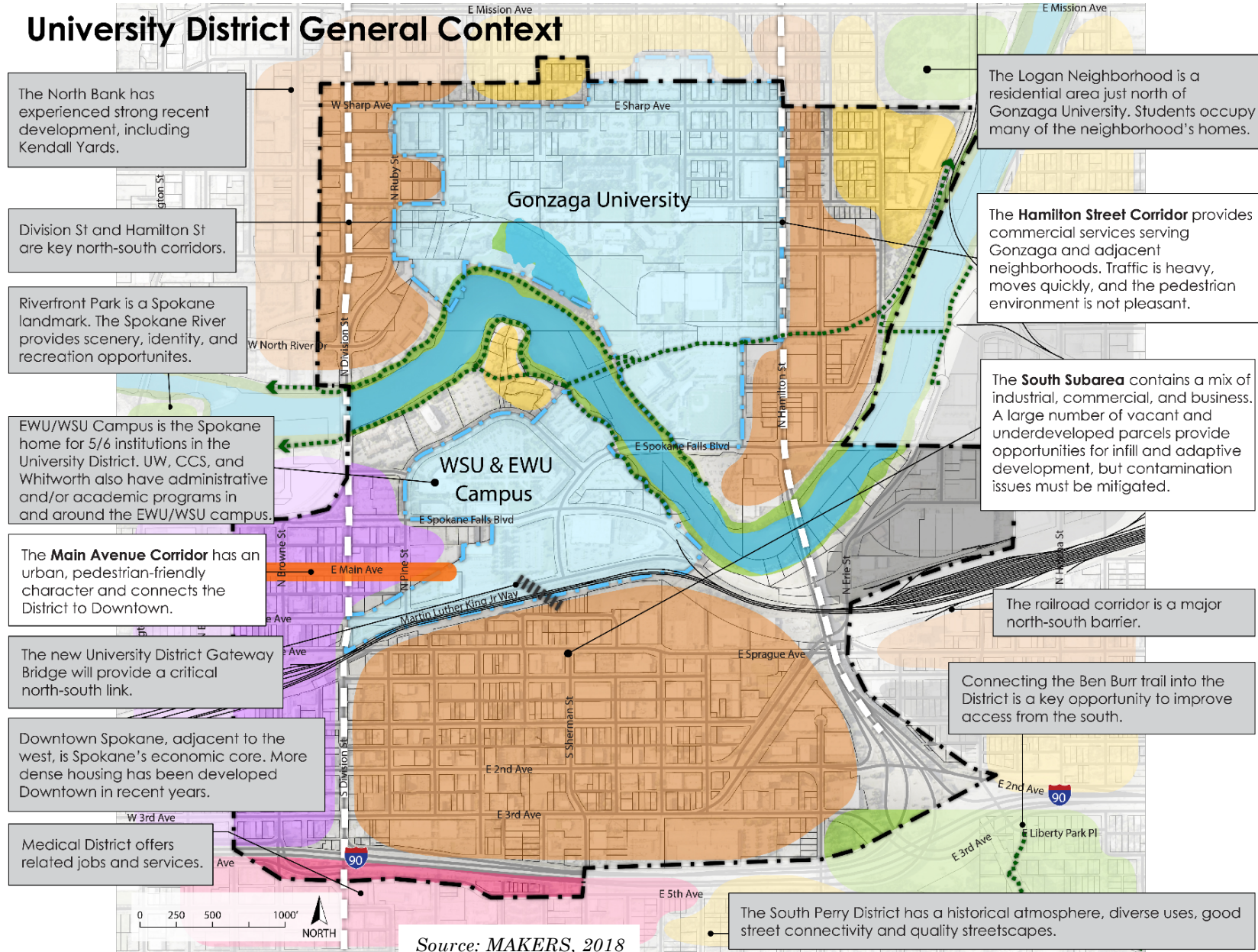
Looking forward, more than \$100 million in private development is underway, nearly \$100 million in public infrastructure is planned for the next three years, businesses are expanding in or relocating to the University District, and multiple new medical and technical degree paths are anticipated. *Momentum* indeed!

The UDDA, a 501(c)(3) nonprofit corporation, and the UDPDA, a quasi-municipal corporation, work in parallel to create and leverage opportunity. The UDDA facilitates revitalization within the District and serves as a unifying voice of the District's many educational, business, and civic partners. The UDPDA plans, coordinates, and implements public improvements in partnership with the City of Spokane within the boundaries of the University District Revitalization Area (UDRA), and serves as the vehicle for revitalization financing.

Readers who need greater detail and explanation of various items (including Exhibits referenced but not included in this Summary) can call the University District CEO at (509) 255-8093, refer to the full [UDSMP-U](#), and/or visit SpokaneUDistrict.org.

Exhibit 1. University District General Context, 2018

University District General Context



SYNTHESIZED VISION, 2004 – 2018

The original 2004 UDSMP vision for the University District was that it would become a “24/7 type of environment where students, faculty, businesses, entrepreneurs, and neighborhoods can thrive (because) when people thrive, companies and neighborhoods thrive right along with them.” Additional plans referenced visions that aligned with this fundamentally place-based strategy for attracting “knowledge workers” who would leverage the District’s assets and resources to create a competitively unique, one-of-a-kind area.

The following themes capture and clarify the key components of the 2004 UDSMP vision and subsequent plans since the UDSMP’s publication:

- The University District will continue to develop the connectivity, infrastructure, and programming needed to enable a globally-recognized hub of education, innovation, research, and health care.
- The University District will balance its role as a regional employment center with growth in a variety of multifamily housing typologies to house employees, residents, and students.
- The intellectual dynamism and focus on health will be mirrored in a physical environment that encourages outdoor recreational activities and the healthy lifestyle of workers, residents, and visitors.
- The University District will emerge as a model urban center that will embody the leading edge of physical and social urbanism in the City of Spokane.
- The University District will seamlessly connect with Downtown Spokane and surrounding neighborhoods via “complete streets”, transit, bike lanes and paths, and pedestrian walkways and bridges.
- The University District will serve as a demonstration area for innovative public-private partnerships, planning, and financing structures.
- The University District will reinforce an authentic, original, and unique sense of place that will compete successfully with other urban centers for high-quality talent.
- The urban fabric of the University District will be dense, walkable, mixed-use, well-connected, and green; the District will be river-facing and will facilitate vibrant street-level energy and an activated public realm.
- The human-scaled and -focused physical, social, and commercial environment of the University District will be deeply supportive of both emerging and legacy small businesses and organizations.
- The history and industrial legacy of the University District will be honored and integrated into the area’s modern identity and future.

REAFFIRMED DISTRICT VISION, 2019

The 2004 UDSMP vision has strengthened rather than shifted over the years. Perhaps most critically, an “Innovation District” was reaffirmed during multiple recent meetings, surveys, and a community charrette. (Detailed in **Appendix A of the**

UDSMP-U). This guidance informed the UDSMP-U and identified broad sectors with differing character, all under the overarching Innovation District concept. These sectors are:

- **Science, Tech, and Institutional Activity Centers:** Areas with substantial buildings for research laboratories and offices supported by the latest technical infrastructure systems. Facilities may be clustered into connected complexes and will often be in campus settings. These uses form the core of the Innovation District.
- **Mixed-Use Neighborhoods:** Pedestrian-oriented areas with safe and attractive streets, featuring a mix of commercial, entertainment, institutional and residential uses. Light industrial, art, artisan fabrication activities, restaurants, child care, and existing businesses may be part of the mix. Emphasize the adaptive reuse of structures.
- **Special Purpose Residential:** A residential area with assisted living facilities, health services, special needs housing, child/elder care, and commercial services to support quality of life objectives.
- **Mixed Commercial:** An area that serves the needs of diverse business activities. A variety of new and existing commercial structures with convenient truck access characterize this area. The area also provides a logical place for new businesses growing out of local research activities.

The Innovation District concept also promotes the following elements:

- **Greenways:** Pedestrian-oriented streets that are attractively landscaped with streetscape amenities and points of interest.
- **Green Spaces:** A complex of open space resources for active and passive activities and environmental restoration.
- **Small Parks, Plazas and Open Spaces:** High amenity open spaces and gathering places that may be developed by the City or be part of private development(s).
- **Gateways and Wayfinding:** Gateway features can be artworks, automobile- or pedestrian-scaled signs or landscaping schemes that help to identify the District.

KEY FINDINGS FOR STRATEGIC PLANNING

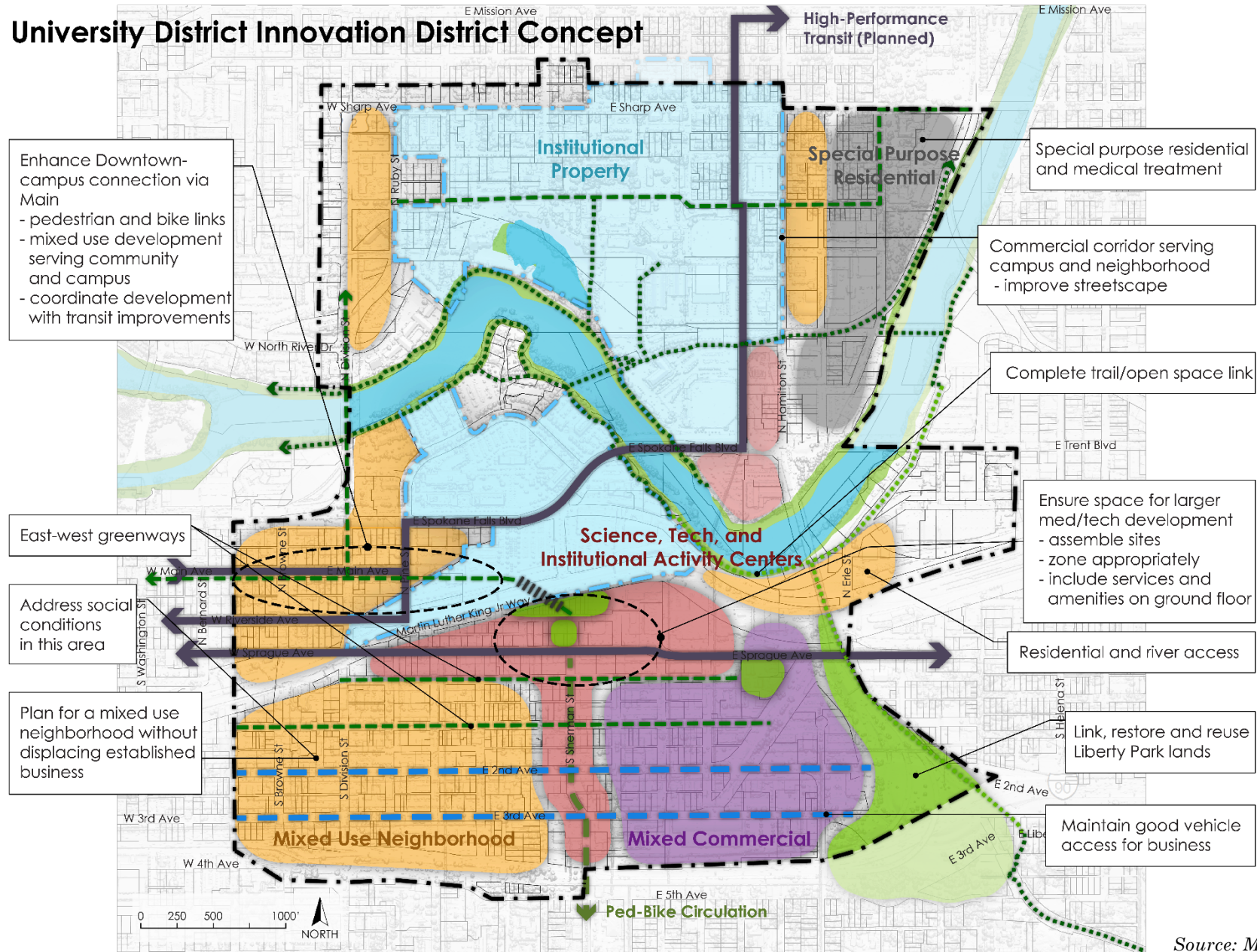
The UDSMP-U presents a robust assessment of demographic and market trends that have bearing for planning for the University District. **Exhibit 48** (page 7) illustrates how the District could integrate the following key findings:

- **Recent and planned developments present new opportunities.** Development trends present an opportunity to focus development near Spokane Transit Authority's new high-performance transit lines and other new investments.
- **Zoning designations in the University District are varied and may require amendment for consistency with a more urban District vision.**

- **Since 2004, population and employment in the University District have been growing faster than either the City or County overall.** If the District's population growth from 2004-2017 continues at the same pace, it would add 2,500 new residents by 2035.
- **Stakeholders' vision for the University District requires higher density development.** Development intensity is generally low across the District, especially in the south area. Using conservative development standards, vacant, and underutilized lands could accommodate development to support an additional 3,700 jobs.
- **Health-care employment is heavily concentrated southwest of the District.** Connecting the campuses to this area is an opportunity for future redevelopment.
- **Young people comprise the District's resident base, reflecting student housing needs near the universities.**

