

## **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, OCTOBER 7, 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**

**COUNCIL CHAMBERS  
CITY HALL**

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

## CITY COUNCIL BRIEFING SESSION

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

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

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

### ADDRESSING THE COUNCIL

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

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

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

**AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:** The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [msteinolfson@spokanecity.org](mailto: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. Contract with Vermeer Rocky Mountain (Spokane, WA) for McLaughlin MCL-10H Pit Launched Directional Drill with Digital Control F2 Locating System—\$82,311.89 (incl. tax).<br><b>Seth McIntosh</b>                                   | Approve | OPR 2019-0809<br>BID 5158-19 |
| 2. Contract Amendment with Bernardo Wills Architects (Spokane, WA) to complete construction phase services for CSO Basin 26 Control Facility project—increase of \$25,160. Total Contract Cost: \$139,980.50.<br><b>Mark Serbousek</b> | Approve | OPR 2017-0528<br>ENG 2010088 |
| 3. Contract with Keller Rohrback, LLP (Seattle, WA) for provide legal services in conjunction with recovery efforts for damages from the manufacturers and distributors of opioid based prescriptions.<br><b>Michael Ormsby</b>        | Approve | OPR 2019-0810                |
| 4. Agreement with Washington State Department of Transportation to install conduit for City of Spokane use as part of the Trent Avenue Bridge replacement—\$117,652.<br><b>Louis Meuler</b>  | Approve | OPR 2019-0811                |

5. Contract with FCS Group (Redmond, WA) for rate structure analysis of the Water, Sewer, and Stormwater utilities—not to exceed \$260,000 (incl. tax.).  
**Dan Kegley** Approve OPR 2019-0812  
BID 5115-19
6. Report of the Mayor of pending: Approve & Authorize Payments CPR 2019-0002
- 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 \$\_\_\_\_\_.
- b. Payroll claims of previously approved obligations through\_\_\_\_\_, 2019: \$\_\_\_\_\_. CPR 2019-0003
7. City Council Meeting Minutes: \_\_\_\_\_, 2019. Approve All CPR 2019-0013
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## EXECUTIVE SESSION

(Closed Session of Council)

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

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## CITY COUNCIL SESSION

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

(Council Briefing Center)

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

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## LEGISLATIVE SESSION

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

WORDS OF INSPIRATION

PLEDGE OF ALLEGIANCE

ROLL CALL OF COUNCIL

## **ANNOUNCEMENTS**

(Announcements regarding Changes to the City Council Agenda)

## **NO BOARDS AND COMMISSIONS APPOINTMENTS**

## **ADMINISTRATIVE REPORT**

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## **COUNCIL COMMITTEE REPORTS**

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

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## **OPEN FORUM**

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

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

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# **LEGISLATIVE AGENDA**

## **SPECIAL BUDGET ORDINANCES**

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinance C35817 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:

**Fleet Services Fund**

**FROM:** Central Service Center, \$3,497,576;

**TO:** Various Accounts, same amount.

(This action budgets to cover increased costs and increased repairs that have not been budgeted adequately over the last few years.)

**Scott Simmons**

## **NO EMERGENCY ORDINANCES**

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

- RES 2019-0082      Declaring Asea Brown Boveri Limited (ABB) who owns the patented software known as ABB ServiceGrid which is used to enhance the overall operational effectiveness and reduce maintenance costs at the City's Waste To Energy (WTE) Facility as sole source and thus authorizing its purchase from Asea Brown Boveri Limited (ABB), of Zurich, Switzerland for the Waste to Energy Facility from January 1, 2020, through December 31, 2024—estimated cost for five years of \$1,350, 000 (excl. tax).  
OPR 2019-0813
- RES 2019-0083      Joint Resolution granting a Non-Exclusive Access and Utility Easement to the City of Spokane for Sewer Line purposes.  
**Chris Averyt**
- RES 2019-0084      Authorizing the Airport Board to sell property identified as Spokane County Assessor's Parcel Nos. 15344.0102, 15344.0103, 15344.0104, 15344.0105, 15344.0106, 15344.0107, 15344.0108, 15344.0109, 15344.0110, 15344.0111 and 15344.0113.  
**Larry Krauter, Todd Woodard, Brian Werst**
- RES 2019-0085      Joint Resolution with Spokane County authorizing the Airport Board to sell property identified as Spokane County Assessor Parcels 15362.0025, 15362.0026, 15362.0027 and 15362.0028.  
**Larry Krauter, Todd Woodard, Brian Werst**
- RES 2019-0086      Joint Resolution amending the Airport Joint Operation Agreement between Spokane County and the City of Spokane.  
**Larry Krauter, Todd Woodard, Brian Werst**
- RES 2019-0087      Supporting the use of contingency reserves to substantially reduce Spokane individuals who are unhoused by supporting basic needs services: including 24/7 low-barrier emergency shelters, warming centers, social workers who can refer individuals to mental health and substance abuse treatment and best-practice programs for Spokane residents facing homelessness.  
**Council President Stuckart**

**FIRST READING ORDINANCES**

- ORD C35818      (To be considered under Hearings Item H1.b.)
- ORD C35819      (To be considered under Hearings Item H2.b.)
- ORD C35820      (To be considered under Hearings Item H3.b.)

FURTHER ACTION DEFERRED

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**NO SPECIAL CONSIDERATIONS**

## HEARINGS

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

### RECOMMENDATION

- |     |  |                                     |            |
|-----|--|-------------------------------------|------------|
| H1. | a. Hearing on vacation of a portion of unused right-of-ways southeast of the intersection of Cedar Road and Cheney-Spokane Road, as requested by Molly Kingston. | Approve<br>Subject to<br>Conditions | ORD C35818 |
|     | b. First Reading Ordinance C35818 vacating of a portion of unused right-of-ways southeast of the intersection of Cedar Road and Cheney-Spokane Road.             | Further<br>Action<br>Deferred       |            |
|     | <b>Eldon Brown</b>   |                                     |            |
| H2. | a. Hearing on vacation of Alameda Court east of Center Court except the west 100 feet, as requested by Community Frameworks.                                     | Approve<br>Subject to<br>Conditions | ORD C35819 |
|     | b. First Reading Ordinance C35819 vacating Alameda Court east of Center Court except the west 100 feet.  | Further<br>Action<br>Deferred       |            |
|     | <b>Eldon Brown</b>   |                                     |            |
| H3. | a. Hearing on vacation of Cataldo Avenue and a portion of Dean Avenue between Washington and Howard Streets, as requested by Spokane Public Facilities District. | Approve<br>Subject to<br>Conditions | ORD C35820 |
|     | b. First Reading Ordinance C35820 vacating Cataldo Avenue and a portion of Dean Avenue between Washington and Howard Streets.                                    | Further<br>Action<br>Deferred       |            |
|     | <b>Eldon Brown</b>   |                                     |            |

**Motion to Approve Advance Agenda for October 7, 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 October 7, 2019, Regular Legislative Session of the City Council is adjourned to October 14, 2019.

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**NOTES**



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

10/07/2019

<u>Date Rec'd</u>	9/11/2019
<u>Clerk's File #</u>	OPR 2019-0809
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	5158-19
<u>Requisition #</u>	RE 19314

<u>Submitting Dept</u>	WATER & HYDROELECTRIC SERVICES
<u>Contact Name/Phone</u>	SETH MCINTOSH 625-7804
<u>Contact E-Mail</u>	SMCINTOSH@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Purchase w/o Contract
<u>Agenda Item Name</u>	4100 - PIT LAUNCH DIRECTIONAL DRILL

**Agenda Wording**

Purchase of a McLaughlin MCL-10H Pit Launched Directional Drill with Digital Control F2 Locating System from Vermeer Rocky Mountain (Spokane, WA) for \$82,311.89 including tax.

**Summary (Background)**

Request for Quote #5158-19 for a Pit Launch Directional Drill was issued on August 27, 2019 through the City's electronic bidding portal. Two quotes were received by the closing deadline on September 10, 2019. Award is correspondingly recommended to Vermeer Rocky Mountain as the low responsive, responsible bidder.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense	\$ 82,311.89	# 4100-42490-94000-56401-99999
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>	PIES 9/23/2019
<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		
<u>Additional Approvals</u>			
<u>Purchasing</u>	WAHL, CONNIE		

## Briefing Paper

### Public Infrastructure, Environment, & Sustainability Committee

<b>Division &amp; Department:</b>	Public Works, 4100 Water & Hydroelectric Services
<b>Subject:</b>	Pit Launch Directional Drill
<b>Date:</b>	23 September 2019
<b>Author (email &amp; phone):</b>	Dan Kegley, <a href="mailto:dkegley@spokanecity.org">dkegley@spokanecity.org</a> , x7821
<b>City Council Sponsor:</b>	
<b>Executive Sponsor:</b>	Scott Simmons, Director – Public Works
<b>Committee(s) Impacted:</b>	PIES
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Funding for this purchase is available in the Water & Hydroelectric Services department budget.
<b>Strategic Initiative:</b>	Innovative Infrastructure
<b>Deadline:</b>	Purchase of this equipment coincides with funds already approved in this year's capital budget.
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	This equipment will expand the functional and efficient installation of water services throughout the City of Spokane.
<b>Background/History:</b> Request for Quote #5158-19 for a Pit Launch Directional Drill was issued on August 27, 2019 through the City's electronic bidding portal. Two quotes were received by the closing deadline on September 10, 2019. Award is correspondingly recommended to Vermeer Rocky Mountain (Spokane, WA) as the low responsive, responsible bidder.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>Purchase recommended from Vermeer Rocky Mountain (Spokane, WA) for \$82,311.89 including tax</li> </ul>	
<b>Budget Impact:</b> 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	
<b>Operations Impact:</b> 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: N/A Known challenges/barriers: N/A	



**CITY OF SPOKANE - WATER & HYDROELECTRIC SERVICES**

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

## QUOTE TABULATION

Quote Number	5158-19	
Description	Pit Launch Directional Drill	
	TT Technologies, Inc.	Vermeer Rocky Mountain
Pit Launch Directional Drill w/Accessories	\$ 119,000.00	\$ 75,584.84
Subtotal	\$ 119,000.00	\$ 75,584.84
Sales Tax (8.9%)	\$ 10,591.00	\$ 6,727.05
<b>Quote Total</b>	<b>\$ 129,591.00</b>	<b>\$ 82,311.89</b>
Lead Time (Business Days ARO)	21	50

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

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

10/07/2019

<u>Date Rec'd</u>	9/10/2019
<u>Clerk's File #</u>	OPR 2017-0528
<u>Renews #</u>	

Submitting Dept	ENGINEERING SERVICES	Cross Ref #	
Contact Name/Phone	MARK 625-6154	Project #	2010088
Contact E-Mail	MSERBOUSEK@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	CR 20973
Agenda Item Name	0370 CONTRACT AMENDMENT - BERNARDO WILLS ARCHITECTS		

Agenda Wording

This Contract Amendment with Cost No. 2 is for anticipated fees to complete construction phase services for CSO Basin 26 Control Facility project.

Summary (Background)

The Bernardo Wills agreement for construction phase services needs to be increased by \$25,160.00 to provide services through the final stage of construction and submittal review. We will continue to require construction support services through the end of the project.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? YES	
Expense \$ 25,160.00		# 4250-98817-94000-56601-10026
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	TWOHIG, KYLE	<u>Study Session</u>
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u> PIE 9/23/19
<u>Finance</u>	ORLOB, KIMBERLY	Distribution List
<u>Legal</u>	PICCOLO, MIKE	eraea@spokanecity.org
<u>For the Mayor</u>	ORMSBY, MICHAEL	publicworksaccounting@spokanecity.org
Additional Approvals		kgoodman@spokanecity.org
<u>Purchasing</u>	PRINCE, THEA	htrautman@spokanecity.org
		aduffey@spokanecity.org
		mserbousek@spokanecity.org

## Briefing Paper

### PIES Committee

<b>Division &amp; Department:</b>	Engineering Services; Public Works
<b>Subject:</b>	Approve funding for CSO 26 Construction Management Support
<b>Date:</b>	9/23/2019
<b>Contact (email &amp; phone):</b>	Mark Serbousek (mmserbousek@spoknecity.org) 625-6154
<b>City Council Sponsor:</b>	
<b>Executive Sponsor:</b>	Scott Simmons
<b>Committee(s) Impacted:</b>	PIES
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	This project is in the 6 year street/utility plan and the CSO Reduction Program
<b>Strategic Initiative:</b>	Innovative Infrastructure
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	This budget will provide for consulting services from the Architectural company (BWA) for construction support during project construction.
<b>Background/History:</b> Bernardo Wills Architects are the architect firm of record for the plaza on top of CSO #26 tank. There were remaining funds available in the architectural contract to pay for the design construction support through September 2019. Due to extended construction time needed for the completion of tank structure, the plaza on top of the tank necessitated an extended construction period. Additional funds are needed for continued construction activities through the end of December 2019.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>The CSO 26 Control Facility project has been under construction since February 2017 and will be substantially completed by the end of 2019.</li> <li>Initial utility relocates are complete, most of the large pipe has been installed, and the tank structure is nearly completed.</li> <li>Shoring and excavation for the flow control chamber is ongoing in Lincoln Street while surface finishes are being completed and installed for the plaza above the tank.</li> <li>BWA has been providing both construction support as well as coordination of the various disciplines working on the plaza components of the facility.</li> <li>Additional coordination and an extended duration necessitate additional funds for their services to complete the project.</li> <li>Estimated cost of these architectural services are \$26,000. This is an estimate with payment made on a time and materials basis.</li> <li>This is a request to amend the contract to add \$26,000 and extend the contract through the end of December 2019.</li> <li>This project is funded by a DOE loan and Green Bonds.</li> </ul>	
<b>Budget Impact:</b> 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? ☒ Yes ☐ No ☐ N/A

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

Specify changes required:

Known challenges/barriers:



**City of Spokane**

**CONTRACT AMENDMENT  
WITH COSTS #2**

CSO Basin 26 Control Facility

THIS CONTRACT AMENDMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as ("City"), and BERNARDO WILLIS ARCHITECTS, whose address is 153 South Jefferson Street, Spokane, WA 99201 as ("*Consultant*"). Individually hereafter referenced as a "party", and together as the "parties"

WHEREAS, the parties entered into a Contract wherein the Consultant agreed to ASSIST THE CITY THROUGH THE BIDDING AND CONSTRUCTION OF THE CSO BASIN 26 CONTROL FACILITY PROJECT; and

WHEREAS, REASON FOR AMENDMENT; ANTICIPATE FEE TO COMPLETE CONSTRUCTION PHASE SERVICES FOR THE ABOVE PROJECT.

-- Now, Therefore, the parties agree as follows:

1. **DOCUMENTS.** The original Contract dated July 18, 2017, any previous amendments and/or extensions/renewals thereto are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.
2. **EFFECTIVE DATE.** This Contract Amendment shall become effective July 22, 2019.
3. **AMENDMENT.** Section Contract section being amended of the contract documents is amended to read as follows:

ANTICIPATED FEES TO COMPLETE CONSTRUCTION PHASE SERVICES FOR THE ABOVE PROJECT.

4. **COMPENSATION.** The City shall pay Consultant a maximum amount not to exceed **TWENTY FIVE THOUSAND ONE HUNDRED SIXTY AND 00/100 DOLLARS, (\$25,160.00)** for everything furnished and done under this Contract Amendment.

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

**BERNARDO WILL ARCHITECTS**

**CITY OF SPOKANE**

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

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

Dell Hatch  
Print Name

\_\_\_\_\_  
Print Name

Principal  
Title

\_\_\_\_\_  
Title

dhatch@bwarch.com  
E-Mail Address

Attest:

Approved as to form:

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

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

**Attachments that are part of this Agreement:**  
**ATTACHMENT A: CONSULTANTS SCOPE OF WORK**



July 22, 2019

Mr. Mark Serbousek  
City of Spokane Streets Manager  
City Hall, Third Floor  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Re: Anticipated Fees to Complete Construction Phase Services for CSO 26 Control Facility/Plaza  
Bernardo Wills Architects

Dear Mark:

Per your request, we have compiled an assessment of the ongoing and remaining tasks with corresponding fees for Bernardo Wills Architects (BWA) to complete their Construction Phase Services (CAS) for the CSO 26 Control Facility and Plaza.

As of Monday July 22, 2019, our Contract for completing CAS has \$3,066.75 remaining to be invoiced. In speaking with Justin Ludwig, the site superintendent for GARCO Construction for CSO 26, he anticipated that the worst case scenario for full completion of the plaza and related site elements could extend to September 30, 2019; or approximately 10 weeks from now.

Currently, we are processing an average of 5 RFIs and/or Submittal reviews per week. We are also visiting the site up to 3 times per week to answer Contractor questions, or to verify/coordinate finish details. Additionally, we are attending the bi-weekly team coordination meetings every other Wednesday at the BWA office. Anticipated tasks beyond those described here will be to conduct a pre-punch site visit, conduct a punch list site visit, and a post punch list review for verification of corrected or completed items. Once the project is complete, we will prepare As-Built drawings for the City's records. We also will perform a one-year warranty walk through of the project in 2020.

As you know, we have been trying to facilitate the installation of the commissioned art work that will be permanently displayed on the plaza surface, since Karen Mobley has had a difficult time enlisting the artist to follow through with the final installations. I am in conversations with GARCO and their concrete sub-contractor, Cameron/Reilley to come up with an economical solution for creating anchor/display footings for each sculpture. We anticipate that there will be some continued coordination with this effort and possibly with the reinstallation of the poem plaza.

Listed below are the tasks and hours/fees for our proposed continuation to provide CPS through completion of the project. We would propose that we invoice hourly against the total as a not-to-exceed maximum, unless authorized to exceed by your office. We propose to use a 'blended' hourly rate of Dell and Bill's billable rates = \$185/hr.

Assume ten (10) weeks remaining in construction schedule.

- Process five (5) submittals/RFI per week at .75 hr. each = 3.75 hrs./week x 10 weeks = 37.5 hrs.
- Conduct 3 site review visits per week at 1 hr. each = 3 hrs./week x 10 weeks = 30 hrs.
- Attend bi-weekly team meetings at BWA at 1.5 hr./meeting x 5 weeks = 7.5 hrs.
- Conduct irrigation test and planting approvals. Total of 5 hours for both = 5 hrs.
- Prepare preliminary punch list with written documentation 4 hrs.
- Prepare final punch list with written documentation 4 hrs.
- Conduct post punch list project review with written documentation 4 hrs.
- Prepare As-Built Drawings for elements designed by BWA (estimate) 30 hrs.
- Conduct 1-year warranty walk through of project in 2020 with written documentation 4 hrs.
- Provide miscellaneous coordination and design for other project elements such as art  
Installation, poem plaza issues, other site items as needed. 10 hrs.

**Total 136 hrs.**

136 hrs. x \$185 = \$25,160.00

Thank you for the consideration on this issue. Let us know if our proposal is not understandable and whether you require any adjustments.

Best Regards,  
Bernardo Wills Architects

Dell R. Hatch, Principal  
Licensed Landscape Architect

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

10/07/2019

<u>Date Rec'd</u>	9/25/2019
<u>Clerk's File #</u>	OPR 2019-0810
<u>Renews #</u>	

Submitting Dept	CITY ATTORNEY	Cross Ref #	
Contact Name/Phone	MIKE ORMSBY 6287	Project #	
Contact E-Mail	MORMSBY@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	0500 SPECIAL COUNSEL CONTRACT		

Agenda Wording

Contract with the firm of Keller Rohrback, LLP, of Seattle, Washington, to provide legal services in conjunction with recovery efforts for damages from the manufacturers and distributors of opioid based prescriptions.

Summary (Background)

The City Council requested that City Legal look at whether or not the City should participate in litigation against opioid based pharmaceutical manufactures and distributors. The City Attorney communicated to the Mayor and City Council the recommendation to join in the litigation. This action item authorizes the retention of outside counsel.

<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>	PICCOLO, MIKE	<u>Study Session</u>	10/7/19
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>	HUGHES, MICHELLE	Distribution List	
<u>Legal</u>	DALTON, PAT	dmensher@kellerrohrback.com	
<u>For the Mayor</u>	ORMSBY, MICHAEL	noble@spokanecity.org	
Additional Approvals		amcdaniel@spokanecity.org	
<u>Purchasing</u>		sdhansen@spokanecity.org	

## ATTORNEY ENGAGEMENT & CONTINGENCY FEE AGREEMENT

It is HEREBY ACKNOWLEDGED AND AGREED by and between the City of Spokane (“Client”) and Keller Rohrback L.L.P. (“Attorneys or Firm”) (together, the “Parties”) as follows:

1. **Employment.** Client hereby retains Attorneys to represent Client with respect to potential claims against the **manufacturers and wholesalers of prescription opioid painkillers and other related defendants as agreed between Client and Attorneys.** Attorneys will assist Client in gathering information and data relevant to Client’s potential claims. Attorneys will also advise Client with respect to those potential claims. At Client’s request, Attorneys will institute proceedings to seek remedies on Client’s behalf as Client and Attorneys conclude is appropriate and advisable (“the Lawsuit”).
2. **Responsibility of Attorneys.** Although the individual attorneys listed below will be primarily responsible to represent Client in this matter, other members of Keller Rohrback may work on Client matters in accordance with their areas of practice. The primary attorneys representing Client are Derek Loeser, David Ko, and Daniel Mensher. Attorneys will consult with Client in connection with any settlement proposal before accepting same.

If Attorneys become aware of any potential conflicts of interest between the Client and any other client of the Firm in the opioid litigation either prior to Attorneys commencing service for Client or during the course of litigation, Attorneys will immediately provide Client with all necessary information regarding the potential conflict.

3. **Responsibility of Client.** Client will maintain control of the litigation. Client agrees to timely comply with Attorneys’ request. Client agrees to advise Attorneys of all facts, knowledge, or information relevant to Attorneys’ representation of Client, including facts, knowledge, or information which come to Client’s attention after execution of this Agreement.

Client is aware that Attorneys represent several other jurisdictions in Washington State involved in similar litigation.

4. **Client Representatives.** Client designates \_\_\_\_\_ to be the Client’s Representatives. The Client’s Representatives are responsible for receiving all communications from Attorneys and transmitting all communications from Client to Attorneys. Client agrees that Attorneys may rely on either of Client’s Representatives’ statements as an accurate reflection of Client’s position and desires. Attorneys agree to keep the Client’s Representatives informed of all significant developments regarding the representation.