Exhibit 48. 2018 University District "Innovation District" Concept Vision

University District Innovation District Concept



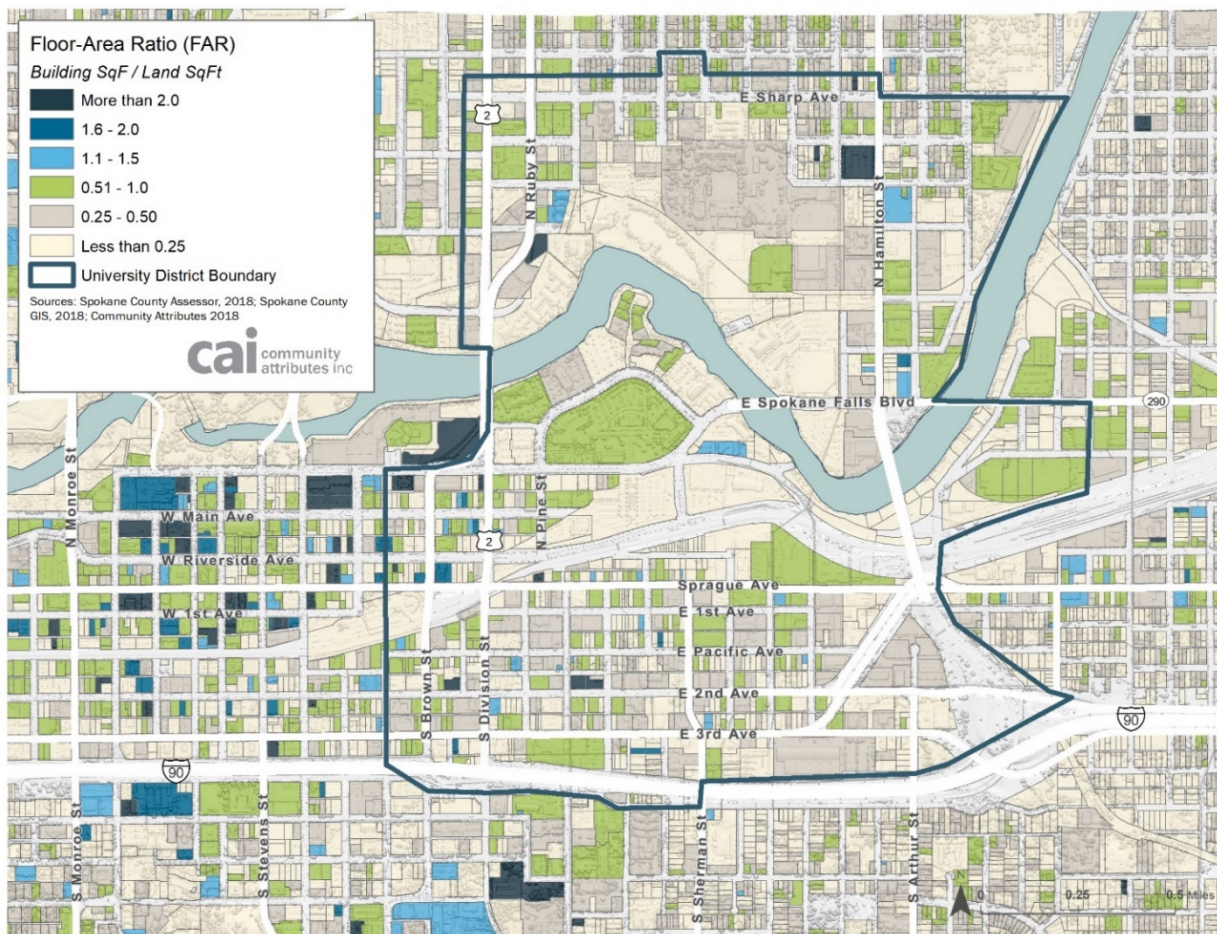
Source: MAKERS, 2018

EXISTING CONDITIONS

The University District has a large supply of parcels with improvement values per square foot under \$0.01 (classified as “vacant”), and with values between \$0.01 and \$5.00 (classified as “underutilized”). These make up nearly 120 acres of land although some parcels may be unavailable for development due to market, environmental, or other limiting factors. In addition, some surface parking lots and buildings in the District look vacant or underutilized but are located on parcels that include higher value existing improvements. These calculations and **Exhibit 9** highlight the general scope of development opportunities without limiting or specifying the development opportunities.

On developed parcels, the intensity of the development, as measured by Floor-Area Ratio (FAR), is illustrated on the map in **Exhibit 12**.

Exhibit 12. FAR of Existing Development by Parcel, University District and Surrounding Area, 2018



Sources: Spokane County Assessor, 2018; Spokane County GIS, 2018; Community Attributes Inc., 2018

DEVELOPMENT TYPES AND TRENDS

Multifamily Housing

On a per square foot basis, multifamily lease rates in the District remained slightly higher than the City and County from 2000-2014 (**Exhibit 28**). In 2014, rents dropped and have tracked closely with the Countywide average since that time. Multifamily vacancy has been relatively steady between 4% and 8%, with notable spikes in the vacancy rate in 2005-2006 and 2009. There have been several significant new multifamily developments in the District in recent years, all of which were occupied relatively quickly.

Office Space

Average office lease rates in the District have generally lagged slightly below those found elsewhere in Spokane since 2009. Vacancy for office uses in the University District has been lower compared to the City and the County and is currently at the lowest level experienced during this period (**Exhibits 33 and 34**).

No new office space has been completed in the District since 2013; the Catalyst project on the South Landing of the University District Gateway Bridge is anticipated to bring office and lab space online in 2020. When combined, net office absorption was positive across the last six quarters in the University District.

A large share of the District's existing supply of office space was built before 1920, with another large portion built in the 1980s (**Exhibit 37**).

Industrial/Flex

Industrial/Flex¹ lease rates were relatively flat from 2007-2016 in the District. Rates were more consistent compared to the rest of the region, which saw a decline from 2007-2015 followed by a recovery (**Exhibit 38**). Lease rates in the District are currently consistent with the Countywide average. Average local Industrial/Flex vacancy has been more variable during the same period. Vacancy has been dropping from a 2010 high of 16% and is currently around 3% (**Exhibit 39**).

There was no Industrial/Flex development in the District in the past 10 years (**Exhibit 40**). The City of Spokane has captured the majority of Spokane County's recent industrial development. Consistent with vacancy trends, the District saw persistent negative absorption from 2008-2010, and generally positive absorption since then

¹ Industrial space is used for "assemblage, processing, and/or manufacturing products from raw materials or fabricated parts. Additional uses include warehousing, distribution, and maintenance facilities". Flex space can be used as office, medical, warehouse, distribution, quasi-retail, or R&D space. (Costar 2018).

(**Exhibit 41**)². The University District’s current stock of Industrial/Flex real estate is aging, with a high portion built before 1950.

Retail

Retail lease rates in the District dropped in 2018, reversing an upward trend from 2011-2017 (**Exhibit 43**). Prior to this upswing, retail rents had lagged below the rest of the region. Before 2016, retail vacancy in the District was much higher than the City or County (**Exhibit 44**). A large amount of retail space was absorbed in 2015, likely explained by a 131,500-square-foot marijuana growing and processing facility which opened in a former Costco store around this time. Since 2015, retail vacancy has generally been similar to the City and County overall, hovering between 4% and 7%.

FUTURE DEVELOPMENT SCENARIOS

Three future development scenarios were analyzed based on land capacity, types of development, and regional growth projections. These scenarios represent variations on the absorption of vacant and underutilized land at three separate scales: strong, moderate, and weak. Visual representations of the strong, as well as the maximum, build-out scenarios are presented in **Appendix B**. While 2035 was used for some calculations, these scales should be compared to absorption trends to assess how much time would be required to achieve each scenario.

The analysis uses six types of development consistent with the Reaffirmed District Vision. These development types may deviate from the current zoning for these areas, but reflect a balance of vision, market realities, and current standards where possible. The typologies, which are defined in detail in sections of the UDSMP-U, are summarized here as follows:

1. **Midrise Residential Block.** Five-story residential building.
2. **Midrise Mixed-Use.** Six-story building with five stories of apartments over one story of retail.
3. **Three Story Residential.** Three-story residential building.
4. **Lab/R&D or Office Building.** Five-story building, either entirely Class A office space or a split between Class A office and lab/flex space.
5. **Live-Work.** Two-story “townhouse”-type homes with ground floor commercial space.
6. **Mixed-Use Tower.** 13-story mixed-use tower with 12 stories of residential over one story of retail.

Based on the future vision, each focus area was assigned a unique allocation of these typologies to model how future development may occur in that area (**Exhibit 50**). This

² Absorption is a measure of leasing activity. When positive, more space is being occupied than is being vacated, and vacancy should drop. Negative absorption also occurs when new development comes on the market and has not yet been occupied.

allocation reflects both the specific vision for each focus area and the characteristics of developable lands.

See the UDSMP-U for a deeper description and analysis regarding: assumptions applied to all types (parking, vacancy, development costs, rate of return, etc.), detailed typology description, site and building size description, expected site improvements, description of rentable or salable assets, and market characteristics (cap rates and construction costs displayed tabularly to highlight breakeven points).

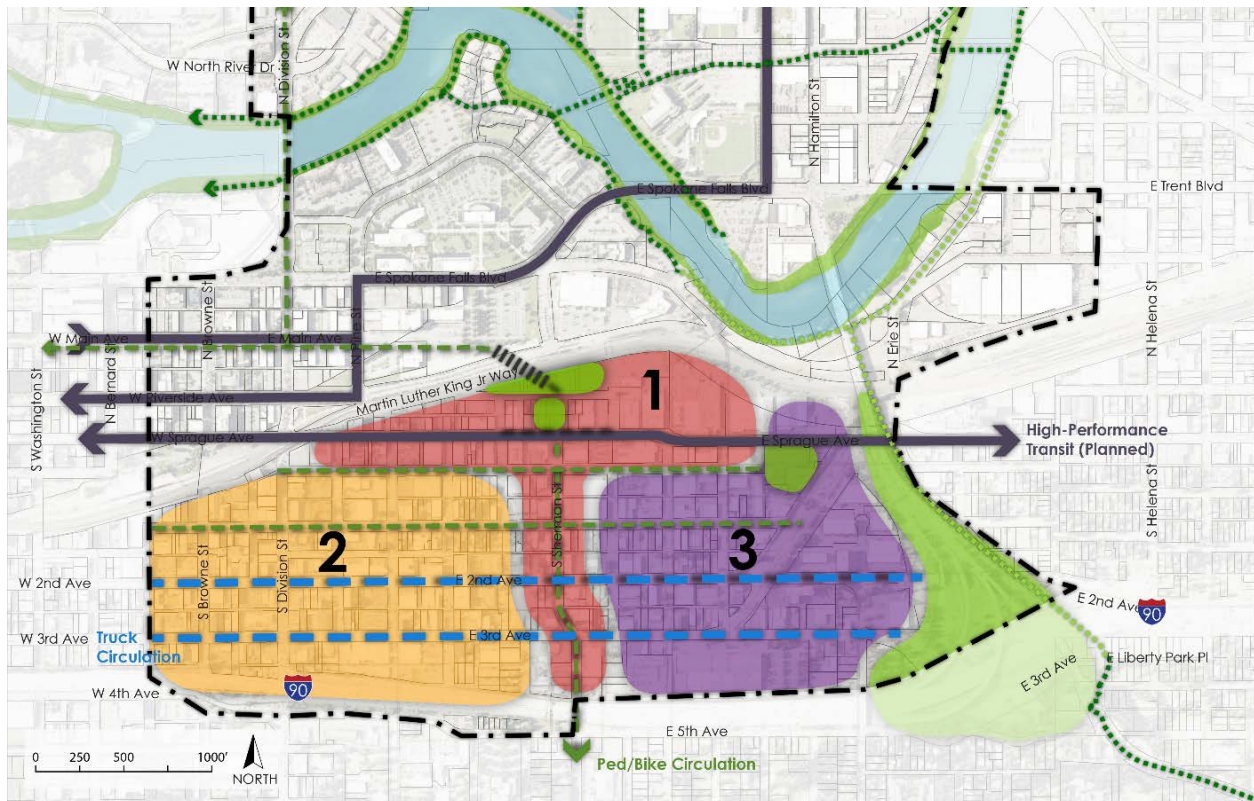
UNIVERSITY DISTRICT CURRENT DEVELOPMENT CAPACITY

The total amount of capacity for development in the District includes up to 925 dwelling units, 441,000 s.f. of commercial space, and 126,500 s.f. of retail space (all based on the development of the six typologies). Within those totals, vacant land in the District can accommodate up to 425 dwelling units, 241,000 s.f. of commercial development, and 64,000 s.f. of retail space. Underutilized land, in total, can accommodate an additional 500 dwelling units, 200,000 s.f. of commercial space, and 62,500 s.f. of retail space. The full UDSMP-U highlights three (strong, moderate, weak) growth scenarios that assume varying levels of absorption of this total capacity by 2035 (**Exhibits 52-54**).

The District has the capacity to accommodate a high share of the City of Spokane's total forecasted employment and population growth. The UDSMP-U's estimates of population and employment growth in each focus area and growth scenarios compared to past absorption trends. The models project that by 2035 population growth potential ranges from 922 to 2,151 new residents, while estimated employment growth ranges from 743 to 1,691 new jobs.

As commercial activity, educational programming, zoning, demand, and other underlying assumptions and factors evolve, the University District's capacity will grow.

Exhibit 71. Summary of Preferred Scenario, University District South Subarea



Source: MAKERS, 2018

SOUTH SUBAREA ASSESSMENT AND PREFERRED SCENARIO

The preferred scenario for the South Subarea is a conceptual plan informed by previous plans and extensive public input. The South Subarea and the three focus areas within the Subarea are highlighted in **Exhibit 71**. This assessment identifies specific opportunities and unique roles each focus area could potentially play within the context of the Subarea and the larger University District.

This is not intended to discourage a mixture of uses throughout the District, but rather to describe the dominant character and purpose of each area. This conceptual plan is intended to provide a basis for more detailed Subarea planning, to commence in 2019. It is also important to note that the anticipated 2029 completion of the North Spokane Corridor (US 395) will impact access to and opportunities in the South Subarea.

1. Sprague-Sherman Corridor

The Sprague-Sherman Corridor, shown in red in **Exhibit 71**, consists of the blocks along Sprague and Sherman within the District, extending to the Subarea's northern edge along the BNSF tracks. This corridor provides critical connections to Downtown Spokane via Sprague, the Medical District to the southwest via Sherman, and the university campuses to the north via the University District Gateway Bridge. A new

high-performance transit line is planned to run along Sprague, enhancing connections to Downtown and residential areas on the City's periphery. Division Street also provides a critical north-south link.

An activity node is developing at the intersection of Sprague and Sherman, where the University District Gateway Bridge's southern landing and the future Catalyst development are located. This node will develop as a clearly defined, compact, commercial center for the South Subarea. The Reaffirmed District Vision has established Sprague and Sherman as well-suited for denser development, particularly for uses consistent with a globally-recognized Innovation District concept. This includes large laboratories, office buildings, larger apartment buildings, integrated parking structures, and related uses. The design of larger buildings should remain consistent with the District's pedestrian-friendly vision. In general, buildings should be oriented to sidewalks and pleasant pedestrian experiences, and mixed-use developments with small, street-level commercial spaces should be encouraged.