5. **Attorneys' Fees.** Other than as set forth in Paragraph 8, below, the fees that Client agrees to pay Attorneys ("Attorneys' Fee" or "Attorneys' Fees") will depend on the outcome of the Lawsuit, as set forth here:

- a. "Sums Recovered" means all monies (and the value of any other property) actually paid in settlement of or judgment on the Lawsuit's claims (including the settlement of any demand made by Attorneys on Client's behalf before initiation of the Lawsuit), including any monies paid in settlement or judgment as an award of attorneys' fees, costs, or interest.
- b. If the Sums Recovered is an amount less than or equal to \$10 million, the Attorneys' Fee shall be 20% of the recovery;
- c. If the Sums Recovered is an amount greater than \$10 million but less than or equal to \$20 million, the Attorneys' Fee shall equal the amount specified in Section 5(b) above, plus 18% of any Sums Recovered in the \$10 million to \$20 million range.
- d. If the Sums Recovered is an amount greater than \$20 million but less than or equal to \$25 million, the Attorneys' Fee shall equal the amount specified in Sections 5(b) and 5(c) above, plus 15% of any Sums Recovered in the \$20 million to \$25 million range.
- e. If the Sums Recovered is an amount in excess of \$25 million, the Attorneys' Fee shall equal the amount specified in Sections 5(b), 5(c), and 5(d) above, plus 10% of any Sums Recovered in excess of \$25 million.
- f. If the Lawsuit proceeds to trial and the court awards Client a monetary judgment and an attorneys' fee, and the attorneys' fee is greater than the percentage Attorneys would be entitled to under Section 5(a)-(e), then Attorneys will be entitled to the full attorneys' fee awarded by the Court.

**NO ATTORNEYS' FEES SHALL BE PAID IF NO RECOVERY IS MADE.**

6. **Advice Concerning Attorneys' Fee.** Client has been informed of the alternative of employing Attorneys on an hourly fee basis. This alternative would require the payment of a \$25,000 retainer at commencement of the representation, payment of costs as incurred, and payment of legal fees each month for legal services. In deciding to engage Attorneys on a contingency fee basis, Client has considered the risks involved in this case, the experience and reputation of Attorneys, and the uncertainty regarding the number of hours required to prosecute the case.

7. **Costs.** Attorneys will advance all “out-of-pocket” costs, fees, and expenses incurred by Attorneys in pursuing the Lawsuit (“Costs”). Notwithstanding the foregoing, Attorneys agree to notify and obtain Client’s consent before incurring Costs aggregating more than \$10,000 in any single month.

Client understands that Attorneys shall seek reimbursement from defendants for all Costs actually expended, but that there is no guarantee that Costs will be reimbursed by the defendants to Attorneys. Attorneys will be reimbursed for all Costs out of any settlement or recovery in addition to any Attorneys’ Fees they receive under Sections 5 or 8, as the case may be. Attorneys shall be reimbursed for Costs first, from any monies paid by a defendant on account of Cost reimbursement and, if such monies are insufficient, from any monies paid as part of the Sums Recovered.

Attorneys may, with Client’s prior consent which shall not unreasonably be withheld, hire any expert or consultant whose services Attorneys advises Client is necessary for the evaluation or prosecution of any of the claims within the scope of the Lawsuit.

8. **Withdrawal or Discharge.** Subject to Court rules and other applicable laws, Attorneys shall have the right to withdraw from representation of Client upon giving reasonable notice of the intention to withdraw. In the event of withdrawal of Attorneys or discharge of Attorneys by Client, Attorneys may seek reasonable fees for services rendered according to the terms of Section 5, above. Client shall have the right to discharge Attorneys at any time. If Client discharges Attorneys, Attorneys retain the right to seek reasonable fees for services rendered according to the terms of Section 5, above.
9. **Venue and Attorneys’ Fees.** The Parties agree that in the event any dispute should arise with respect to this Agreement, venue shall lie in Seattle, Washington. Further, the prevailing party in such an action shall be awarded reasonable costs and attorneys’ fees.
10. **Outcome.** Attorneys do not guarantee or represent a particular result in this Lawsuit. Client understands the risks associated with pursuing this Lawsuit.
11. **No Other Agreements.** Client has read this contract, has received a copy of it, and agrees to its terms and conditions. There are no oral or other agreements between Client and Attorneys. This Agreement when signed below by Client replaces any prior understandings or oral agreement between Client and Attorneys.
12. **Governing Law.** This Agreement and all aspects of the Parties’ relationship shall be construed under the laws of the State of Washington, without regard to choice of law principles.

13. **Other Provisions.** This Agreement may be executed in one or more counterparts and transmitted by mail, overnight delivery service, and/or email, each one of which shall constitute an original and all of which shall constitute one and the same document.

DATED: \_\_\_\_\_

\_\_\_\_\_  
CLIENT SIGNATURE

\_\_\_\_\_  
CLIENT NAME PRINTED

ACCEPTED: Keller Rohrbach L.L.P.

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

DATED: \_\_\_\_\_



**Agenda Sheet for City Council Meeting of:**  
10/07/2019

<b>Date Rec'd</b>	9/25/2019
<b>Clerk's File #</b>	OPR 2019-0811
<b>Renews #</b>	

<b>Submitting Dept</b>	PLANNING	<b>Cross Ref #</b>	
<b>Contact Name/Phone</b>	LOUIS MEULER 625-6096	<b>Project #</b>	
<b>Contact E-Mail</b>	LMEULER@SPOKANECITY.ORG	<b>Bid #</b>	
<b>Agenda Item Type</b>	Contract Item	<b>Requisition #</b>	CR 21010
<b>Agenda Item Name</b>	0650 - WSDOT TRENT BRIDGE REPLACEMENT - CONDUIT AGREEMENT		

**Agenda Wording**

Agreement with WSDOT, for WSDOT to have conduit installed for City use on the Trent Street Bridge replacement project.

**Summary (Background)**

The Trent Avenue Bridge is being replaced by WSDOT. This agreement is for conduit for City use to be installed as a part of the Trent Avenue Bridge replacement project.

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

Expense	\$ 117,652	# 5310-73100-94000-56305-99999
Select	\$	#
Select	\$	#
Select	\$	#

Approvals		Council Notifications	
<u>Dept Head</u>	FINCH, ERIC	<u>Study Session</u>	
<u>Division Director</u>	WORDELL, DAN	<u>Other</u>	PIES 8/26/19

<b><u>Finance</u></b>	ORLOB, KIMBERLY	<b><u>Distribution List</u></b>
<b><u>Legal</u></b>	PICCOLO, MIKE	Accounting - ywang@spokanecity.org
<b><u>For the Mayor</u></b>	COTE, BRANDY	Contract Accounting - aduffey@spokanecity.org

<b><u>Additional Approvals</u></b>	Legal - modle@spokanecity.org
<b><u>Purchasing</u></b>	Purchasing - cwahl@spokanecity.org
	IT - itadmin@spokanecity.org
	Tax & Licenses
	lmeuler@spokanecity.org





**Continuation of Wording, Summary, Budget, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Fiscal Impact**

Select      **\$**

Select      **\$**

**Budget Account**

**#**

**#**

**Distribution List**

tsanders@spokanecity.org

kkeck@spokanecity.org

sbishop@spokanecity.org

smsimmons@spokanecity.org

kmiller@spokanecity.org

## Briefing Paper

<b>Division &amp; Department:</b>	I.T. Department
<b>Subject:</b>	WSDOT Trent Bridge Replacement – Conduit Agreement
<b>Date:</b>	Council Meeting of Oct. 7th, 2019
<b>Contact (email &amp; phone):</b>	Louis Meuler, <a href="mailto:lmeuler@spokanecity.org">lmeuler@spokanecity.org</a> , 625-6096
<b>City Council Sponsor:</b>	
<b>Executive Sponsor:</b>	Michael Sloon, I.T. Director
<b>Committee(s) Impacted:</b>	Public Infrastructure, Environment and Sustainability Committee
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	
<b>Strategic Initiative:</b>	Sustainable Resources – Sustainable practices; Innovative Infrastructure - Sustainability
<b>Deadline:</b>	Council approval for Oct. 7 <sup>th</sup> , 2019
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Council approval of the Construction Agreement UTB 1379 with WSDOT, that provides for the construction of conduit for City use on the Trent Street Bridge replacement project.
<b>Background/History:</b>  The Trent Avenue Bridge is being replaced by WSDOT. This agreement is for conduit for City use to be installed as a part of the Trent Avenue Bridge replacement project.  Trent Bridge Replacement project website: <a href="https://www.wsdot.wa.gov/Projects/SR290/trentbridge/default.htm">https://www.wsdot.wa.gov/Projects/SR290/trentbridge/default.htm</a>	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>• Agreement with WSDOT, for WSDOT to have conduit installed for City use on the Trent Street Bridge replacement project.</li> <li>• Engineering estimated shared cost to the City for project is = \$117,652.00</li> </ul>	
<b>Budget Impact:</b> Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: WSDOT – Trent Bridge Replacement Project Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impact:</b> 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:	



<b>Utility Construction Agreement Work by WSDOT – Utility Cost</b>		Utility Name & Address City of Spokane Public Works Department 808 W. Spokane Falls Blvd. Spokane, WA 99201
		Project Title/Location SR 290 E Trent BR Replace Bridge
Agreement Number <b>UTB</b> 1379	Region Eastern	
State Route Number <b>SR</b> 290	Mileposts <b>From</b> .74 <b>to</b> .95	
Estimated Agreement Amount <b>\$</b> 117,652		Advance Payment Amount <b>\$</b> 17,647.65

This Utility Construction Agreement is entered into between the State of Washington Department of Transportation, hereinafter "WSDOT" and the above named Utility, hereinafter the "Utility;" collectively the "Parties" and individually the "Party".

### Recitals

- WSDOT is planning the construction or improvement of the State Route as shown above for the listed WSDOT Project, and in connection therewith, it is necessary to remove and/or relocate and/or construct certain Utility facilities, herein the (Work).
- The Utility is responsible for (1) the cost of the Work for Utility facilities located without a documented ownership of and/or interest in real property, such as being located pursuant to a franchise, a permit, or undocumented permission, (2) all betterments, and (3) new facilities.
- The Work shall be defined as all materials, equipment, labor, contract administration and any other efforts required to perform the relocation, construction, and/or removal of the Utility's facilities.
- The Work includes ☐ Betterments; ☒ Installation of New Facilities; ☐ Relocation of Facilities without Property Rights; ☐ Removal of Existing Facilities from WSDOT right of way; and/or ☐ Protect in Place.
- It is deemed to be in the best public interest for WSDOT to include the Work in WSDOT's Project.

Now, Therefore, pursuant to RCW 47.01.210 and chapter 47.44 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, as well as the attached Exhibits which are incorporated and made a part hereof.

It Is Mutually Agreed As Follows:

### 1. Plans, Specifications and Bids

- 1.1 Program Guide:** *Utility Relocation and Accommodation on Federal Aid Highway Projects* shall determine and establish the definitions and applicable standards and payments for this Agreement. By this reference this document is adopted and made a part of this Agreement as if fully contained herein.
- 1.2 Betterment:** A betterment is any improvement to the Utility's facilities not required by code, regulation, standard industry practice, or any other applicable regulation. If any of the Work constitutes a betterment as defined in the Program Guide: *Utility Relocation and Accommodation on Federal Aid Highway Projects*, the Utility is solely responsible for the costs of such improvement.

- 1.3 WSDOT, acting on behalf of the Utility, agrees to perform the Utility facilities Work in accordance with Exhibit A, Special Provisions, and Exhibit C, Plans, where either:
- (1) Utility supplied the Work plans and special provisions to WSDOT, or
  - (2) WSDOT developed the Work plans and special provisions from Utility-provided information. WSDOT will incorporate the Plans and Special Provisions into WSDOT Project in accordance with Utility requirements. The Utility agrees that it is solely responsible for insuring that all Special Provisions, Plans and Utility standards are met and that it has supplied WSDOT with all applicable standards, codes, regulations, or any other requirements the Utility is obligated to meet, unless otherwise noted.
- 1.4 The Utility has reviewed and approved the Work Special Provisions and Plans that will be incorporated into WSDOT Project. WSDOT will advertise the Work and Project for bids. WSDOT will be the Utility's representative during the Ad and award period. When requested by WSDOT, the Utility shall timely assist WSDOT in answering bid questions and resolving any design issues that may arise associated with the Work. All comments and clarifications must go through WSDOT. If the Utility supplied the Work plans and special provisions, the Utility agrees to provide WSDOT with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.
- 1.5 WSDOT will provide the Utility with written notification of the bid price no later than five (5) days after award for all Work items for which the Utility is responsible for the cost. The Utility shall respond in writing to WSDOT, stating its Acceptance or Rejection of the Work items, within two (2) working days.
- 1.6 Should the Utility reject the bid Work items for which it has cost responsibility:
- 1.6.1 WSDOT shall delete said items from the Project. The Utility agrees to reimburse WSDOT for engineering costs and direct and related indirect costs incurred by WSDOT associated with deleting the bid Work items from the Project, including any redesign, reengineering or re-estimating, if necessary, to delete the Work items, and the Utility agrees to pay such costs upon receipt of a WSDOT invoice.
  - 1.6.2 The Utility agrees that should it reject the bid Work items for which it has cost responsibility, it shall continue to be obligated to timely relocate its facilities as required by WSDOT Project. The Utility further agrees that should its actions delay or otherwise damage WSDOT Project, it shall be liable for such costs.

## **2. Construction, Inspection, and Acceptance**

- 2.1 WSDOT agrees to administer the Work on behalf of the Utility.
- 2.2 The Utility agrees to disconnect and/or reconnect its facilities as required by WSDOT when such disconnection or reconnection is required to be performed by the Utility. The Parties agree to define disconnect and/or reconnection requirements, including notification and response in Exhibit A. WSDOT agrees, as part of the Work, to remove disconnected and/or abandoned facilities at the Utility's cost. Utility facilities not removed pursuant to this Agreement shall remain the ownership, operation and maintenance responsibility of the Utility.
- 2.3 Salvage: All materials removed by WSDOT shall be reclaimed or disposed of by WSDOT and shall become the property of WSDOT. If the Utility desires to retain such materials and WSDOT agrees, the value of salvaged materials will be paid to WSDOT in an amount not less than that required by the Program Guide: *Utility Relocation and Accommodation on Federal Aid Highway Projects*.
- 2.4 The Utility may furnish an inspector for the Work. The Utility agrees that it is solely responsible for all such inspection costs. The Utility's inspector shall not directly contact WSDOT's contractor. All contact between the Utility's inspector and WSDOT's contractor shall be through WSDOT's representatives. WSDOT's Project Construction Engineer may require the removal and/or replacement of the Utility's inspector if the inspector interferes with WSDOT's Project, WSDOT's contractor and/or the Work.



- 2.5 WSDOT shall promptly notify the Utility in writing when the Work is completed
- 2.6 The Utility shall, within Twenty ( 20 ) working days of being notified that the Work is completed:
- (a) deliver a letter of acceptance to WSDOT which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the Work and WSDOT's administration thereof, or
  - (b) deliver to WSDOT written reasons why the Work does not comply with the previously approved Plans and Special Provisions. The Utility agrees to work diligently and in good faith with WSDOT to resolve any issues so as not to delay WSDOT's Project. If all issues are resolved, the Utility agrees to deliver to WSDOT a letter of acceptance as provided herein.
- 2.7 If the Utility does not respond within Twenty ( 20 ) working days as provided in section 2.6, the Work and the administration thereof will be deemed accepted by the Utility, and WSDOT shall be released from all future claims and demands.
- 2.8 Upon completion and acceptance of the Work pursuant to Sections 2.6 or 2.7, the Utility agrees that it shall be solely responsible for all future ownership, operation and maintenance costs of its facilities, without WSDOT liability or expense.
- 2.9 WSDOT will prepare the final construction documentation in general conformance with WSDOT's Construction Manual. WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red of all plan revisions typically recorded per standard WSDOT practice, as directed by WSDOT's Construction Manual. Once the Utility has accepted the Work per Section 2.6 or 2.7, WSDOT upon request by the Utility will provide one reproducible set of contract as-builts to the Utility, and the Utility agrees to pay the cost of reproduction upon receipt of a WSDOT invoice

### 3. Payment

- 3.1 The Utility agrees that it shall be responsible for the actual direct and related indirect costs, including mobilization, construction engineering, contract administration and overhead costs, associated with the Work. The cost of this Work is estimated to be One Hundred Seventeen Thousand Six Hundred Fifty Two Dollars (\$ 117,652 ). An itemized estimate of Utility-responsible costs for Work to be performed by WSDOT on behalf of the Utility is included in Exhibit B, Cost Estimate.
- 3.2 The Utility agrees to pay WSDOT the "Advance Payment Amount" stated above within twenty (20) calendar days after WSDOT submits its first partial payment request to the Utility. The advance payment represents fifteen (15) percent of the estimate of cost for which the Utility is responsible. The advance payment will be carried throughout the life of the Work with final adjustment made in the final invoice
- 3.3 The Parties acknowledge and agree that WSDOT does not have the legal authority to advance state funds for the Utility's Work under this Agreement. Should the Utility fail to make payment according to the terms of this Agreement, WSDOT shall have the right to terminate this Agreement, charging the Utility for all associated costs of termination, including non-cancellable items, as well as associated Project delay and contractor claims. Such termination shall not relieve the Utility's obligation to timely relocate its facilities as provided under section 1.6.2
- 3.4 The Utility, in consideration of the faithful performance of the Work to be done by WSDOT, agrees to pay WSDOT for the actual direct and related indirect cost of all Work for which the Utility is responsible, including mobilization, construction engineering, administration and overhead costs. WSDOT shall invoice the Utility and provide supporting documentation therefore, and the Utility agrees to pay WSDOT within thirty (30) calendar days of receipt of an invoice. A partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of final invoice, the Parties will resolve any discrepancies.

#### **4. Change in Work or Cost Increase**

- 4.1 Increase in Cost: In the event unforeseen conditions require an increase in the cost of the Work for which the Utility is responsible, above the Exhibit B, Cost Estimate (including sales tax, engineering, and contingencies) by more than Twenty Five (25) percent, the Parties agree to modify Exhibit B to include such cost increase.
- 4.2 If WSDOT determines that additional Work or a change in the Work is required, prior written approval must be secured from the Utility; however, where the change is required to mitigate a Project emergency or safety threat to the traveling public, WSDOT will direct the change without the Utility's prior approval. WSDOT will notify the Utility of such change as soon as possible thereafter. The Utility agrees to respond to all WSDOT change order requests in writing and within five (5) working days. WSDOT notification shall not be required for Utility-requested changes. The Utility agrees to pay all costs associated with the changed Work, as well as the costs of Project or Work delays and/or subsequent contractor claims associated with the Utility's failure to timely respond as required.
- 4.3 The Utility may request additions to the Work through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, Project permits, state and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities.
- 4.4 All elective changes to the Work shall be approved in writing by the Utility before WSDOT directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The Utility agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 3.
- 4.5 WSDOT will make available to the Utility all change order documentation related to the Work.

#### **5. Franchise or Permit**

- 5.1 The Utility shall apply for a permit, franchise or an amendment to its current franchise for those new or modified Utility facilities that will be located within WSDOT's right of way. After receiving the application, WSDOT will issue the Utility a permit or a new or amended franchise.

#### **6. Right of Entry**

- 6.1 The Utility agrees to arrange for rights of entry upon all privately owned lands upon which the Utility has a claimed property right and which are necessary to perform the Work. The Utility also agrees to obtain all necessary permissions for WSDOT to perform the Work on such lands, which may include reasonable use restrictions on those lands. The Utility agrees to provide the rights of entry and applicable permissions under this section to WSDOT within Twenty (20) calendar days of entering into this Agreement. Upon completion of the Work on such lands, the rights of entry and permissions shall terminate.

#### **7. General Provisions**

- 7.1 Indemnification: To the extent authorized by law, the Utility and WSDOT shall indemnify and hold harmless one another and their employees and/or officers from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement, provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the Utility and (b) WSDOT, their respective employees and/or officers, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Utility or WSDOT, and provided further, that nothing herein shall require the Utility or WSDOT to hold harmless or defend the other or its employees and/or officers from any claims arising from that Party's sole negligence or that of its employees and/or officers. The terms of this section shall survive the termination of this Agreement.



- 7.2 Disputes: If a dispute occurs between the Utility and WSDOT at any time during the prosecution of the Work, the Parties agree to negotiate at the management level to resolve any issues. Should such negotiations fail to produce a satisfactory resolution, the Parties agree to enter into arbitration and/or mediation before proceeding to any other legal remedy. Each Party shall be responsible for its own fees and costs. The Parties agree to equally share the cost of a mediator or arbiter.
- 7.3 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in the superior court situated in Spokane County, Washington. Each Party shall be responsible for its own attorney's fees and costs.
- 7.4 Termination:
- 7.4.1 Unless otherwise provided herein, the Utility may terminate this Agreement upon thirty (30) calendar days written notice to WSDOT. If this Agreement is terminated by the Utility prior to the fulfillment of the terms stated herein, the Utility shall reimburse WSDOT for all actual direct and related indirect expenses and costs, including mobilization, construction engineering, contract administration and overhead costs, incurred up to the date of termination associated with the Utility Work, as well as the cost of non-cancelable obligations, including any redesign, reengineering or re-estimating, if necessary, to delete the Work, and contractor claims, if any, payment in accordance with Section 3. Further, the Utility acknowledges and agrees that should it terminate this Agreement, such termination shall not relieve the Utility from its responsibility to design, remove, relocate and/or construct its facilities so as not to delay or conflict with WSDOT's Project. WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility.
- 7.4.2 Unless otherwise provided herein, WSDOT may terminate this Agreement upon thirty (30) calendar days written notice to the Utility. Should WSDOT terminate this Agreement, the Utility shall reimburse WSDOT for all actual direct and related indirect expenses and costs, including mobilization, construction engineering, contract administration and overhead costs, incurred by WSDOT up to the date of termination associated with the Utility Work. The Utility acknowledges and agrees that should WSDOT terminate this Agreement, such termination shall not relieve the Utility from its responsibility to design, remove, relocate and/or construct its facilities so as not to delay or conflict with WSDOT's Project. WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility.
- 7.5 Amendments: This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.
- 7.6 Independent Contractor: Both Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party.
- 7.7 Audit and Records: During the progress of the Work and for a period of not less than six (6) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by the other Party, Washington State, and/or Federal Government and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim or audit is commenced, the record, accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the six-year retention period.
- 7.8 Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year last written below.

Requesting Entity	Washington State Department of Transportation
Signature: _____	Signature: _____
By: _____ Print Name	By: <u>Mike Gribner P.E.</u> Print Name
Title: _____	Title: <u>Regional Administration</u>
Date: _____	Date: _____



**UTB 1379  
CONSTRUCTION AGREEMENT  
WORK BY WSDOT  
UTILITY COST  
EXHIBIT A  
SPECIAL PROVISIONS**

**Scope of Work**

The Work under this Agreement provides for WSDOT through its construction contractor to install approximately 1042 LF 4" RGS conduit on the bridge and 392 LF of 4" RGS, 862 LF of 4" Sch 80, 453 LF of 2" Sch 40 conduit and 3 vaults off the bridge. The bridge will be replaced as part of the WSDOT's Project SR 290 Spokane River East Trent Bridge replacement, Milepost 0.82 to Milepost 0.92.