2. Southwest Section

The Southwest Section, shown in yellow in **Exhibit 71**, is the area located south of Sprague and west of Sherman. This area has more direct connections to Downtown Spokane, the rest of the University District and the Medical District compared to the eastern half of the Subarea. As a result, participants identified this area as being better suited for redevelopment in the near term.

The vision for the Southwest Section is to provide a mixture of housing and services to support the larger employment opportunities focused on Sprague and Sherman. This includes finding ways to incorporate existing social services and affordable housing developments located in the neighborhood. The neighborhood should feature pedestrian-oriented areas with safe and attractive streets, featuring a mix of commercial, entertainment, institutional, and residential uses. Light industrial, art, artisan fabrication activities, food production, and existing businesses may be part of the mix. Buildings should be generally smaller-scale and oriented to the street. The architectural character may vary, and the adaptive reuse of historic buildings should be encouraged.

The development pattern and street infrastructure should support walkability and safe cycling, consistent with the overarching District concept of healthy living. Pacific and 1st Avenues were envisioned as opportunities to promote nonmotorized traffic, while truck traffic required by many local light industrial uses could be channeled further south.

3. Southeast Section

The Southeast Section, shown in purple in **Exhibit 71**, is the area located south of Sprague and east of Sherman. Stakeholders indicated that this area is less likely to be attractive for redevelopment in the short term. This area's character is more predominantly light industrial and includes existing legacy businesses which are assets to be preserved. As a result, the focus for this section is on supporting and growing

existing businesses rather than redevelopment. Where vacancies exist, there could be opportunities to connect new businesses emerging from the Innovation District concept with affordable spaces. Adaptive reuse is particularly appropriate for this area. Live-work housing is a good infill housing option for this area that can blend crafter/maker industrial uses with urban residential.

SUMMARY OF BARRIERS TO REDEVELOPMENT

The full UDSMP-U provides a detailed assessment of barriers as well as a set of infrastructure, policy, and programming actions to overcome many of the barriers.

Barriers include:

- Environmental – contamination and soil conditions
- Land Use – zoning and parking
- Connectivity and Infrastructure – multimodal connectivity and water/sewer issues.
- Market Conditions – factors impacting new uses and densification
- Social – community services and safety perceptions

Suggested actions are categorized as follows:

- Define and adopt development standards consistent with South Subarea and University District Reaffirmed Vision.
- Enhance livability and sense of place.
- Develop a safe, enjoyable street network for pedestrians, bicyclists, and transit users.
- Support and grow new and existing businesses.
- Attract high-quality commercial development.
- Facilitate remediation of brownfield sites.

2004 PRIORITY PROJECTS UPDATE

The 2004 UDSMP identified priority projects. These are listed, with their status.

Item	2004 Plan Description	2019 Status
Transportation study	Identify design solutions that relieve the development community of the burden of generating project-by-project transportation studies.	Complete
Riverside extension	Extend Riverside Avenue and relieve traffic off Spokane Falls Boulevard. Second, its design will include provisions for future light rail.	Complete
UDDA District marketing	Create the UDDA to form strong partnerships with groups within and in neighboring areas.	Complete
Detailed economic market study	Conduct a study to enable the City and affiliated economic development organizations to create a comprehensive strategy to encourage long-term growth within the University District.	Complete
District incentive program	Develop and promote development incentives that encourage mixed-use, research and development uses, entertainment, and neighborhood services.	Complete
District High-Performance Transit	Create a high-frequency bus line(s) to serve each campus, designated parking areas, Downtown, the Sprague Area, and the Medical District.	Underway
University District Gateway Bridge	This is the major catalyst project for the Sprague Area. Completion of this project will create a connection to the universities and spark mixed-use and high-tech research development.	Complete
Site selector with enhanced selection tools	Leverage city/county site-selector site in development to feature an enhanced set of GIS tools to allow a more interactive and a greater level of detail for properties within the University District.	Complete
Division Street gateway	Make significant aesthetic and functional improvements to Division Street and the railroad viaduct from the off-ramp to the Convention Center.	Complete
Main Avenue streetscape and pedestrian	Improve the pedestrian environment along Main Avenue from the EWU/WSU Campus, across Division, and into Downtown. This project gives special consideration to pedestrian safety.	Underway
Non-motorized boat launches, riparian habitat restoration,	Increase recreational access to the river above the Division Street Bridge, repair and increase riparian habitat along the river, and incorporate education about the River's ecosystem.	Underway

Item	2004 Plan Description	2019 Status
river education station		
Sherman Street streetscape	Improve Sherman Street to create a better environment for pedestrians and bicyclists traveling to and from the Medical District/South Hill and the University District and Downtown.	Critical but not started
Sharp and Hamilton streetscape	This project will improve pedestrian amenities and safety within this activity center. Emphasis would be on facilities for bicycles and pedestrian crossings.	Underway
Sprague Avenue streetscape	Improve the vehicular and pedestrian environment along Sprague Avenue to Division Street. The focus would be to address parking, safety, and providing a pleasant pedestrian and bicyclist environment.	Underway
District wayfinding project	This project will develop a comprehensive wayfinding system for pedestrians, bicyclists, and automobiles within the University District.	Underway
Main Avenue conversion	Convert traffic from one-way to two-way initially between Pine Street and Brown Street. This could be extended further into Downtown in the future.	Scope changed, underway
Hamilton Street streetscape	Improve the aesthetic and pedestrian environment along Hamilton Street between Trent and Sharp Avenues.	Critical but not started
Pacific Avenue streetscape (Browne to Scott)	Improve Pacific Ave's sidewalks and streets between Sherman Street and Pine Street to encourage Pacific Avenue has the potential for development as a mixed-use and residential corridor.	Not started
Grant Street streetscape	Complete the connection of the Sprague area to the University District Gateway Bridge and facilitate pedestrian traffic.	Scope changed, underway
Area-specific development guidelines	Ensure that development is occurring within the University District that is contributing the desired character and that future development does as well.	Underway
Iron Bridge refurbishment	Refurbish the Iron Bridge to accommodate pedestrians and bicyclists adding another connection across the river.	Complete
Riverside Extension Phase Two	Extend and bypass the Trent Hamilton intersection and allow development along much of the underutilized land in the area and near the river. This also sets the stage for the extension of a trail	Complete

Item	2004 Plan Description	2019 Status
	system along the river in conjunction with the proposed Burr Trail extension.	
Pedestrian Trail Extension under Hamilton Bridge	Extend the Ben Burr Trail to connect portions of the East Central Neighborhood to the Spokane River, Centennial Trail, and the University District.	Underway

APPENDIX B: SOUTH SUBAREA MASSING MODELS

Capacity Visualizations

The massing model in **Exhibit 76** is an illustration of what the South Subarea could look like if the development under the strong development scenario takes place. This scenario only assumes future development will take place on vacant and underutilized parcels, and also removes a portion of available parcels to account for market and other factors limiting development. This assumption is consistent with Spokane County’s current development assumptions used for land capacity planning purposes.

These current assumptions may not be as useful if the South Subarea is able to capture an increased share of Spokane’s development, and if the UDPDA, UDDA, and their partners are able to encourage new development that would not be likely otherwise in the market. **Exhibits 78 and 79** present an alternate, even stronger vision for the Subarea’s future. In this case, all vacant and underutilized parcels are developed, along with several parcels in key areas that are just past the definition of “underutilized”.