**UTILITY RESPONSIBILITIES.**

1. Install conductors from vault to vault at a later date.

**WSDOT RESPONSIBILITIES**

1. WSDOT contractor will install approximately 1434 LF of 4" RGS conduit across the bridge and approach slabs, 862 LF of 4" Sch 80, 453 LF of 2" Sch 40 conduit and 3 pull boxes off the bridge.
2. WSDOT contractor will install all apparatus related to the conduit installation but not limited to, hanger rods, hangers, braces, expansion fittings.
3. Set pull boxes on compacted gravel.

# UTB 1379

## Exhibit B Cost Estimate

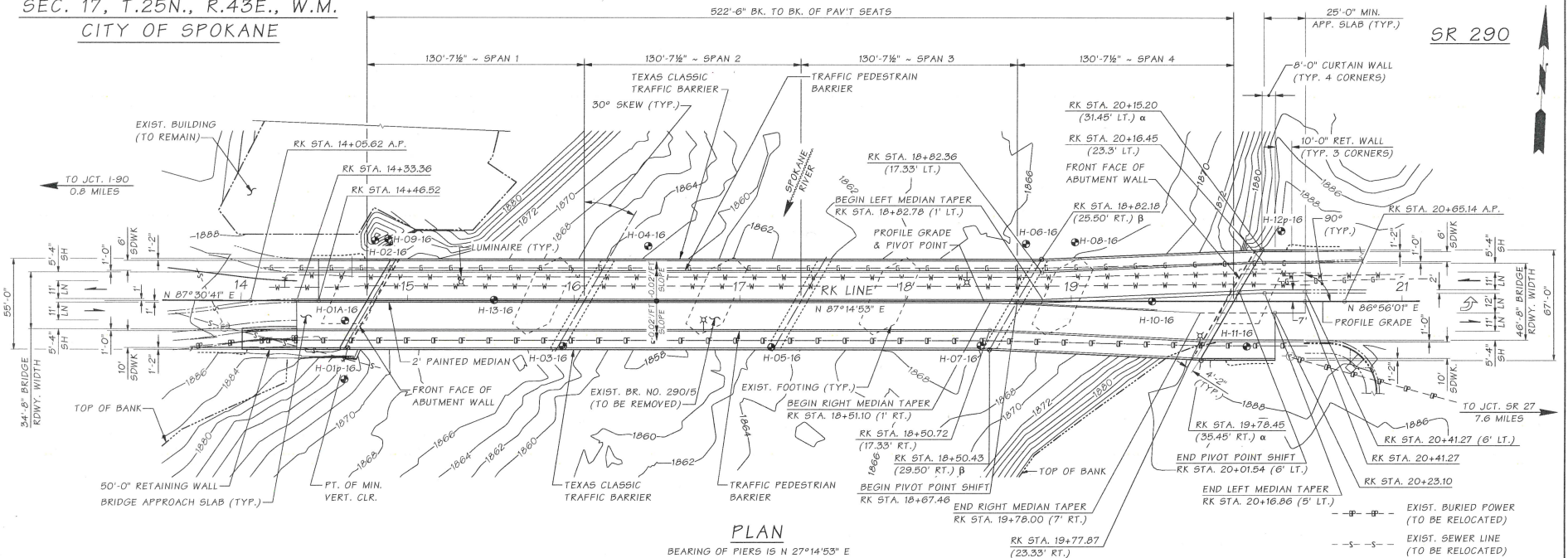
Page 1 of 1

Bridge and Road	
Item	Total
Materials	\$87,118.62
Labor	\$22,848.48
Equipment	\$14,403.84
Base Contract Total	\$124,370.94
Sales Tax (0%)	\$0.00
Base Project Subtotal	\$124,370.94
Construction Engineering (10%)	\$12,437.09
State Overhead (12.13%)	\$15,086.20
Contingencies (4%)	\$4,974.84
Bridge and Road Project Total	\$156,869.07

75% COS shared cost	\$117,651.80	Round to \$117,652
25% WSDOT shared cost	\$39,217.27	

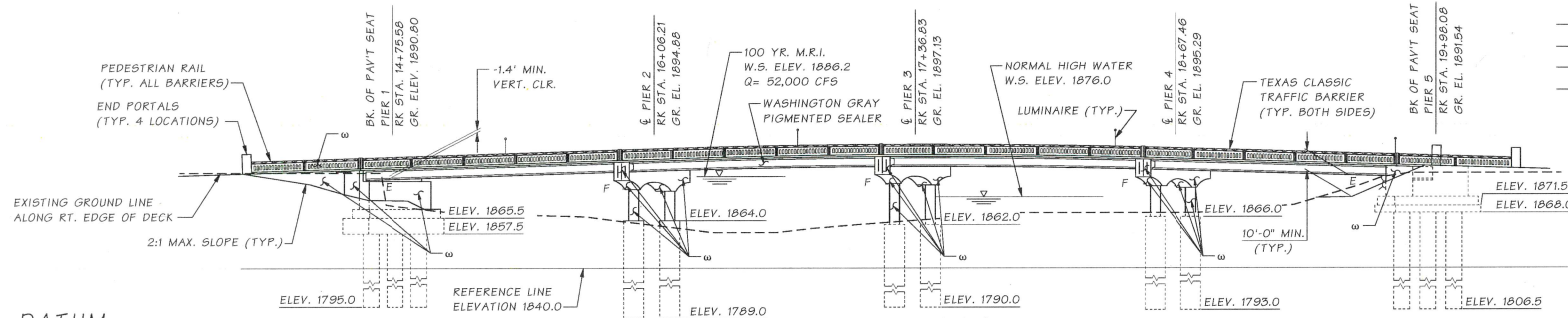
UTB 1379  
EXHIBIT C - PLANS  
PAGE 1 OF 7

SEC. 17, T.25N., R.43E., W.M.  
CITY OF SPOKANE



PLAN

BEARING OF PIERS IS N 27°14'53\"/>



ELEVATION

GRADE ELEVATIONS SHOWN ARE FINISH GRADES AT TOP OF BRIDGE DECK ON RK LINE AND ARE EQUAL TO PROFILE GRADE.  
SEE STD. PLAN A-50.20 FOR EMBANKMENT DETAILS AT BRIDGE ENDS.

NOTE: 500 YR M.R.I.  
W.S. ELEV. 1890  
Q = 65,000 CFS

P.C. GIRDERS (WF50G)

LOADING: HL-93

Bridge Design Engr.	khalaght, B	M:\2-Team\SR290 E Trent Ave Br over Spokane River\window files\001-LAYOUT.wnd
Supervisor	Zeldenzust, RP	
Designed By	MB/GSB	06/17
Checked By	MB/GSB	
Detailed By	Hanson, CE	06/17
Bridge Projects Engr.		
Prim. Plan By		
Architect/Specifier	Rochon, MJ	02/19
DATE	REVISION	BY APPD
REGION NO.	STATE	FED. AID PROJ. NO.
10	WASH.	
JOB NUMBER		
CONTRACT NO.		

BRIDGE  
AND  
STRUCTURES  
OFFICE

**PRELIMINARY**  
Washington State  
Department of Transportation  
NOT FOR CONSTRUCTION

SR 290  
SPOKANE RIVER E TRENT BR  
REPLACE BRIDGE

LAYOUT

BRIDGE  
SHEET  
NO.  
BR1  
SHEET  
10  
OF  
100  
SHEETS

SR 290 FILE NO. 3649 SHEET BR1

Wed Sep 04 08:33:54 2019

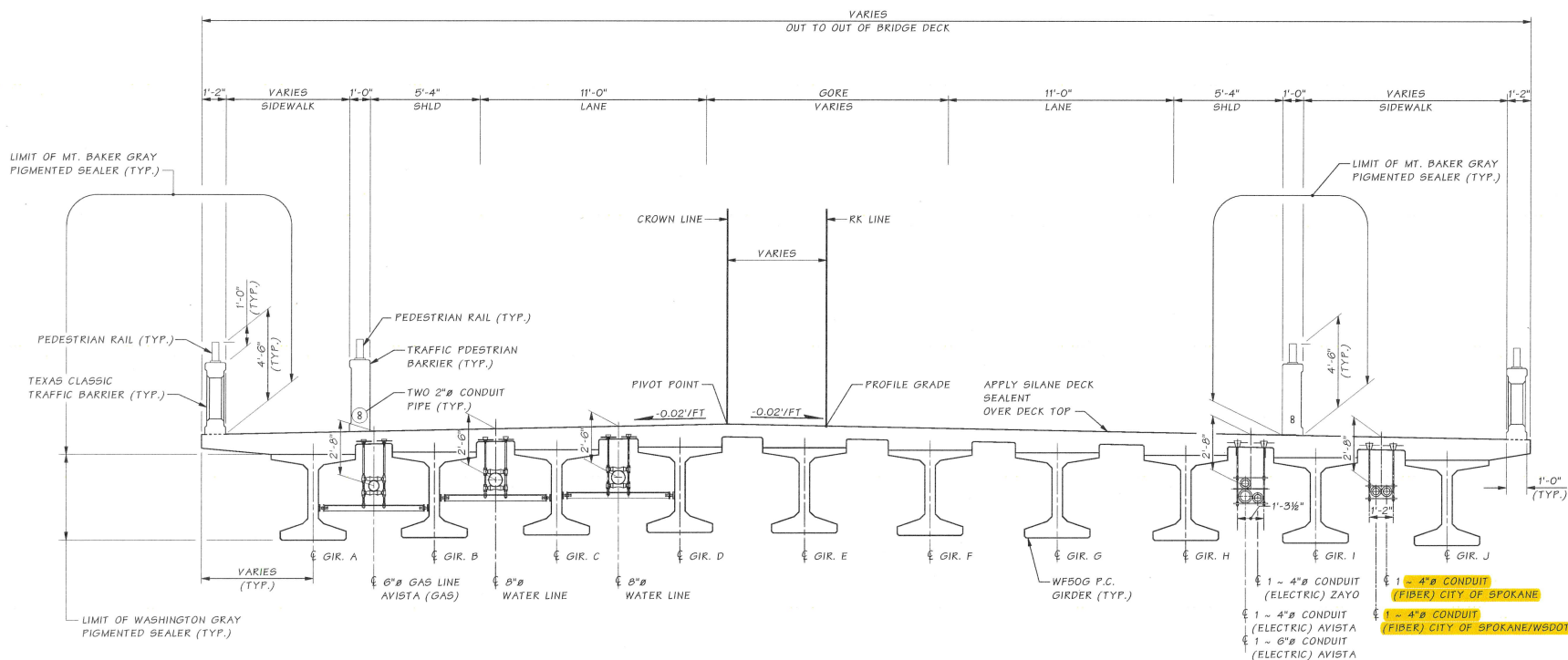


Bridge Design Engr.		khallegih, B		N:\2-Team\SR290 E Trent Ave Br Over Spokane River\winflow Files\044-TYP SEC A.mxd																	
Supervisor		Zeldenrust, RP										REGION NO.		STATE		FED. AID PROJ. NO.		SHEET NO.		TOTAL SHEETS	
Designed By		Bedl, G		06/17								10		WASH.							
Checked By																					
Detalled By		Davis, E		11/18																	
Bridge Projects Engr:																					
Prelim. Plan By																					
Architect/Specialist																					
DATE																					
REVISION																					
BY																					
APPD																					
CONTRACT NO.																					