Exhibit 76. "Strong Growth" Massing of South Subarea

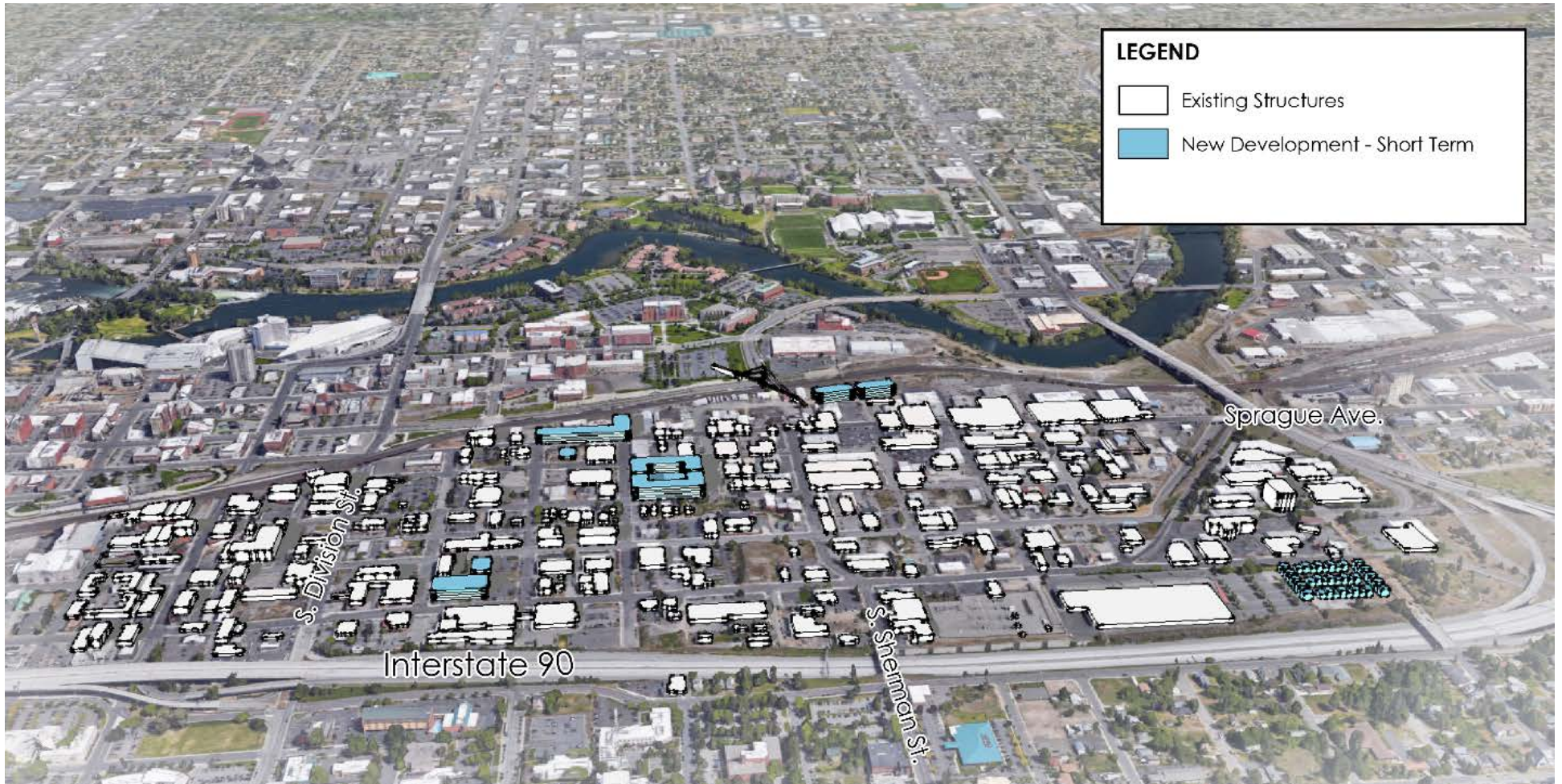


Exhibit 78. "Maximum Growth" Massing of South Subarea – Plan View

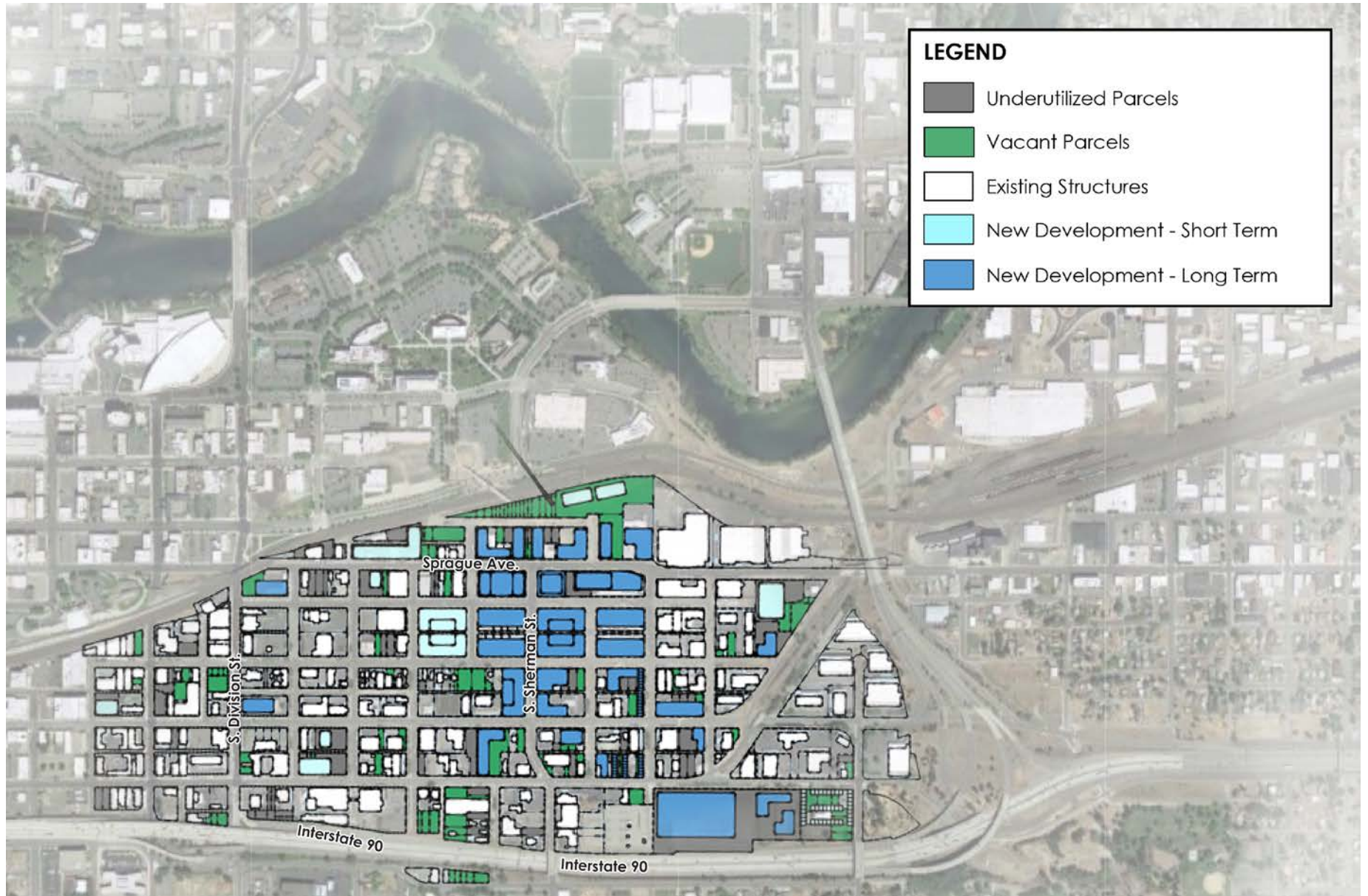
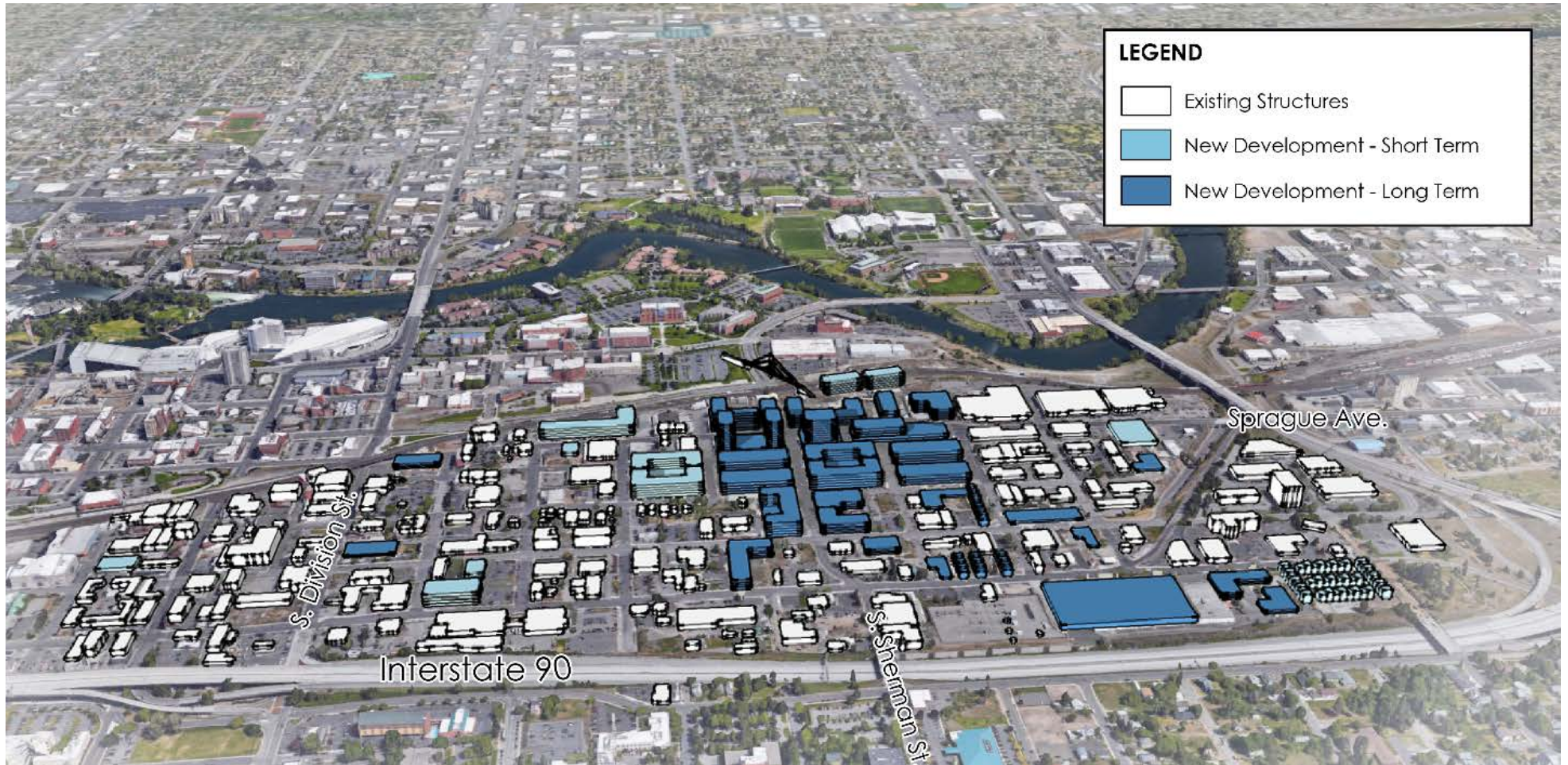


Exhibit 79. "Maximum Growth" Massing of South Subarea





University District Public Development Authority
University District Development Association
120 N Pine St, Ste 292, Spokane, WA 99202
Office (509) 255-8038
info@spokaneudistrict.org
www.spokaneudistrict.org

Link to view the full University District Strategic Master Plan Update:

https://www.spokaneudistrict.org/uploads/publication/files/object/2019_University_District_Strategic_Master_Plan_Update_UDSMP-U_3.22.19.pdf

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

04/08/2019

<u>Date Rec'd</u>	3/14/2019
<u>Clerk's File #</u>	ORD C35755
<u>Renews #</u>	

<u>Submitting Dept</u>	CITY COUNCIL	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	KAREN 6256269	<u>Project #</u>	
<u>Contact E-Mail</u>	AMCDANIEL@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	First Reading Ordinance	<u>Requisition #</u>	FUTURE BT
<u>Agenda Item Name</u>	0320 BABY CHANGING FACILITIES ORDINANCE		

Agenda Wording

An ordinance requiring baby changing facilities in publicly accessible restrooms in all City of Spokane owned buildings; amending SMC Section 12.05.005; and adopting new section 12.05.025 to Chapter 12.05 of the Spokane Municipal Code.

Summary (Background)

This ordinance requires all publicly accessible restrooms in City-owned buildings to have baby changing facilities. Exceptions to this requirement include restrooms not accessible to the public or restrooms with signs clearly indicating where a restroom with a baby changing table is located in the same City-owned building or buildings owned or managed by Spokane Parks & Recreation.

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

Expense	\$ 5,000 (for 1 floor of City Hall)	# 5900-30700-18300-54802-99999
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	MCDANIEL, ADAM	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	Public Safety - March 4
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	DALTON, PAT	kstratton@spokanecity.org	
<u>For the Mayor</u>	ORMSBY, MICHAEL	charris@spokanecity.org	
<u>Additional Approvals</u>		kbustos@spokanecity.org	
<u>Purchasing</u>			



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

It is a goal to install at least two baby changing facilities in City of Spokane buildings each year until compliant with this ordinance.

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

ORDINANCE NO. C35755

An ordinance requiring baby changing facilities in publicly accessible restrooms in all City of Spokane owned buildings; amending SMC Section 12.05.005; and adopting new section 12.05.025 to Chapter 12.05 of the Spokane Municipal Code.

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

Section 1. That section 12.05.005 of Chapter 12.05 of the Spokane Municipal Code is amended to read as follows:

Section 12.05.005 Definitions

- A. "Agent" means any person acting within the scope of employment by or acting on behalf of the City of Spokane including City-facility property managers.
- B. "Baby changing facility" means a table or other device suitable for changing the diaper of a child.
- C. "Employee" means any person holding a regularly compensated position of employment with the City of Spokane including elected officers.
- D. "Federal civil immigration enforcement operations" means an operation than has one of its objectives the identification or apprehension of a person or persons in order to investigate them for a violation of the immigration law and subject them to one or more of the following:
 - 1. Civil immigration detention;
 - 2. Removal proceedings; and
 - 3. Removal from the United States
- E. "LEED" is a green building rating and certification system developed by the U.S. Green Building Council to evaluate environmental performance from a whole building perspective, including sites, water efficiency, energy & atmosphere, materials & resources, indoor environmental quality, locations & linkages, awareness & education, innovation in design, and regional priority.
- F. "Nonpublic" means any area of a city facility or property that is not generally open and accessible to the general public, but instead requires prior to entry express permission, such as a valid ticket for a bona fide passenger, or permission by a city employee or an employee of a tenant in a city facility on an individual

basis. Areas posted as “Restricted” in City facilities shall be considered to be non-public areas.

- G. “United States Citizenship and Immigration Services” means the agency of the United States Department of Homeland Security and any successor agency charged with overseeing United States immigration laws.
- H. “United States Customs and Border Protection” means the agency of the United States Department of Homeland Security and shall include any successor federal agency charged with border enforcement.
- I. “United States Immigration and Customs Enforcement” means the agency of the United States Department of Homeland Security including Enforcement and Removal Operations and Homeland Security Investigations and shall include any successor federal agency charged with the enforcement of immigration laws.
- J. “U.S. Green Building Council” is an organization serving as the nation’s foremost leaders from across the building industry working to promote buildings that are environmentally responsible, profitable, and healthy places to work and live.

Section 2. That a new section 12.05.025 be added to Chapter 12.05 of the Spokane Municipal Code to read as follows:

Section 12.05.025 Baby Changing Facilities in Restrooms of City Buildings

- A. All publicly accessible restrooms in buildings owned and occupied by the City of Spokane shall be equipped with baby changing facilities.
- B. The Asset Management Director, or his or her designee, shall be responsible for ensuring baby changing facilities buildings owned by the City of Spokane are safe, sanitary, and accessible.
- C. This section shall not apply to:
 - 1. a restroom in a building owned by the City of Spokane that is not accessible by the public;
 - 2. a restroom in a building owned or maintained by Spokane Parks and Recreation; or
 - 3. a restroom in a building owned by the City of Spokane that contains clear signage indicating where a publicly accessible restroom with a baby changing table is located in the same building.

- D. The construction and installation of baby changing facilities shall be incorporated in the Capital Improvement Plan with a goal of installing at least two baby changing facilities in City of Spokane buildings each year until compliant with this ordinance.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

Briefing Paper

Public Safety & Community Health

Division & Department:	City Council
Subject:	Requiring Baby Changing Facilities in City-owned Buildings
Date:	March 4 th , 2019
Contact (email & phone):	mmorrison@spokanecity.org 625-6291
City Council Sponsor:	Karen Stratton
Executive Sponsor:	None
Committee(s) Impacted:	Finance and Administration; Public Safety & Community Health
Type of Agenda item:	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	N/A
Strategic Initiative:	N/A
Deadline:	N/A
Outcome: (deliverables, delivery duties, milestones to meet)	<p>This ordinance will ensure parents and guardians will have access to baby changing facilities in any publicly accessible restroom in City-owned buildings.</p> <p>City Hall would comply with this ordinance by installing baby changing facilities in the Lower Level restrooms of City Hall.</p>
Background/History: <p><i>“My wife and I are usually together when we’re out, and more often than not, there’s one in either bathroom,” Davis, 30, said. “But it’s definitely still weighted to the ladies’ rooms.” In places like public parks, Davis said, he’s had to “just plop the kid down on a blanket” for a diaper change (Campbell, 2018).</i></p> <p>There are an estimated 31,000 children between the ages of 0-4 living in Spokane County.¹ Single-parent families made up 43% of all families with children in the city of Spokane in 2017. The number of single-parent householders have increased in the city of Spokane by 30% since 2005 (U.S. Department of Commerce, 2017).²</p> <p>Currently there are no baby changing facilities in the publicly accessible bathrooms in City Hall. Some states have moved towards requiring baby changing facilities in all public restrooms through updates to their building codes (Kindelan, n.d.). In 2016, President Obama signed the BABIES Act into law which requires women’s and men’s publicly accessible restrooms in Federal buildings have baby changing facilities.</p>	
Executive Summary: <p>This ordinance:</p> <ul style="list-style-type: none"> Requires all publicly accessible restrooms in City-owned buildings to have baby changing facilities Exceptions to this requirement include restrooms not accessible to the public or restrooms with 	

¹ OFM, 2017

² Single-parent households led by a male in the city of Spokane has increased by 36% since 2005 (Spokane Community Indicators)

signs clearly indicating where a restroom with a baby changing table is located in the same City-owned building.

Budget Impact:


TOTAL COST:

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

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

If new, specify funding source:

Other budget impacts: (revenue generating, match requirements, etc.) It is estimated adding baby changing facilities in both men and women's restroom of City Hall's Lower Level will cost \$5,000.



Enter keywords or item #


Search

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Office SuppliesTechnologyFurnitureFacility & BreakroomShop All CategoriesFeature

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Gray

Item: IMP1170 [Write a Review](#)

- Sturdy construction reliably supports up to 100 lb.
- Center graphic informs users of proper changing methods for added awareness
- Safety strap comfortably supports infants to keep them safely buckled
- Liner storage offers easy access to liners to keep sanitary conditions

Packaging: 1 Each
List Price: \$349.99 / Each
Your Price: **\$217.45 / Each**
Not in stock for next day delivery, check with us for options

Quantity: [Add to Cart](#) [★](#)



Operations Impact:

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

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

Specify changes required:

Known challenges/barriers:

References

Campbell, W. (2018, June 17). The times they are a-changin': More baby-changing stations appearing in men's restrooms. *The Spokesman-Review*.

Kindelan, K. (n.d.). *Dads score win as changing tables to be required in public New York bathrooms in 2019*. Retrieved from ABC News: <https://abcnews.go.com/beta-story-container/GMA/Family/dads-score-win-changing-tables-required-public-york/story?id=60088989>

Tien, Y.-Y., Riffe, A., & Wenzl, S. (2017). *DEMOGRAPHICS & SOCIAL CHARACTERISTICS: Spokane County*. Spokane: Spokane Regional Health District.