**PRELIMINARY**  
 **Washington State  
Department of Transportation**  
 NOT FOR CONSTRUCTION

TYPICAL SECTION A

BRIDGE SHEET NO.	BR44
	SHEET
	OF
	SHEETS



TYPICAL SECTION  
SHOWN NEAR MID SPAN 4

SR 290 FILE NO. 3649 SHEET 8845

Bridge Design Engr.	khalteht, B	M:\Z-Team\SR290 E Trent Ave Br Over Spokane River\window files\045-TYP SEC B.wnd
Supervisor	zeldennust, RP	
Designed By	Bedi, G	06/17
Checked By		
Detailed By	Davis, E	11/18
Bridge Projects Engr.		
Prelim. Plan By		
Architect/Specifier		
DATE	REVISION	BY APPD

Wed Sep 04 09:34:30 2019

BRIDGE  
AND  
STRUCTURES  
OFFICE

**PRELIMINARY**  
Washington State  
Department of Transportation  
NOT FOR CONSTRUCTION

SR 290  
SPOKANE RIVER E TRENT BR  
REPLACE BRIDGE

TYPICAL SECTION B

BRIDGE  
SHEET  
NO.  
BR45  
SHEET  
OF  
SHEETS





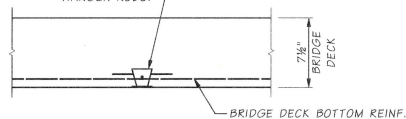
1. CONTRACTOR SHALL ANALYZE AND DESIGN AIR VALVE MANHOLE IN ACCORDANCE TO AASHTO LRFD BRIDGE DESIGN SPECIFICATIONS 2015 CODE REQUIREMENTS.
2. LOADING HL-93
3. MANHOLE BODY AND COVER - AASHTO M105 CLASS 35B OR ASTM A48 CLASS 35B.



\* CONDUIT "LAYING LENGTH" MAY VARY

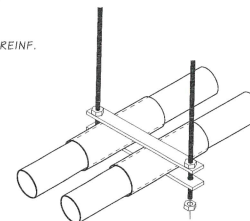


ANVIL INSERT FIG. 286 OR DAYTON-RICHMOND F-44 THIN  
SLAB FERRULE INSERT TO RECEIVE 1" ROD (WATER MAIN)  
OR 3/4" ROD (UTILITY) OR APPROVED EQUAL (TYP.) INSERT  
TO BE INSTALLED LEVEL LONGITUDINALLY AND TRANSVERSELY.  
PLACE INSERT TO PROVIDE FOR TRANSVERSE ADJUSTMENT OF  
HANGER RODS. —

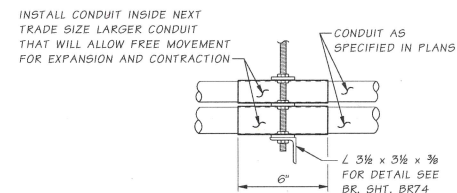


DETAIL (5)

- BR94 &amp; BR95



CONDUIT HANGER DETAILS  
(TYPICAL)



DETAIL (6)

NOTES:  
1. ALL STEEL SURFACES SHALL BE GALVANIZED AFTER FABRICATION IN ACCORDANCE WITH AASHTO M 11. ALL BOLTS, RODS, AND RELATED HARDWARE SHALL BE GALVANIZED AFTER FABRICATION IN ACCORDANCE WITH ASTM F2329.

Bridge Design Eng.		Khalighi, B	M:\2-Team\SR290 E Trent Ave Br Over Spokane River\window files\096-UTIL HANG DET3.smd		REGION NO.	STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
Supervisor		Zeldensrust, RP			10	WASH.			
Designed By		Bedi, G	10/17						
Checked By									
Detailed By		Davis, E	05/18						
Bridge Projects Engr.									
Prelim. Plan By									
Architect/Seals&st									
	DATE		REVISION		BY	APPD	CONTRACT NO.		

**PRELIMINARY**  
 **Washington State  
Department of Transportation**  
 NOT FOR CONSTRUCTION

SR 290  
SPOKANE RIVER E TRENT BR  
REPLACE BRIDGE

UTILITY HANGER  
DETAILS 3 OF 3

BRIDGE SHEET NO.	BR96
	SHEET
OF	
SUBJECT	

## SE 1/4 Section 17, T. 25 N., R. 43 E., W.M.

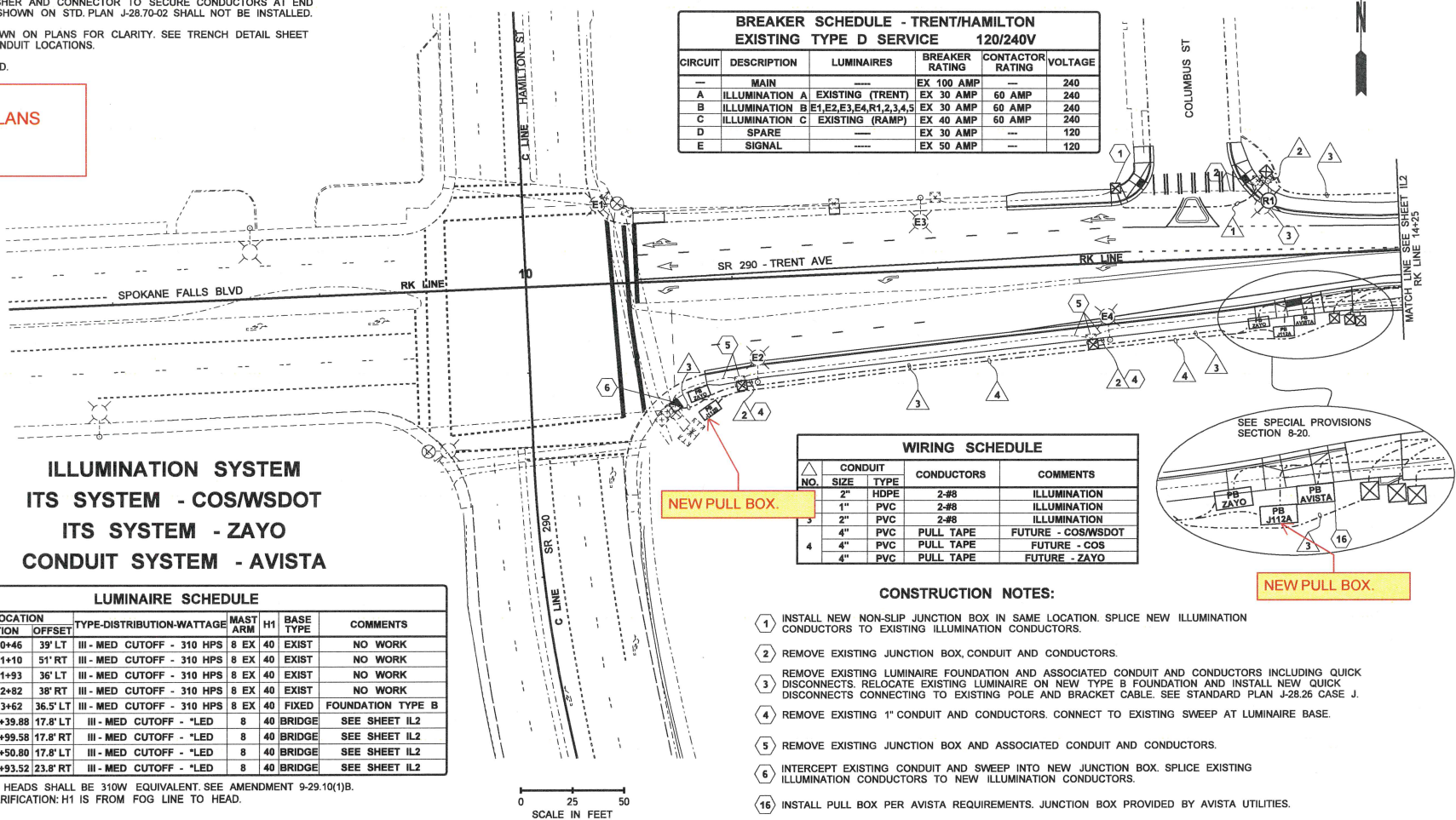
City of Spokane

## GENERAL NOTES THIS PAGE:

- CONTACT CITY OF SPOKANE SIGNAL SHOP FOREMAN, BYRON VASECKA 72 HRS PRIOR TO BEGINNING ANY WORK ON THE SYSTEM.  
BYRON VASECKA  
CELL (509) 232-8801
- THE REDUCING WASHER AND CONNECTOR TO SECURE CONDUCTORS AT END OF MAST ARM AS SHOWN ON STD. PLAN J-28.70-02 SHALL NOT BE INSTALLED.
- CONDUIT RUNS SHOWN ON PLANS FOR CLARITY. SEE TRENCH DETAIL SHEET IL4 FOR ACTUAL CONDUIT LOCATIONS.
- SEE IL2 FOR LEGEND.

UTB 1379  
EXHIBIT C - PLANS  
PAGE 5 OF 7

BREAKER SCHEDULE - TRENT/HAMILTON EXISTING TYPE D SERVICE 120/240V					
CIRCUIT	DESCRIPTION	LUMINAIRES	BREAKER RATING	CONTACTOR RATING	VOLTAGE
—	MAIN	—	EX 100 AMP	—	240
A	ILLUMINATION A	EXISTING (TRENT)	EX 30 AMP	60 AMP	240
B	ILLUMINATION B	E1,E2,E3,E4,R1,2,3,4,5	EX 30 AMP	60 AMP	240
C	ILLUMINATION C	EXISTING (RAMP)	EX 40 AMP	60 AMP	240
D	SPARE	—	EX 30 AMP	—	120
E	SIGNAL	—	EX 50 AMP	—	120



ILLUMINATION SYSTEM  
ITS SYSTEM - COS/WSDOT  
ITS SYSTEM - ZAYO  
CONDUIT SYSTEM - AVISTA

LUMINAIRE SCHEDULE									
LUM NO.	CIRCUIT	LOCATION		TYPE-DISTRIBUTION-WATTAGE	MAST ARM	H1	BASE TYPE	COMMENTS	
E1	B	RK	10+46	39' LT	III - MED CUTOFF - 310 HPS	8 EX	40	EXIST	NO WORK
E2	B	RK	11+10	51' RT	III - MED CUTOFF - 310 HPS	8 EX	40	EXIST	NO WORK
E3	B	RK	11+93	36' LT	III - MED CUTOFF - 310 HPS	8 EX	40	EXIST	NO WORK
E4	B	RK	12+82	38' RT	III - MED CUTOFF - 310 HPS	8 EX	40	EXIST	NO WORK
R1	B	RK	13+62	36.5' LT	III - MED CUTOFF - 310 HPS	8 EX	40	FIXED	FOUNDATION TYPE B
2	B	RK	15+39.88	17.8' LT	III - MED CUTOFF - "LED	8	40	BRIDGE	SEE SHEET IL2
3	B	RK	16+99.58	17.8' RT	III - MED CUTOFF - "LED	8	40	BRIDGE	SEE SHEET IL2
4	B	RK	18+50.80	17.8' LT	III - MED CUTOFF - "LED	8	40	BRIDGE	SEE SHEET IL2
5	B	RK	19+93.52	23.8' RT	III - MED CUTOFF - "LED	8	40	BRIDGE	SEE SHEET IL2

\*LED HEADS SHALL BE 310W EQUIVALENT. SEE AMENDMENT 9-29.10(1)B.  
\*\*CLARIFICATION: H1 IS FROM FOG LINE TO HEAD.