U.S. Department of Commerce. (2017). *United States Census Bureau*. Retrieved from American Community Survey (ACS):
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

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

04/15/2019

<u>Date Rec'd</u>	3/22/2019
<u>Clerk's File #</u>	ORD C35756
<u>Renews #</u>	

Submitting Dept	CITY COUNCIL	Cross Ref #	
Contact Name/Phone	MIKE FAGAN 6256269	Project #	
Contact E-Mail	AMCDANIEL@SPOKANECITY.ORG	Bid #	
Agenda Item Type	First Reading Ordinance	Requisition #	
Agenda Item Name	0320 PROPOSED AMENDMENTS TO THE CITY'S ETHICS CODE		

Agenda Wording

An ordinance relating to the Code of Ethics; amending SMC sections 1.04A.020 1.04A.110 of the Spokane Municipal Code.

Summary (Background)

The City's Ethics Commission has been reviewing proposed amendments to the Ethics Code over the past several months. Most of the proposed amendments are based on the Commission's experience with various complaints that have been processed over the last couple of years. At its June 20, 2018 meeting, the Commission voted to approve the recommended amendments and to forward those recommendations to the City Administration and City Council.

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

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

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	MCDANIEL, ADAM	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	Finance - 3/18
<u>Finance</u>	BUSTOS, KIM	Distribution List	
<u>Legal</u>	PICCOLO, MIKE	mpiccolo@spokanecity.org	
<u>For the Mayor</u>	ORMSBY, MICHAEL		

Additional Approvals

<u>Purchasing</u>		



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The recommended amendments include: 1) SMC 1.04A.020 - Additional definitions
2) SMC 1.04A.110 D 1 g & h - Additional grounds upon which the Commission may dismiss a complaint; 3) SMC 1.04A.110 D 3 - Ability for the Commission chairperson to summarily dismiss a complaint if the respondent is not subject to the Ethics Code with the right to appeal the dismissal to the full commission; 4) SMC 1.04A.110 F 1 - Ability for the Commission to hear preliminary motions, including motions to dismiss, based upon the submission of affidavits and documentary evidence; 5) SMC 1.04A.110 F 1 - Process for the adoption of pre-hearing orders; and 6) SMC 1.04A.110 F 2 - Incorporation of evidentiary rules

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

ORDINANCE NO. C35756

An ordinance relating to the Code of Ethics; amending SMC sections 1.04A.020 1.04A.110 of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That SMC 1.04A.020 is amended to read as follows:

1.04A.020 Definitions

The following words and phrases as used in this chapter, unless the context clearly indicates otherwise, shall have the following meanings:

- A. “Agency” means any City board, commission, bureau, committee, department, institution, division or tribunal in City government.
- B. “Assist” means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to or otherwise provide assistance to another person, believing that the action is of help, aid, advice or assistance of the person with intent so to assist such person.
- C. “Beneficial interest” has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.
- D. “Business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, consultant, holding company, joint stock company, receivership, trust or any legal entity organized for profit.
- E. “City” means the City of Spokane, Washington.
- F. “City action” means any action on the part of an agency, including, but not limited to:
 - 1. a decision, determination, finding, ruling or order; and
 - 2. a grant, payment, award, license, contract, transaction, sanction or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling or order.
- G. “City officer” means every individual elected, appointed, hired or otherwise selected to an office or position with the City, or any subdivision, agency, committee or board thereof, whether such individual is paid or unpaid.
- H. “Compensation” means anything of economic value, however designated, that is paid, loaned, granted or transferred, or to be paid, loaned, granted or transferred for, or in consideration of, personal services to any person.

- I. "Confidential information" means:
1. Specific information, rather than generalized knowledge, that is not available to the general public on request; or
 2. Information made confidential by law including but not limited to taxpayer information, RCW 82.32.330; information regarding organized crime, RCW 43.43.856; criminal history information, Chapter 10.97 RCW; medical records, Chapter 70.02 RCW; and juvenile records, RCW 13.50.010; or
 3. Information that is initially disclosed or discussed in executive session, and which is not available to the general public on request; however
 4. Confidential information does not include information authorized by the mayor or a majority vote of the council to be disclosed.
- J. "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement or a sales agreement.
- K. "De Minimis" means a violation of lesser significance, or a violation more technical than substantial.
- L. "Dishonesty" means behavior that intends to deceive or cheat people; untruthfulness; untrustworthiness. It is not possible to be negligently "dishonest."
- ~~((K))~~M. "Ethics Commission" means the commission on ethical conduct for and duly appointed by the City.
- ~~((L))~~N. "Employee" means any person holding a regularly compensated position of employment with the City but does not include elected officers and persons who serve without compensation on City boards and commissions.
- ~~((M))~~O. "Exempt employee" shall mean those City employees not represented by a recognized labor union and identified by both the City administration and the applicable labor unions as exempt confidential employees.
- P. "False and frivolous complaint" means a complaint with no basis in fact or law.
- ~~((N))~~Q. "Family member" means:
1. a spouse or domestic partner; or
 2. any dependent parent, parent-in-law, child or son-in-law or daughter-in-law; or
 3. any parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of the City officer or employee.
- ~~((O))~~R. "Gift" means anything of economic value or tangible worth for which no consideration is given. "Gift" does not include:

1. items from family members or friends where it is clear that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;
2. items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;
3. items exchanged among officials and employees or a social event hosted or sponsored by a City officer or City employee for coworkers;
4. payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
5. items a City officer or City employee is authorized by law to accept;
6. payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
7. items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;
8. campaign contributions reported under chapter 42.17 RCW;
9. discounts available to an individual as a member of an employee group, occupation or similar broad-based group;
10. awards, prizes, scholarships or other items provided in recognition of academic or scientific achievement;
11. attendance of a City officer or employee at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of City business or where official attendance by the officer or employee as a City representative is appropriate;
12. an award publicly presented in recognition of public service; or
13. any item of nominal value which cannot reasonably be presumed to influence the vote, action or judgment of the City officer or employee, or be considered as part of a reward for action or inaction. An item of nominal value shall include incidental items associated with the professional conduct or courtesies of a City officer or employee's duty including the acceptance during the conduct of official business of such items as refreshments, note pads, pens, pins and books.

((P))S. "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

((Q))I. "Honorarium" means money or thing of value offered to a City officer or City employee for a speech, appearance, article or similar item or activity in connection with the City officer's or City employee's official role.

((R))U. "Household member" means any person having a close relationship with and residing in the same household of the City officer or employee, and having agreed to be jointly responsible for basic living expenses.

V. "Jurisdiction," for purposes of SMC 1.04A.110, means that the Commission has authority to hear and decide the case, pursuant to SMC chapter 1.04A.

W. "Mitigating circumstances" means factors for the Commission's determination that might explain a violation, in whole or in part, or make the violation more understandable and/or less subject to condemnation.

X. "Moral turpitude" is conduct that violates commonly accepted standards of good morals, honesty, and justice; the application of this standard depends upon the collective conscience and judgment of the members of the Commission.

((S))Y "Person" means any individual, partnership, association, firm, institution or corporation, business or other entity, however constituted, organized or designated.

((T))Z. "Personal interest" means direct or indirect pecuniary or material benefit accruing to a City officer or employee as a result of legislation or a contract or transaction which is or may be the subject of an official act or action by or with the City except for such contracts or transactions which confer similar benefits to all other persons and/or property similarly situated. For the purpose of this chapter, a City officer or employee is deemed to have a personal interest in the affairs of:

1. any person who is a City officer or employee's family member or household member, as defined in this chapter;
2. any business entity in which the City officer or employee is an officer, director or employee;
3. any business entity in which the stock of, or legal or beneficial ownership of, in excess of five percent of the total stock or total legal and beneficial ownership, is controlled or owned directly or indirectly by the City officer or employee;
4. any person or business entity with whom a contractual relationship exists with the City officer or employee; provided, that a contractual obligation of less than five hundred dollars, or a commercially reasonable loan made in the ordinary course of business or a contract for a commercial retail sale shall not be deemed to create an interest in violation of this chapter.

((U))AA. "Regulatory agency" means any City board, commission, department or officer, except those in the legislative or judicial branches, authorized by law to conduct

adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

~~((V))~~BB. "Represented employee" shall mean a City employee represented by a recognized labor union.

~~((W))~~CC. "Responsibility" in connection with a transaction involving the City, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove or otherwise direct City action in respect of such transaction.

~~((X))~~DD. "Staff Director" means the employee appointed by the City Attorney to, in addition to other responsibilities, assist the Ethics Commission in its duties.

EE. "Stipulation" means agreement.

Section 2. That SMC 1.04A.110 is amended to read as follows:

1.04A.110 Complaint Process of the Ethics Commission

- A. A complaint that this Code of Ethics has been violated by a City employee or a City officer shall be filed with the Ethics Commission.
- B. Any person may file an official written complaint or inquiry with the Ethics Commission asking whether a current City officer or employee has failed to comply with this Code of Ethics.
- C. Complaints and inquiries must be in writing on a form approved by the Ethics Commission. The form shall contain a statement that must be signed and which states that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint or inquiry is true. The complaint must describe the facts that constitute the violation of this Code of Ethics in sufficient detail so that the Commission and the person who is the subject of the complaint or inquiry can reasonably be expected to understand the nature of any offense that is being alleged.
- D. The Commission, upon receipt of the complaint, shall acknowledge receipt of the complaint, forward the complaint simultaneously to the person who is complained against, if known, and the City Attorney, and promptly meet and review the complaint. As soon as practicable after giving due consideration to a complaint the Commission shall either:
 - 1. Dismiss the complaint based on any of the following grounds:
 - a. It has no jurisdiction;
 - b. The alleged violation, if true, would not constitute a violation of this article;
 - c. The alleged violation is a minor or de minimis violation;
 - d. The complaint or inquiry is, on its face, frivolous, groundless or brought for purposes of harassment;

- e. The matter has become moot because the person who is the subject of the complaint or inquiry is no longer a City officer or employee;
- f. The appointing authority has already taken action as a result of finding a violation and the Commission believes the action was appropriate; ~~((or))~~
- g. The respondent had previously requested and followed the documented advice regarding compliance with the Ethics Code provided by the legal counsel for the Ethics Commission;
- h. The respondent had previously been the subject of a prior ethics complaint based upon the same set of facts and alleging the same violation(s) of the Code of Ethics and regarding which the Ethics Commission issued a decision.

2. Determine that:

- a. The complaint alleges facts which, if found to be true, would be sufficient to constitute a violation of the Code of Ethics;
- b. Further information must be presented for the Commission to determine if a violation of the Code of Ethics has occurred.

3. The Commission Chairperson may summarily dismiss a complaint if the respondent is not subject to the Code of Ethics. The Chairperson shall issue a written decision setting forth the legal and/or factual basis for the dismissal, which shall be provided to the complainant and the Commission. The complainant may appeal the Chairperson's decision to the Commission within ten days of the date of the Chairperson's decision. In the event of an appeal, the Chairperson shall not participate in the Commission's deliberation or decision. The appeal will be determined by the remaining members of the Commission.

- E. If the Commission determines the complaint alleges facts which, if found to be true by a preponderance of the evidence, would be sufficient to constitute a violation of the Code of Ethics, it may create a stipulation for the City officer or employee subject to the complaint resolving the complaint, the determination of compliance and the penalty, if any to be imposed.
- F. If the complaint is not resolved by stipulation, or earlier in the adjudication process, or additional information is required to establish the factual record necessary for the Commission to determine whether a violation of the Code of Ethics has occurred, the ~~((board))~~ Commission may convene a hearing at a future date certain.

1. As part of the hearing process, the Commission may consider preliminary motions, such as a motion to dismiss. At such a hearing, the Commission shall consider additional evidence submitted by the parties including the submission of affidavits and documentary evidence. The Commission may consider whether to

subpoena and hear the testimony of witnesses, including cross examination, if, in the opinion of the Commission, such testimony would serve the Commission to establish the factual record ((may call additional witnesses or consider additional documentary evidence)). The Commission may issue a prehearing order, including for hearing matters involving the testimony of witnesses. The Commission shall adopt as part of its policies and procedures a standard pre-hearing order to be used by parties appearing before the Commission.

2. The Commission decides issues before it based upon the preponderance of the evidence standard. That is, a violation must be more likely than not to have occurred before the Commission will hold for the complainant. The Commission shall rely, for its ultimate decision, upon evidence, whether or not technically admissible into evidence in a court of law, on which a reasonably prudent person would base significant decisions affecting his or her person or business. The Commission may utilize the rules of evidence of judicial tribunals for purposes of admitting and evaluating evidence, however, such rules are not binding and the Commission may determine the relevancy and weight to be given to the submitted evidence.

3. After final deliberations on additional testimony, statements, or documents presented at the hearing, the Commission shall determine whether or not a violation of the Code of Ethics has occurred.

- G. Any person who is the subject of a complaint may designate a representative if he or she wishes to be represented (~~((by someone else, to present evidence, and to cross-examine witnesses))~~). The person who submitted the complaint and the subject of the complaint must be allowed sufficient time to examine and respond to any evidence not presented to them in advance of the hearing.
- H. After the Commission has made its final determination, the Commission shall issue its written findings of fact and conclusions of law, along with its recommended disposition (if applicable). The Commission may, in addition, issue any additional reports, opinions, or recommendations as it deems advisable under the circumstances. All such reports shall be reviewed by the city attorney (or independent legal counsel in the event that a conflict of interest prevents the city attorney from conducting the review) prior to their issuance. The Commission's conclusions shall be based on the preponderance of the evidence standard.
- I. The investigation of complaints shall be completed by the Ethics Commission and written findings and conclusions prepared within sixty days of the date of the complaint. A copy of the written investigation findings and conclusions shall be served on any party against whom a complaint is filed within three days of the Ethics Commission's final decision. It shall be posted on the City's website for the Ethics Commission no more than twenty-four hours later. Posting on the website will clearly indicate the disposition of the issue in the text of the link and not in the text of the document only.