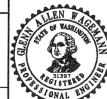
WIRING SCHEDULE				
NO.	CONDUIT SIZE	TYPE	CONDUCTORS	COMMENTS
1	2"	HDPE	2-#8	ILLUMINATION
2	1"	PVC	2-#8	ILLUMINATION
3	2"	PVC	2-#8	ILLUMINATION
4	4"	PVC	PULL TAPE	FUTURE - COS/WSDOT
	4"	PVC	PULL TAPE	FUTURE - COS
	4"	PVC	PULL TAPE	FUTURE - ZAYO

## CONSTRUCTION NOTES:

- INSTALL NEW NON-SLIP JUNCTION BOX IN SAME LOCATION. SPLICE NEW ILLUMINATION CONDUCTORS TO EXISTING ILLUMINATION CONDUCTORS.
- REMOVE EXISTING JUNCTION BOX, CONDUIT AND CONDUCTORS.
- REMOVE EXISTING LUMINAIRE FOUNDATION AND ASSOCIATED CONDUIT AND CONDUCTORS INCLUDING QUICK DISCONNECTS. RELOCATE EXISTING LUMINAIRE ON NEW TYPE B FOUNDATION AND INSTALL NEW QUICK DISCONNECTS CONNECTING TO EXISTING POLE AND BRACKET CABLE. SEE STANDARD PLAN J-28.26 CASE J.
- REMOVE EXISTING 1" CONDUIT AND CONDUCTORS. CONNECT TO EXISTING SWEEP AT LUMINAIRE BASE.
- REMOVE EXISTING JUNCTION BOX AND ASSOCIATED CONDUIT AND CONDUCTORS.
- INTERCEPT EXISTING CONDUIT AND SWEEP INTO NEW JUNCTION BOX. SPLICE EXISTING ILLUMINATION CONDUCTORS TO NEW ILLUMINATION CONDUCTORS.
- INSTALL PULL BOX PER AVISTA REQUIREMENTS. JUNCTION BOX PROVIDED BY AVISTA UTILITIES.

FILE NAME G:\Task Orders\SR 290XL5135 - Trent Bridge Replacement\CAD\Contract Plans\XL5135\_PS\_IL.dgn  
TIME 3:25:28 PM  
DATE 9/24/2019  
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DESIGNED BY TRAFFIC OFFICE  
ENTERED BY ER TRAFFIC DESIGN  
CHECKED BY R. FOUTS  
PROJ. ENGR. G. WAGEMAN, P.E.  
REGIONAL ADM. M. GRIBNER, P.E.

REVISION NO. 10  
STATE WASH  
FED.AID PROJ.NO. STPF-0290(025)  
JOB NUMBER 19Z022  
CONTRACT NO.  
LOCATION NO. XL5135



P.E. STAMP BOX

DATE

Washington State  
Department of Transportation



SR 290  
SPOKANE RIVER E TRENT BR  
REPLACE BRIDGE  
ILLUMINATION & ITS PLAN

Plot 1  
PLAN REF NO  
IL1  
SHEET  
X  
OF  
X  
SHEETS

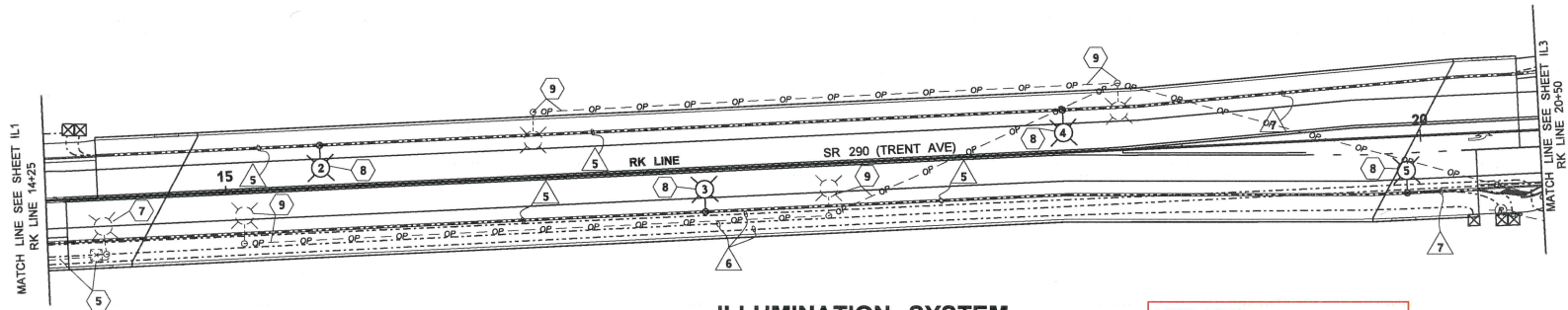
# SE 1/4 Section 17, T. 25 N., R. 43 E., W.M.

City of Spokane

## GENERAL NOTES THIS PAGE:

1. CONTACT CITY OF SPOKANE SIGNAL SHOP FOREMAN, BYRON VASECKA 72 HRS PRIOR TO BEGINNING ANY WORK ON THE SYSTEM. BYRON VASECKA CELL (509) 232-8801.
2. THE REDUCING WASHER AND CONNECTOR TO SECURE CONDUCTORS AT END OF MAST ARM AS SHOWN ON STD. PLAN J-28.70-02 SHALL NOT BE INSTALLED.
3. CONDUIT RUNS SHOWN ON PLANS FOR CLARITY. SEE TRENCH DETAIL SHEET IL4 FOR ACTUAL CONDUIT LOCATIONS.
4. SEE IL1 FOR LUMINAIRE SCHEDULE.

WIRING SCHEDULE				
NO.	CONDUIT	TYPE	CONDUCTORS	COMMENTS
5	2"	PVC	2-#8	ILLUMINATION
	2"	PVC	PULL TAPE	FUTURE ITS
6	4"	RGS	PULL TAPE	AVISTA
	6"	RGS	PULL TAPE	AVISTA
7	4"	RGS	PULL TAPE	ZAYO
	4"	RGS	PULL TAPE	COS / WSDOT
				COS



ILLUMINATION SYSTEM  
ITS SYSTEM - COS/WSDOT  
ITS SYSTEM - ZAYO  
CONDUIT SYSTEM - AVISTA

UTB 1379  
EXHIBIT C - PLANS  
PAGE 6 OF 7

LEGEND			
EXISTING	NEW	EXISTING	NEW
			OVERHEAD POWER
			POWER POLE
			CONSTRUCTION NOTE
			WIRE NOTE
			PULL BOX - ZAYO
			PULL BOX - COS
			PULL BOX - COS
			PULL BOX - AVISTA

## CONSTRUCTION NOTES:

- 5 REMOVE EXISTING JUNCTION BOX AND ASSOCIATED CONDUIT AND CONDUCTORS.
- 7 REMOVE EXISTING LUMINAIRE, FOUNDATION, AND ASSOCIATED CONDUIT AND CONDUCTORS.
- 8 INSTALL LUMINAIRE POLE ON BRIDGE BARRIER. SEE BRIDGE SHEETS.
- 9 COORDINATE REMOVAL OF OVERHEAD POWER, LUMINAIRE HEAD AND LUMINAIRE ARM BY AVISTA. POLE STANDARD TO BE REMOVED WITH BRIDGE DEMOLITION.

0 25 50  
SCALE IN FEET



FILE NAME	G:\Task Orders\SR 290\XL5135 - Trent Bridge Replacement\CAD\Contract Plans\XL5135_PS_IL.dgn	REGION NO.	STATE	FED.AID PROJ.NO.	STPF-0290(025)	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION	SR 290 SPOKANE RIVER E TRENT BR REPLACE BRIDGE ILLUMINATION & ITS PLAN	Plot 2 PLAN REF NO IL2 SHEET X OF X SHEETS
TIME	3:25:34 PM	10	WASH	CONTRACT NO.	19Z022			
DATE	9/24/2019			LOCATION NO.	XL5135			
PLOTTED BY	bohnetg							
DESIGNED BY	TRAFFIC OFFICE							
ENTERED BY	ER TRAFFIC DESIGN							
CHECKED BY	R. FOOTS							
PROJ. ENGR.	G. WAGEMAN, P.E.							
REGIONAL ADM.	M. GRIBNER, P.E.							
REVISION								
DATE								
BY								



# GENERAL NOTES THIS PAGE:

- CONTACT CITY OF SPOKANE SIGNAL SHOP FOREMAN, BYRON VASECKA  
72 HRS PRIOR TO BEGINNING ANY WORK ON THE SYSTEM.  
BYRON VASECKA  
CELL (509) 232-8801
- ALL CONDUIT SHALL BE 2" SCHEDULE 40 (GRAY) WITH MINIMUM 24" SWEEPS. USE SWEDGE COUPLERS OR FACTORY BELL ENDS. PULL TAPE SHALL BE INSTALLED IN ALL CONDUIT FOR FUTURE USE. AVISTA UTILITIES TO INSPECT CONDUIT TRENCH PRIOR TO CONDUIT PLACEMENT AND CONDUIT INSTALLATION PRIOR TO BACKFILLING.
- TO SCHEDULE PICK UP OF HANDHOLE AND GROUND RODS, THE CONTRACTOR SHALL COORDINATE WITH THE FOLLOWING CONTACT AT AVISTA UTILITIES 72 HOURS PRIOR:  
KAREN CORNWELL  
1411 E. MISSION  
SPOKANE, WA, 99202  
509-495-4457
- SCHEDULE DELIVERY OF PRECAST LUMINAIRE FOUNDATION, THE CONTRACTOR SHALL COORDINATE WITH THE FOLLOWING CONTACT AT WILBERT PRE-CAST CONTACT 72 HOURS PRIOR:  
DARIN SWAN  
2215 E. BROOKLYN AVE.  
SPOKANE, WA, 99217  
509-789-2264
- CONTRACTOR TO PROVIDE PROJECT TEMPORARY TRAFFIC CONTROL FOR AVISTA (PAID UNDER ITEM PROJECT TEMPORARY TRAFFIC CONTROL).
- SEE IL2 FOR LEGEND.

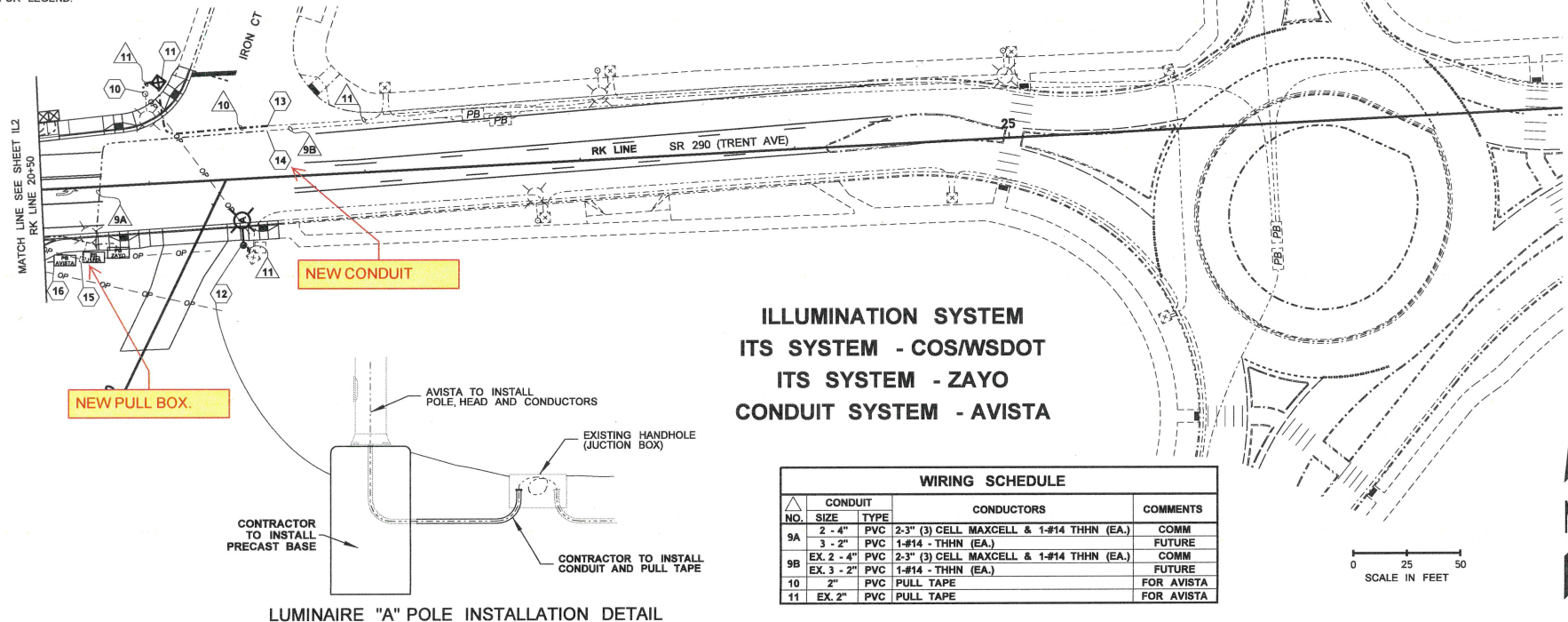
SE 1/4 Section 17, T. 25 N., R. 43 E., W.M.