- J. The City Attorney may require the investigation of complaints and written findings to be completed by the Ethics Commission, in a reasonable amount of time, less than that stated in (I) in circumstances where the matter should be resolved more quickly.
- K. Any individual who is advised of another's violation of this code is responsible to direct the advising party of this code and its procedure for filing complaints.

Section 3. That the attached Ethics Commission Policy and Procedural Manual is approved.

PASSED BY THE CITY COUNCIL ON _____, 2019.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

CITY OF SPOKANE ETHICS COMMISSION

_____,
vs.
_____,
Complainant,
Respondent

FINAL PREHEARING ORDER

The Spokane Ethics Commission met on_____, 20___, and after input from the parties and their representatives, now, therefore, enters the following pretrial order:

I. Date, time and location of full hearing:

The full hearing on this matter will be held on:_____, 20___, at _____ p.m. at Spokane City Hall, Council Chambers, or as otherwise directed.

II. Subpoenas for witnesses to attend hearing:

Proposed subpoenas must be provided to the Spokane Ethics Commission two weeks in advance of the hearing. The Commission will meet in special session two weeks before the hearing to decide whether to issue the subpoenas presented. IT IS THE RESPONSIBILITY OF EACH PARTY TO ASSURE THAT ANY WITNESS WHOSE TESTIMONY IS SOUGHT WILL BE AVAILABLE AND WILL ATTEND THE FULL HEARING. The Ethics Commission does not guarantee the attendance of witnesses; its subpoenas are not self-executing.

1 **III. Preliminary Order**

2 (i) This Order shall control the conduct of the full hearing of this matter.

3 (ii) Only parties of record may present argument or witnesses at the full hearing.

4 (iii) All witnesses shall testify under oath.

5 (iv) The Chair may cause the removal of any person who is being disruptive at the full hearing.

6 (v) The parties should assume that members of the Commission have read the document
7 commonly known as the “_____,” or have at least some familiarity with such Report. However,
8 the Commission recognizes that the Report is not evidence, and advises the parties not to rely on the
9 Report when deciding whether to call witnesses or offer exhibits.
10

11 (vi) The Commission has dismissed Count ___ of Complainant’s _____, 20__ Complaint, as
12 clarified or amended without objection, on a voice vote. Entry of appropriate written findings and
13 conclusions regarding Count ___ will take place following the full hearing of this matter, or otherwise at
14 an open meeting properly noticed pursuant to applicable law.
15

16 (vii) All pending motions are hereby dismissed, without prejudice to any party’s ability to re-
17 file or re-open motions on leave of the Commission. Any motion any party wishes to be heard must be
18 made in writing to the Commission, with copies served on all parties. No action will be taken on any
19 motion unless the motion is filed on or before_____, 20__.
20

21 **IV. Conduct of hearing:**

22 **1. Allocation of time at full hearing:** Each side is allotted 90 minutes. Each side may use the
23 allotted time in any manner chosen. Staff will keep track of each party’s time, and will notify the
24 Commission and parties when the allotted time is completed. Opening statement, direct and cross
25 examination of witnesses, argument over objections, and closing argument will all be allocated to the
26 party examination of the witness, making the argument, arguing the objection, or otherwise addressing
27
28

1 the Commission, as in opening or closing. Once the party's 90 minutes is completed, that party may
2 not present further evidence or argument.

3 **2. Commission participation:** Members of the Commission will be allowed to ask questions.
4 Such questioning will not count against any party's allotted time. Parties are permitted to follow up on
5 questions asked by Commissioners and answers received, but the time used in any follow-up questions,
6 and answers, will be charged against the party asking following up.

7
8 **3. Exhibits and Briefs:**

9 **A. Service and filing of exhibits:** Exhibits shall be served and filed two weeks in advance of
10 the full hearing. Electronic delivery is preferred, but hard/paper copies will be accepted.

11 **B.** Objections to exhibits must be filed one week prior to the full hearing. Responses are due
12 48 hours before the full hearing.

13 **C. Admissibility of exhibits:** Any exhibit not objected to will be deemed admissible.
14 Objections to exhibits will be argued on the day of the full hearing, in advance of the presentation of
15 testimony. Exhibits shall be offered at the full hearing by number; no objections will be permitted
16 during the full hearing to the admissibility of the exhibit used, except as set forth below (impeachment
17 exhibits).

18 **D. Numbering exhibits: exhibit lists:** Complainant will use exhibit numbers 1-20,
19 Respondent will use exhibit numbers 21-40. Each submitting party will pre-number and pre-mark
20 exhibits, and shall submit a list of all exhibits simultaneously with the exhibits served.

21 **E. Impeachment exhibits:** Any party may impeach any witness by exhibits offered to reflect
22 on the credibility of the witness. Newspaper articles and other, similar documents may not be used for
23 impeachment purposes unless the document was submitted in advance of, and opportunity was given
24 for argument prior to, the full hearing. These are the only impeachment documents which must be pre-
25 disclosed, in advance of the full hearing.

26 **F. The full hearing will commence with argument over objections to exhibits and/or**

1 **witnesses.** Time spent in such argument will be limited by the Chair to no more than ten minutes per
2 side, but this time will not be counted toward the 90 minute allocation for each party. Time-counting
3 will commence with item 5(A)(2), below.

4 **G. Hearing Briefs:** Parties must serve and file any briefing they wish the Commission to
5 consider on week prior to the full hearing. No later-filed brief shall be considered by the Commission,
6 unless prior to the full hearing, the Commission approves of such late filing.

7
8 **4. Witnesses lists:**

9 **A.** Witness lists shall be served on each party and filed with staff on or before _____, 20__.
10 Any objections must be served and filed on or before _____, 2017. Requests for subpoenas shall
11 be served and filed on or before _____, 20__. The Commission will hold a special meeting
12 on _____, 20__, two weeks before the full hearing, in order to issue subpoenas if requested, *inter*
13 *alia*.

14
15 **B.** Witnesses shall testify under oath.

16 **5. Conduct of hearing:**

17 **A. Presentation of testimony and argument** at the full hearing shall occur as follows,
18 subject to the time allocations and limitations set forth above:
19

- 20 1. Introduction of hearing by Commission Chair.
- 21 2. Opening Statement (non-argumentative summary of evidence to be presented)
22 by Complainant. Time shall be counted toward party's allotted 90 minutes.
- 23 3. Presentation of Complainant's Case (Presentation of Witness and Documentary
24 Evidence). Complainant calls witnesses.
- 25 4. Cross Examination of witnesses by Respondent.
- 26 5. Questions by Commission. (Time not counted against either party's allocation.)
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6. Follow-up Questions by Complainant and Respondent.
7. Complainant rests.
8. Opening Statement (non-argumentative summary of evidence to be presented) by Respondent. Time shall be counted toward party's allotted 90 minutes.
9. Presentation of Respondent's Case (Presentation of Witness and Documentary Evidence). Respondent calls witnesses.
10. Cross Examination of witnesses by Complainant.
11. Questions by Commission. (Time not counted against either party's allocation.)
12. Follow-up Questions by Complainant and Respondent.
13. Respondent rests.
14. Final Arguments.

B. Rules of evidence: It is the intention of the Ethics Commission to hear all relevant evidence. Lack of conformity to state or federal rules of evidence goes to the weight, not the admissibility, of evidence. However, questions with the purpose or effect of harassing or intimidating a witness will not be tolerated. Cumulative or argumentative testimony, speculations of a witness, and testimony based solely upon hearsay are not helpful to the truth-finding process and may therefore be excluded, in the discretion of the Chair. Counsel are encouraged to point out to the Commission that the opposing party's evidence, in whole or in part, consists of evidence that could be deemed inadmissible under evidentiary rules applicable in other fora.

C. Motions to dismiss shall not be made or considered during the full hearing.

6. Evidentiary objections at full hearing: It is a part of the purpose of this Order to minimize the objections made at hearing to preserve the flow of evidence and complete the full hearing in a timely manner. However, parties retain the right to object when it is deemed advisable to do so.

1 Objections shall be directed to the Chair, who will alone determine the appropriate response to the
2 objection. The Chair may consult with Commission counsel before ruling, but need not do so.

3 **V. Issue to be decided following full hearing:**

4 Whether Respondent _____ violated SMC 01.04A.030 __ (State Facts of Alleged
5 Conduct.)
6

7 **VI. Waiver of Right to Hearing Prior to Date and Time Scheduled for Full Hearing, and**
8 **Waiver of Objection of Same:**

9 At prior hearings in this matter, the parties were given opportunity to object to the delays
10 incurred in bringing this matter to full hearing. The delays have been caused by a desire to provide a
11 fair hearing by accommodating both counsel. No party has objected. Accordingly, it is ordered that the
12 parties and their attorneys have waived the right, if any, to have this matter heard prior to the date and
13 time set forth in this Prehearing Order.
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15 Approved by unanimous vote on the tenth day of _____, 20__.

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Chair, Spokane Ethics Commission
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ORDINANCE NO. C35759

AN ORDINANCE REFORMULATING THE NORTHEAST PUBLIC DEVELOPMENT AUTHORITY AND APPROVING ITS CHARTER AND BYLAWS

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

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 initially created and established the Northeast Public Development Authority in November 2011 (ORD C-34813) to assist in providing economic development to the northeast portion of the City and provide economic stimulus and benefit the entire city and region. As a result of this Agreement between the Parties the prior PDA shall cease to operate; and

WHEREAS, Spokane County would like to participate and incorporate additional property to include the joint planning areas and UGA land north and east of the City boundaries; and

WHEREAS, the current PDA needs to be reformulated and revised to allow for additional property and inclusion of the County; and

WHEREAS, the City and Spokane County have entered into an Interlocal Agreement regarding the reformation of the Northeast Public Development Authority for the purpose of which is to realign resources, property and services to facilitate economic development and operation of the Northeast Public Development Authority; and

WHEREAS, the City Council hereby further finds that the reformation of the Northeast Public Development Authority will assist the City and the County in their joint desire to improve the economic conditions of the Northeast area of Spokane County:--
Now, Therefore,

The City of Spokane does ordain as follows:

1. That the Northeast Public Development Authority is hereby reformed pursuant to RCW 35.21.730 - .755 and RCW 35.21.757 - .759 and the Interlocal Agreement entered into between the City and County dated _____; and

2. That the Interlocal Agreement pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act) sets forth the terms and conditions between the City and the County for the operation of the reformed Northeast Public Development Authority; and

3. That the attached Charter and Bylaws for the reformed Northeast Area Public Development Authority are hereby approved.

PASSED BY THE CITY COUNCIL ON _____, 2019.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

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

04/15/2019

Date Rec'd

4/3/2019

Clerk's File #

ORD C35758

Renews #Submitting Dept

CITY COUNCIL

Cross Ref #Contact Name/Phone

LORI KINNEAR 625-6261

Project #Contact E-Mail

LKINNEAR@SPOKANECITY.ORG

Bid #Agenda Item Type

First Reading Ordinance

Requisition #Agenda Item Name

0320 - AN ORDINANCE REGARDING SPOKANE'S URBAN FORESTRY PROGRAM.

Agenda Wording

An ordinance updating Spokane's urban forestry ordinance.

Summary (Background)

This ordinance is an update to the urban forestry ordinance and commits the City to aspirational goals concerning increasing the urban tree canopy. The ordinance also commits the city to updating the urban forestry plan every five years, and requires that the director of the urban forestry program coordinate with the neighborhood and business services division. The ordinance also creates new reforestation programs and maintains existing programs.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

MCCLATCHEY, BRIAN

Study SessionDivision DirectorOther

PIES Committee, 3/12/19

Finance

HUGHES, MICHELLE

Distribution ListLegal

DALTON, PAT

For the Mayor

ORMSBY, MICHAEL

Additional ApprovalsPurchasing

ORDINANCE NO. C35758

An ordinance regarding Spokane's Urban Forestry Program; amending Article V of chapter 12.02 of the Spokane Municipal Code.

WHEREAS, Spokane's urban forest provides many economic, health and environmental benefits for city residents and businesses; and

WHEREAS, trees produce oxygen and filter airborne particulates which improves Spokane's air quality; and

WHEREAS, trees improve water quality and reduce storm water runoff – reducing pollutants and mitigation costs; and

WHEREAS, trees save energy costs by providing shade, contributing to summer cooling, and moderating the effects of wind – according to the U.S. Forest Service's Center for Urban Forest Research, properly placing just three trees near a home can reduce that home's energy costs by up to 30%; and

WHEREAS, there are over 76,000 street trees which have been inventoried and analyzed for value and benefits in the City of Spokane, and those trees provide tangible financial value, such as:

- Over \$700,000 in reduced heating and cooling costs annually,
- Over \$75,000 in annual reductions of atmospheric CO₂,
- Nearly \$300,000 in annual savings for our storm water mitigation efforts due to rain interception and storage, and
- Lowered crime rates and increased marketability and property values of about \$2,800,000 annually; and

WHEREAS, pavement which is shaded by trees will last 10 years longer than exposed pavement, resulting in less maintenance and savings in paving material and labor costs; and

WHEREAS, people are more likely to shop in business districts with treescaping and are likely to spend more when doing so; and

WHEREAS, patients with even just a view of greenery, such as parks, gardens, and/or trees, heal faster; and

WHEREAS, trees provide a wealth of wildlife habitat and are especially important in urban areas as connections to open space and wild areas; and

WHEREAS, studies have shown that properly-designed plantings of trees and shrubs can reduce the apparent loudness of urban areas by 6-10 decibels; and

WHEREAS, the City of Spokane recognizes the central part that trees play in our culture, our environment, and our city's distinctive character by adopting the Ponderosa Pine as our official city tree; and

WHEREAS, trees make our city more livable and a healthy urban forest plays important roles in our quality of life and the sustainability of Spokane's environment by lowering our energy costs, giving us clean air and clean water, imparting a distinctive character and beauty, enriching the aesthetic experience of the community, softening and screening urban development, providing habitat for wildlife, and adding to our history, civic pride and public life.

NOW THEREFORE, the City of Spokane does ordain:

Section 1. That Article V of Chapter 12.02 of the Spokane Municipal Code is amended to read as follows:

Article V: Urban Forestry Program

Section 12.02.900 ~~((Urban Forestry Program))~~Findings, Purpose, and Intent

~~((A new article is created in chapter 12.02 SMC, designated Article V, Urban Forestry Program, to consist of SMC 12.02.900 through SMC 12.02.958.))~~

- A. The City of Spokane recognizes that the design of the urban environment must ultimately be for the benefit of the quality of life of the human inhabitants, and that a healthy urban forest is a key component of the quality of life.
- B. The focus of the urban forestry program is to balance competing needs of the community, in the context of limited municipal resources, while promoting and maintaining a healthy urban forest.
- C. The City of Spokane intends, by enacting this chapter, to:
 - a. promote the restoration and preservation of desirable trees and shrubs;
 - b. advocate for the establishment and retention of adequate tree planting spaces while considering the community's desire for urban aesthetics; and
 - c. as resources may allow, to address problems arising from improper planting, maintenance, or removal of trees and shrubs.
- D. The implementation of this Article V is at all times subject to appropriations. It is not a purpose of this article to create or expand any duty, responsibility, or liability on the part of the City of Spokane, its officers, agents, employees, or contractors. Any such duty nonetheless deemed created does not extend to any specific or identifiable person or class. Additionally, nothing in this article and no action taken or inaction by the City, its officers, agents, employees, or contractors shall reduce the responsibility of other persons or entities for intentional or negligent acts or omissions, including failure to maintain their property, curtilage or related

areas with reasonable care. This subsection (D) controls all other provisions.

Section ((12.02.902))12.02.905 ((Purpose))Spokane Urban Forestry Plan and Goals

- A. ~~((The city council and park board recognize that the design of the urban environment must ultimately be for the benefit of the quality of life of the human inhabitants, and that a healthy urban forest is a key component of the quality of life. The focus of the urban forestry program will be on balancing competing needs of the community, in the context of limited municipal resources, while promoting and maintaining a healthy urban forest.~~
-
- B. ~~The purpose of this article is to promote and protect the public health, safety and general welfare through the initiation of an urban forestry program, including supervision of the planting, pruning, removal and maintenance of trees, shrubs, and other plants within the public rights-of-way and public places of the City and by offering education and assistance to citizens to promote a healthy urban forest.~~
-
- C. ~~It is also the intent of the city council to:~~
- ~~1. promote the restoration and preservation of desirable trees and shrubs;~~
 - ~~2. advocate for the establishment and retention of adequate tree planting spaces while considering the community desire for urban aesthetics; and~~
 - ~~3. as resources may allow, to address problems arising from improper planting, maintenance, or removal of trees and shrubs.~~
-
- D. ~~The urban forestry program reflects a municipal goal, but its implementation may be subject to budget or other limitations or restrictions from time to time. It is not a purpose of this article to create or expand any duty, responsibility, or liability on the part of the City of Spokane, its officers, agents, employees, or contractors. Any such duty nonetheless deemed created does not extend to any specific or identifiable person or class. Additionally, nothing in this article and no action taken or inaction by the City, its officers, agents, employees, or contractors shall reduce the responsibility of other persons or entities for intentional or negligent acts or omissions, including failure to maintain their property, curtilage or related areas with reasonable care. This subsection (D) controls all other provisions.))~~

- A. It is the goal of the City of Spokane that thirty percent (30%) of the total land area within the City of Spokane has a healthy and functioning tree canopy coverage by 2030.
- B. It is a goal of the City of Spokane to create and maintain active re-forestation programs in Spokane.
- C. Beginning on the effective date of this section, the City of Spokane will update its urban forestry plan at least every five (5) years.

Section 12.02.910 Definitions

~~((The following definitions, SMC 12.02.932 through SMC 12.02.958, apply to this article.))~~

- A. “Arboricultural manual” means the Arboricultural Specifications and Standards of Practice for the City of Spokane which contains regulations and standards for the planting, pruning, removal, and maintenance of trees and shrubs on public property and a program for developing and improving the tree, shrub, and other plant resources of the community.
- B. “Commercial tree work” means any work performed on street or public trees by a person retained by the property owner or public utility.
- C. “Director” means the director of the parks and recreation division or the director’s designee.
- D. “Hazardous tree” means any tree or tree part that poses a high risk of damage to persons or property.
- E. “Heritage tree” means a tree or collection of trees that is particularly desirable because it has valued, unique characteristics that set it apart from other similar trees as specified by SMC 12.02.975.
- F. “Major pruning” means the pruning or cutting out of branches two inches (2”) in diameter or greater, root pruning, cutting out of branches and limbs constituting greater than fifteen percent (15%) of the tree’s foliage bearing area and pruning trees with branches that are within ten feet (10’) of overhead power lines. The work shall retain the natural form of the tree.
- G. “Minor pruning” means pruning or cutting out of water sprouts, suckers, twigs, or branches less than two inches (2”) in diameter, or which constitutes less than fifteen percent (15%) of the tree’s foliage bearing area. The work shall retain the natural form of the tree. Removal of dead wood, broken branches, and stubs are included within the definition of minor pruning. Minor pruning of street trees may be performed by the owner of the adjacent property without obtaining a permit from the City.

- H. “Public place” means property owned in fee by the City of Spokane.
- I. “Public Tree” is a tree on City-owned property. A public tree may also be a street tree.
- J. “Public utility” means any organization that has a franchise to utilize the public rights-of-way.
- K. “Right-of-way” means that strip of land:
1. dedicated for public travel, including the main traveled portions of the streets and sidewalks as well as parking or planting strips, pedestrian buffer strips, and other associated areas, or over which is built, public streets, sidewalks, or alleys for public travel; or
 2. used for or dedicated to utilities installation within the right-of-way.
- L. “Severe crown reduction” means the specific reduction in the overall size of a tree and/or the severe internodal cutting back of branches or limbs to stubs within the tree’s crown to such a degree as to remove the normal tree canopy and disfigure the tree. Severe crown reduction is not a form of pruning and, for street trees and trees within the public right-of-way, is prohibited.
- M. “Street tree” means any tree or shrub located within the public right-of-way.
- N. “Tree committee” means the urban forestry tree committee created by SMC 04.28.010.
- O. “Tree lawn,” “parking strip,” and “planting strip” are used interchangeably to mean the area between the curb and sidewalk.
- P. “Urban forestry plan” means a comprehensive plan addressing the long-term goals and strategic planning related to tree planting, pruning, removal, and maintenance needs of trees located in public places to encourage the sustainability of the urban forest. Neighborhood specific tree plans or neighborhood land use plans which incorporate sections or language related to public trees shall be incorporated in the general urban forestry plan and neighborhoods shall consider the urban forestry plan in the development of neighborhood specific tree plans or land use plans.

Section ((12.02.904))12.02.915 Urban Forestry Program

A. Establishment.

The urban forestry program is established within the parks and recreation

~~((department))~~division, which exercises jurisdiction over street trees and shrubs ~~((within the public rights-of-way))~~ and trees and shrubs located in other public places as defined in SMC 12.02.910(H).

B. Responsible Official.

The director of parks and recreation is designated as the responsible official for administering the urban forestry program. The director may designate an employee as the urban forester to perform the duties to administer the program.

C. Authority.

1. The director regulates and permits the planting, pruning, removal, replacement, and maintenance of all street trees.
2. The director, with the advice and assistance of the tree committee, will prepare the Arboricultural Manual and associated administrative policy and will present the manual and administrative policy to the park board and city council ~~((for adoption))~~.
3. The director, with the advice and assistance of the tree committee, will prepare the urban forestry ~~((management))~~ plan and associated administrative policy and will present the plan and administrative policy to the park board, plan commission, and city council ~~for adoption~~.
4. The director examines all trees and shrubs within the scope of this article to determine whether they are contagiously diseased, dead, or hazardous, obstructing the right-of-way, or posing a threat to public safety, having the right to take samples from trees and shrubs for laboratory testing.
5. The director, with the advice and assistance of the tree committee, will develop a plan for assisting property owners with their street trees, which plan includes educational programs and criteria for financial assistance.
6. The director will develop educational programs for the public promoting proper urban forestry practices.
7. The director will facilitate the establishment of a citizen advisory committee to facilitate citizen participation in the urban forestry program.
8. In carrying out the duties prescribed by this section, the director shall consult and coordinate with the director of the neighborhood and business services division.

Section ~~((12.02.906))~~ 12.02.920 Hazard Evaluation Criteria

Municipal response to tree or other hazards within the scope of this article is in the City's sole discretion. In prioritizing a response, City officials may use the International Society of Arboriculture's ~~((twelve-point hazard evaluation~~

~~system))~~current best practices for Tree Risk Assessment, but no obligation to act is created.

Section ((12.02.908))12.02.925 Abutting Owner Responsibilities – City Tree Maintenance List

- A. Abutting property owners are responsible for the following:
1. Protection of street tree health by obtaining all permits as required by this article for planting, removal, or pruning of street trees. The property owners may perform minor pruning of street trees ((~~on~~)) abutting their property without obtaining a permit.
 2. Care and maintenance of the tree lawn to ensure proper health of the trees.
 3. Removal and replacement of street trees which are topped or improperly pruned if the director determines that a street tree's health is severely degraded.
 4. Care and maintenance of trees on their property in such a way as to not cause a hazard to the public safety or to the health of public, landmark or street trees.
 5. Removal of trees located on their property that have been declared a public nuisance or hazard.
 6. Abutting property owners must exercise reasonable care in the use or condition of their property so as not to render the right-of-way unsafe for ordinary travel or to endanger persons or property of persons using the right-of-way. Abutting property conditions may include planting or allowing trees, shrubs, plants, or other natural or human placed installations which affect the right-of-way directly or indirectly. Uses include a use with may cause or promote damage, unauthorized alteration, or interference with the right-of-way, not by way of limitation. The abutting property includes the curtilage and areas in or near the right-of-way, whether or not actively used for public travel.
- B. Any duty imposed upon a property owner applies jointly and severally to a property occupant, but enforcement action against an occupant does not release the owner from ultimate responsibility hereunder.
- C. Sometimes, funding may become available for the ((~~park department~~))program to assist in planting new street trees, pruning, removal, or otherwise helping with street tree maintenance for street trees on tree lawns. This effort may arise in low income neighborhoods or become available through community development federal funding or other public or private resources. No action by the ((~~park department~~))program shall relieve a property owner of an obligation under this article except to the extent the ((~~park department~~))program may be

able to assist and support the property owner, and no municipal duty is created thereby. If a new street tree is proposed to be planted, the ~~((park department))~~program shall work with the abutting property owner to confirm the owner's understanding of owner's responsibilities under this article. Specific reference is made to policy NE 12.5 in the Natural Environment chapter of the City of Spokane comprehensive plan, which provides for a policy of "no net loss" in street trees, explaining that street tree removal should only be granted when a tree is determined by the City to be sick, damaged, or near the end of life. This does not restrict removal for public health and safety reasons, in the determination of public safety officials.

- D. The director may develop a maintenance list for street trees or other trees in certain areas where the ~~((department))~~program is able to perform tree maintenance work. Except in such circumstances, and only to the extent resources may be available, ~~((or to the extent SMC 12.02.935(F) may apply,))~~ actions taken under this article are at the cost and liability of the abutting property owner or other responsible party or parties, as may be determined by the director.

~~((Section 12.02.930 Definitions~~

~~The following definitions, SMC 12.02.932 through SMC 12.02.958, apply to this article.~~

~~Section 12.02.932 "Arboricultural Manual" Defined~~

~~"Arboricultural manual" means the Arboricultural Specifications and Standards of Practice for the City of Spokane which contains regulations and standards for the planting, pruning, removal, and maintenance of trees and shrubs on public property and a program for developing and improving the tree, shrub, and other plant resources of the community.~~

~~Section 12.02.934 "Commercial Tree Work" Defined~~

~~"Commercial tree work" means any work performed on street or public trees by a person retained by the property owner or public utility.~~

~~Section 12.02.936 "Director" Defined~~

~~"Director" means the director of the parks and recreation department or the director's designee.~~

~~Section 12.02.938 "Hazardous Tree" Defined~~

~~“Hazardous tree” means any tree or tree part that poses a high risk of damage to persons or property.~~

~~Section 12.02.940 “Person” Defined~~

~~See SMC 1.02.100.~~

~~Section 12.02.942 “Pruning” Defined~~

- ~~A. “Major pruning” means the pruning or cutting out of branches three inches in diameter or greater, root pruning, or cutting out of branches and limbs constituting greater than fifteen percent of the tree’s foliage bearing area. The work shall retain the natural form of the tree.~~
- ~~B. “Minor pruning” means pruning or cutting out of water sprouts, suckers, twigs, or branches less than three inches in diameter, or which constitutes less than fifteen percent of the tree’s foliage bearing area. The work shall retain the natural form of the tree. Removal of dead wood, broken branches, and stubs are included within the definition of minor pruning. Minor pruning may be performed by the property owner without obtaining a permit from the City.~~

~~Section 12.02.944 “Public Place” Defined~~

~~“Public place” means property owned in fee by the City of Spokane.~~

~~Section 12.02.945 “Public Tree” Defined~~

~~“Public Tree” is a tree on City-owned property or on the public right-of-way abutting City-owned property. A public tree may also be a street tree. “City-owned property” does not refer to the right-of-way.~~

~~Section 12.02.946 “Public Utility” Defined~~

~~“Public utility” means any organization that has a franchise to utilize the public rights-of-way.~~

~~Section 12.02.948 “Right-of-way” Defined~~

~~“Right-of-way” means that strip of land:~~

- ~~A. dedicated for public travel, including the main traveled portions of the streets and sidewalks as well as parking or planting strips, pedestrian buffer strips, and other associated areas, or over which is built, public streets, sidewalks, or alleys for public travel; or~~

~~B. used for or dedicated to utilities installation within the right-of-way.~~

~~The “right-of-way” is typically an easement over the land of the abutting property owner.~~

~~Section 12.02.950 “Severe Crown Reduction” Defined~~

~~“Severe crown reduction” means the specific reduction in the overall size of a tree and/or the severe internodal cutting back of branches or limbs to stubs within the tree’s crown to such a degree as to remove the normal tree canopy and disfigure the tree. Severe crown reduction is not a form of pruning.~~

~~Section 12.02.952 “Street Tree” Defined~~

~~“Street tree” means any tree or shrub located within the public right-of-way.~~

~~Section 12.02.954 “Tree Committee” Defined~~

~~“Tree committee” means the urban forestry tree committee created by chapter 4.28 SMC.~~

~~Section 12.02.956 “Tree Lawn” Defined~~

~~“Tree lawn” means the area within the right-of-way easement, generally the lawn between the curb and sidewalk; also known as the “parking or planting strip.”~~

~~Section 12.02.958 “Vegetation Management Plan” Defined~~

~~“Vegetation management plan” means a comprehensive plan addressing the long-term goals and strategic planning related to tree planting, pruning, removal, and maintenance needs of community trees to encourage the sustainability of the urban forest. Neighborhood specific tree plans or neighborhood land use plans which incorporate sections or language related to public trees shall be incorporated in the general vegetation management plan and neighborhoods shall consider the vegetation management plan in the development of neighborhood specific tree plans or land use plans.))~~

~~Section ((12.02.940))12.02.960~~ Tree Permit Required

A. Pruning and Removal of Trees.

No person may perform major pruning ~~((of trees,))~~ or cause or authorize any person to prune or remove street trees((;)) or trees located in planting strips~~((, rights-of-way,))~~ or other public places without first filing an application and obtaining a street tree pruning/removal permit from the City.

1. Application Data.
The application must state the location, number, and kind of trees to be pruned or removed; the kind of maintenance or other work to be done; and such other information as the director may find reasonably necessary to a fair determination of whether a permit should be issued.
2. Standards for Issuance.
The director issues the permit if in his or her judgment the proposed work is consistent with the ordinance and the proposed method and workmanship are satisfactory.
3. Time.
Any permit issued shall contain a date of expiration and the work must be completed in the time allowed on the permit.
4. Major Pruning.
The City requires that the pruning be performed by a person licensed by the City pursuant to SMC 10.25.010.

B. Planting of Trees.
No person may plant a tree in any City rights-of-way without first obtaining a street tree permit from the City.

C. Notice of Completion.
A notice of work completion concerning tree planting, removal, or major pruning must be given by the permit holder within five days to the director for inspection. Inspection shall be completed within ten working days.

D. Annual Permit for City Departments and Utilities with Easements or Franchises Within the Rights-of-Way.
City departments and utilities may apply for an annual permit to perform pruning, planting, or removal of street trees (~~((within the rights-of-way))~~). The permit application must include an annual plan that identifies work that will be done during the year. The permit holder must file quarterly reports which will identify all work done on street trees and trees in public places.

E. Emergency Pruning and Removal.
If immediate removal or major pruning is required to protect the health and safety of the public, tree work to mitigate the immediate hazard may be performed without a permit. The director must be notified on the first working day after the tree work is begun and a permit must be obtained. In the case of a declaration of emergency notification may be made within a reasonable time.

F. The director may decline to issue a permit, or revoke a permit issued, to any person who refuses or neglects to comply with any of the provisions of this code.

Section ~~((12.02.912))12.02.965~~ Removal, Pruning of Trees and Shrubs

- A. The director may authorize or order removal of or may remove street trees and shrubs situated within the rights-of-way, or other treatment or pruning, whenever one or more of the following criteria are met:
1. The tree or shrub is hazardous ~~((or other good cause))~~ as determined by SMC 12.02.920.
 2. The tree or shrub is damaging public improvements or public utilities and removal is necessary because of the installation of, or potential or actual damage to, a sidewalk, parkway, curb, gutter, pavement, sewer line, underground utility or other municipal improvement.
 3. There is infection or infestation of trees or shrubs with a disease or pest detrimental to the growth, health or life of such trees and which infection or infestation cannot be controlled or removed.
 4. The vegetation obstructs rights-of-way, authorized traffic signs or is determined to interfere with line of sight or creates other identified traffic or safety concerns.
 5. The tree's health is severely degraded because of improper pruning, including severe crown reduction.
- B. When the engineering services department determines that vegetation obstructs a public right-of-way, it notifies the director. Unless an emergency requires immediate abatement by the City, the director may utilize the procedures in SMC ~~((10.20.020))12.02.0210~~ ~~((SMC 12.02.930,))~~ or any other lawful means for pruning or removal.
- C. As a condition of removal, the director requires replacement with trees or shrubs that are appropriate for the location, unless replacement is not possible.
- D. If a street tree is to be removed at the order of the director, unless immediate removal is necessary to protect public health and safety, he notifies the property owner and tenants thirty (30) days prior to the proposed date of removal. The notice states the reason(s) for the removal and the proposed date of the removal. An order of removal may include an estimated cost and provide the property owner with the option of procuring removing within a time specified by authorized persons, but no estimate shall bind the City to accept any amount less than the true and actual cost determined after corrective action is taken.
- E. For City projects which will require removing one or more trees, the department will notify the property owner and tenants thirty (30) days prior to the proposed date of removal. A copy of the notice shall also be delivered to the department of neighborhood services and code

enforcement within the same time frame.

- F. Questions affecting right-of-way management are referred to the director of the engineering services department. The parks and recreation director may also refer inquiries about interdepartmental assistance to the director of engineering services, where a healthy tree may be preserved with extra measures involving additional cost or expense, on a site by site basis.

Section ~~((12.02.914))~~12.02.970 Tree Protection, Conservation and Preservation

- A. All street and public trees near any excavation, demolition, or construction of any building, structure, street, or utility work must be sufficiently guarded and protected by those responsible for such work as to minimize potential injury to said trees and to maximize their chance for survival. When street and public trees are near the project, any construction permits issued by the City must be approved by the director, who may require protective measures as specified in the Arboricultural Manual.
- B. No person may destroy, injure, or deface any street tree or public tree on public property by any means, including, but not limited to, the following methods:
 - 1. Impede the free passage of water, air, or fertilizer to the roots of any tree, shrub, or other plant by depositing vehicles, concrete, asphalt, plastic sheeting, or other material detrimental to trees or shrubs on the tree lawn or on the ground near any tree~~((-))~~_i;
 - 2. Pour any toxic material on any tree or on the ground near any tree~~((-))~~_i;
 - 3. Cause or encourage any fire or burning near or around any tree~~((-))~~_i;
 - 4. Severely reduce the tree crown~~((except when pruning of trees under utility wires or obstructing the right of way as allowed by a permit issued by the director))~~. Removal or replacement is preferred to severe crown reduction~~((-))~~_i;
 - 5. Carve or attach any sign, poster, notice, or other object on any tree or fasten any rope, wire, cable, nails, screws, staples, or other device to any tree except as used to support a young or broken tree; however, nothing in this section shall be construed in such a manner that it forbids lighting of a decorative or seasonal nature, provided that such lighting is not attached in such a way as to cause permanent damage to the tree~~((-))~~_i; or
 - 6. Plant trees reaching an expected mature height of twenty-five feet (25') or more under overhead power lines.

- C. No person may prevent, delay, or interfere with the director, or the director's designee, or any City employee in the execution or enforcement of the provisions of this article or otherwise violate this Article V.
- D. Any person responsible for a violation of this section must pay the cost of repairing or replacing any tree or shrub damaged by the violation and may be subject to treble the amount of damages assessed in any enforcement action brought by the City, pursuant to RCW 64.12.030. The value of trees and shrubs is to be determined in accordance with the latest revision of the Guide for Plant Appraisals as published by the International Society of Arboriculture.
- E. In addition to remedies under subsection (D) of this section, violation of this section is a class 1 civil infraction. The director has the discretion to issue a warning for a first-time violation.

Section ((12.02.916))12.02.975 Protection of Public and Private Historic and Heritage Trees

- A. The historic and heritage tree preservation designation recognizes the significance of trees to the City. A tree may be retained beyond its useful life because of its contribution to the environment and City character. The intent of this ordinance is to balance the preservation of historic and heritage trees with the growth and development of the City of Spokane. A heritage or historical tree is designated by the tree committee based on the following criteria:
 - 1. Has historical significance to a person, place, or event.
 - 2. Has attained significant size in height, caliper, or canopy spread for its age and species.
 - 3. Has special aesthetic qualities for its species.
 - 4. Is prominently visible to the public, along major roads, or public places.
 - 5. Possesses rare horticulture value.
 - 6. Is not a hazard or obstruction.
 - 7. The owner of the tree agrees in writing to the "Heritage" designation of the tree and has complied with the nomination steps set forth in subsection D of this section.
- B. The purpose of the heritage tree program shall be to accomplish the following:
 - 1. Increase public awareness of trees in general and specifically Spokane's urban forest.

2. Draw attention to and protect those significant heritage trees that are unique within the terms of ~~((as specified by))~~ this section ~~((SMC 12.02.916))~~.
 3. Provide publicity for increased awareness of the purpose and activities of the Spokane urban forestry tree committee (UFTC), the UFTC citizen advisory committee and the urban forestry program.
 4. Encourage public participation in the identification and perpetuation of heritage trees throughout the City.
- C. ~~((The definition of “heritage tree” is a tree or collection of trees that is particularly desirable because it has valued, unique characteristics that set it apart from other similar trees as specified by SMC 12.02.916.))~~
- D. The process for nomination shall be as follows:
1. Any individual or group of individuals interested in identifying and preserving heritage trees may nominate a tree or trees on any Spokane City property for “heritage” status.
 2. The city council may nominate a tree or collection of trees on City property for heritage tree status.
 3. Heritage tree nominations shall be submitted to the urban forest tree committee on nomination forms provided by the urban forestry program of the City.
 4. The nomination shall at least include:
 - a. a description of the tree nominated;
 - b. the characteristics that merit the tree being designated for heritage tree status, (as designated within the terms of this section) ~~((in SMC 12.02.916))~~ including the history of the tree, if known;
 - c. a photograph of the tree; and
 - d. a map locating the tree.
 5. The owner of the property on which the nominated tree is located shall agree to the nomination by signing the consent statement on the nominating form.
 6. The owner of the property on which the nominated tree is located must agree in writing to allow the tree to be placed on a City map of heritage trees.
 7. To inform future property owners, the owner of the property will be encouraged in the notification letter to record a notice to title indicating the location of the heritage tree on the property.
 8. Upon recommendation by the urban forest tree committee, the council may remove designation of any tree as a heritage tree if it finds that such designation is no longer appropriate.

- E. The authority and process for designation of heritage trees shall be as follows:
1. The urban forest tree committee (UFTC) shall consider heritage tree nominations at their regular meetings, using the heritage tree designation guidance document to make their determination. The consideration meetings should take place within two months from receipt of a nomination. No tree may be given heritage tree status unless a quorum of UFTC members discuss and vote in favor of the heritage tree nomination.
 2. Criteria to be considered by the urban forest tree committee for recommending a nomination for heritage tree status shall include the following (as designated within the terms of this section~~((by SMC 12.02.916)))~~):
 - a. Has historical significance to a person, place, or event.
 - b. Has attained significant size in height, caliper, or canopy spread for its age and species.
 - c. Has special aesthetic qualities for its species.
 - d. Is prominently visible to the public, along major roads or public places.
 - e. Possesses rare horticultural value.
 - f. Is not a hazard or obstruction.
 - g. The owner of the tree agrees in writing to the “heritage” designation of the tree and has complied with the nomination steps set forth in subsection D of this section.
 3. All heritage trees will be identified and recorded in a register maintained by the urban forestry tree committee and the urban forestry program.
 4. Notice of all trees identified as heritage trees by the urban forest tree committee shall be forwarded to the mayor. All designated trees, including names of the nominator and the property owner, will then be acknowledged in a letter from the mayor to the nominator and property owner. This letter will be provided by the urban forestry program to the mayor’s staff. Further individual heritage tree publicity is at the discretion of the mayor and the urban forest tree committee, such as proclamations and publicity releases.
 5. The urban forest tree committee shall give biannual updates to the city council on the number of trees designated.
- F. The city will provide the owner with a professional arborist’s assessment of the health of the tree and recommendations for maintaining the tree according to accepted pruning and care standards.

- G. A heritage tree or collection of trees is retained by the property owner and does not become the property or responsibility of the City. The property owner is responsible for all maintenance and liability issues pertaining to the tree or trees. Prior to removal of a heritage tree, a property owner must consult with the urban forest tree committee, as specified on the consent form. The City strongly encourages all heritage tree property owners to retain these significant tree(s). However, a heritage tree designation does not prohibit a property owner from developing a property and/or removing the heritage tree or trees subject to the City's tree retention regulations.
- H. The tree committee may establish additional procedures for nomination of heritage trees consistent with this section. A registry of historic trees is maintained and the designation is indicated on the City tree inventory.

Section ~~((12.02.918))~~ 12.02.980 Disposal of Urban Forest Products

The urban forester may sell wood and other forest products generated during urban forestry and park operations. The proceeds from such sales will be deposited in the urban forestry fund, as provided in SMC 07.08.135.

Section ~~((12.02.920))~~ 12.02.985 Appeal

Decisions of the director under SMC ~~((12.02.910))~~ 12.02.930 and SMC ~~((12.02.912))~~ 12.02.935 may be appealed by the property owner to the ~~((tree committee))~~ hearing examiner within thirty ~~(30)~~ days of receipt of the permit denial or the director's decision. The appeal notice must be in writing and submitted to the director. The notice must include, at a minimum, the following information:

- A. Name, address and telephone number of applicant.
- B. Location of trees involved in the appeal.
- C. Decision being appealed; and
- D. A concise statement of the reasons for appeal.

~~((The appeal is heard at the next regularly scheduled meeting of tree committee following receipt of the notice of appeal. Decisions of the tree committee may be appealed to the hearing examiner by filing a notice of appeal with the director within fifteen days of the tree committee's decision with a copy also filed with the City hearing examiner.))~~ Any appeal from the decision of the hearing examiner is by writ to the appropriate court. There is no right of stay of any order pending appeal unless allowed by the director, conditioned upon posting of a bond or other security or requirements as the director may order. ~~((An appealing party may request emergency review of a director's denial or conditioning of any stay,~~

~~pending appeal, by the chair of the tree committee. Consideration of such a request is at the chair's sole discretion.))~~

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date