City of Spokane

## CONSTRUCTION NOTES:

- CONNECT CONDUIT TO EXISTING LUMINAIRE FOUNDATION, CONVERTING OVERHEAD FEED TO UNDERGROUND. COORDINATE WORK WITH AVISTA UTILITIES.
- INSTALL JUNCTION BOX PER AVISTA REQUIREMENTS. JUNCTION BOX PROVIDED BY AVISTA UTILITIES.
- INSTALL PRECAST LUMINAIRE FOUNDATION AND GROUND ROD PER AVISTA REQUIREMENTS. FOUNDATION PROVIDED BY AVISTA. AVISTA TO INSTALL LIGHT POLE, FIXTURE AND CONDUCTORS.
- CONNECT NEW 2" CONDUIT TO EXISTING 2" STUB. CONDUIT SCHEDULE 40 PER AVISTA REQUIREMENTS.
- CONNECT NEW 2" CONDUITS TO EXISTING 2" STUBS. CONDUIT SCHEDULE 40 TO MATCH EXISTING. CONNECT NEW 4" CONDUITS TO EXISTING 4" STUBS. CONDUIT SCHEDULE 80 TO MATCH EXISTING.
- COORDINATE REMOVAL OF OVERHEAD POWER, TIMBER POLE, LUMINAIRE ARM AND CONDUCTORS BY AVISTA.
- INSTALL PULL BOX PER AVISTA REQUIREMENTS. JUNCTION BOX PROVIDED BY AVISTA UTILITIES.

UTB 1379  
EXHIBIT C - PLANS  
PAGE 7 OF 7



ILLUMINATION SYSTEM  
ITS SYSTEM - COS/WSDOT  
ITS SYSTEM - ZAYO  
CONDUIT SYSTEM - AVISTA

## WIRING SCHEDULE

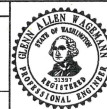
NO.	CONDUIT SIZE	TYPE	CONDUCTORS	COMMENTS
9A	2 - 4"	PVC	2-3" (3) CELL MAXCELL & 1-#14 THHN (EA.)	COMM
	3 - 2"	PVC	1-#14 - THHN (EA.)	FUTURE
9B	EX. 2 - 4"	PVC	2-3" (3) CELL MAXCELL & 1-#14 THHN (EA.)	COMM
	EX. 3 - 2"	PVC	1-#14 - THHN (EA.)	FUTURE
10	2"	PVC	PULL TAPE	FOR AVISTA
11	EX. 2"	PVC	PULL TAPE	FOR AVISTA

LUMINAIRE "A" POLE INSTALLATION DETAIL

FILE NAME: G:\Task Orders\SR 290\XL5135 - Trent Bridge Replacement\CAD\Contract Plans\XL5135\_PS\_IL.dgn  
TIME: 3:25:37 PM  
DATE: 9/24/2019  
PLOTTED BY: bohnatg  
DESIGNED BY: TRAFFIC OFFICE  
ENTERED BY: ER TRAFFIC DESIGN  
CHECKED BY: R. FOUTS  
PROJ. ENGR: G. WAGEMAN, P.E.  
REGIONAL ADM. M. GRIBNER, P.E.

REGION NO. 10  
STATE WASH  
JOB NUMBER 192022  
CONTRACT NO.

FED.AID PROJ.NO. STPF-0290(025)  
LOCATION NO. XL5135



P.E. STAMP BOX

DATE

P.E. STAMP BOX

DATE

Washington State  
Department of Transportation

SR 290  
SPOKANE RIVER E TRENT BR  
REPLACE BRIDGE

ILLUMINATION & ITS PLAN

Plot 3  
PLAN REF NO  
IL3

SHEET  
X  
OF  
X  
SHEETS

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

10/07/2019

<u>Date Rec'd</u>	8/19/2019
<u>Clerk's File #</u>	OPR 2019-0812
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	5115-19
<u>Requisition #</u>	CR 20858

<u>Submitting Dept</u>	WASTEWATER MANAGEMENT
<u>Contact Name/Phone</u>	DAN KEGLEY 625-7821
<u>Contact E-Mail</u>	DKEGLEY@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	4100/4310/4330 - RATE STRUCTURE ANALYSIS - WATER, SEWER, & STORMWATER

Agenda Wording

Contract for rate structure analysis of the Water, Sewer, and Stormwater utilities by FCS Group (Redmond, WA) not to exceed \$260,000.00 annually including tax.

Summary (Background)

Award is recommended to FCS Group to provide an ongoing rate structure analysis for the Water, Sewer, and Stormwater utilities. More than 60 contacts were notified on July 3, 2019 through IRFP #5115-19 and two proposals were received by the closing deadline on July 24, 2019. Award is recommended to FCS in light of their extensive experience in this field. The initial contract will be for a three-year term, with optional renewals not to exceed two additional three-year terms at mutual consent.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense \$ 86,667.00		# 4100-30210-34141-54201-99999
Expense \$ 86,667.00		# 4310-30210-35141-54201-99999
Expense \$ 86,666.00		# 4330-30210-35141-54201-99999
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> PIES 8/26/19
<u>Finance</u>	ALBIN-MOORE, ANGELA	<u>Distribution List</u>
<u>Legal</u>	DALTON, PAT	Angie Sanchez Virnoche - angies@fcsgroup.com
<u>For the Mayor</u>	ORMSBY, MICHAEL	jasonm@fcsgroup.com
<u>Additional Approvals</u>		dkegley@spokanecity.org
<u>Purchasing</u>	WAHL, CONNIE	sjohnson@spokanecity.org
		Tax & Licenses
		seweraccounting@spokanecity.org
		aduffey@spokanecity.org



**City of Spokane**  
**CONSULTANT AGREEMENT**  
**Title: RATE STRUCTURE ANALYSIS**

This Consultant Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **FINANCIAL CONSULTING SOLUTIONS, d/b/a FCS GROUP**, whose address is 7525 166<sup>th</sup> Avenue NE, Suite D-215, Redmond, Washington 98052 as ("Consultant"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the purpose of this Agreement is to perform a Rate Structure Analysis of the City's water, sewer and stormwater utility rates; and*

*WHEREAS, the Consultant was selected from a Request for Proposals/Qualifications No. 5115-19 Utility Billing Rate Study.*

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

**1. TERM OF AGREEMENT.**

The term of this Agreement begins on October 1, 2019, and ends on September 30, 2022, unless amended by written agreement or terminated earlier under the provisions. This Contract may be renewed by written agreement of the parties not to exceed two additional three year renewals.

**2. TIME OF BEGINNING AND COMPLETION.**

The Consultant shall begin the work outlined in the "Scope of Work" ("Work") on the beginning date, above. The City will acknowledge in writing when the Work is complete. Time limits established under this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Consultant's control.

**3. SCOPE OF WORK.**

The General Scope of Work for this Agreement is described in Exhibit B, Consultant's Proposal dated July 24, 2019, and Exhibit C, Consultant's Memorandum dated August 13, 2019, which are attached to and made a part of this Agreement. In the event of a conflict or discrepancy in the contract documents, the City Agreement controls.

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

#### **4. COMPENSATION.**

Total compensation for Consultant's services under this Agreement shall be a maximum annual amount not exceed **TWO HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$260,000.00)**, including tax, if applicable, unless modified by a written amendment to this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section 3 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Agreement.

#### **5. PAYMENT.**

The Company shall submit its applications for payment to Wastewater Maintenance, 909 East Sprague Avenue, Spokane, Washington 99202 or to [seweraccounting@spokanecity.org](mailto:seweraccounting@spokanecity.org). **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

#### **6. REIMBURSABLES**

The reimbursables under this Agreement are to be included, and considered part of the maximum amount not to exceed (above), and require the Consultant's submittal of appropriate documentation and actual itemized receipts, the following limitations apply.

- A. City will reimburse the Consultant at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses or include a markup. Other direct charges may include, but are not limited to the following types of items: travel, printing, cell phone, supplies, materials, computer charges, and fees of subconsultants.
- B. The billing for third party direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant paid invoices, and other supporting documents used by the Consultant to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.
- C. The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts (excluding meals) supporting such travel expenses, and in accordance with the City of Spokane Travel Policy, details of which can be provided upon request.
- D. **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- E. **Meals:** Meals will be reimbursed at the Federal Per Diem daily meal rate for the city in which the work is performed. *Receipts are not required as documentation.* The invoice shall state "the meals are being billed at the Federal Per Diem daily meal rate", and shall detail how many of each meal is being billed (e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time.

- F. **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published General Services Administration (GSA) Index for the city in which the work is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.)
- G. **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred. Please note: payment for mileage for long distances traveled will not be more than an equivalent trip round-trip airfare of a common carrier for a coach or economy class ticket.
- H. **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).
- I. **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.
- J. **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred and may not include a markup. Receipts are required for all miscellaneous expenses that are billed.

**Subconsultant:** Subconsultant expenses will be reimbursed at the actual cost incurred and a four percent (4%) markup. Copies of all Subconsultant invoices that are rebilled to the City are required.

## **7. TAXES, FEES AND LICENSES.**

- A. Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Consultant's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. Where required by state statute, ordinance or regulation, Consultant shall pay and maintain in current status all taxes necessary for performance. Consultant shall not charge the City for federal excise taxes. The City will furnish Consultant an exemption certificate where appropriate.
- C. The Director of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes and fees due the City.
- D. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

## **8. CITY OF SPOKANE BUSINESS LICENSE.**

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

## **9. SOCIAL EQUITY REQUIREMENTS.**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. Consultant agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Consultant. Consultant shall seek inclusion of woman and minority business for subcontracting. A woman or minority business is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington.

## **10. INDEMNIFICATION.**

The Consultant shall 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 Consultant's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Consultant to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the 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 Consultant'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 Consultant, its agents or employees. The Consultant specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Consultant's own employees against the City and, solely for the purpose of this indemnification and defense, the Consultant specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Consultant recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

## **11. INSURANCE.**

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

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

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

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

D. Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for at least two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Consultant shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Consultant's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the sixty (60) day cancellation clause, and the deduction or retention level. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

## **12. DEBARMENT AND SUSPENSION.**

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

## **13. AUDIT.**

Upon request, the Consultant shall permit the City and any other governmental agency ("Agency") involved in the funding of the Work to inspect and audit all pertinent books and records. This includes work of the Consultant, any subconsultant, or any other person or entity that performed connected or related Work. Such books and records shall be made available upon reasonable notice of a request by the City, including up to three (3) years after final payment or release of withheld amounts. Such inspection and audit shall occur in Spokane County, Washington, or other reasonable locations mutually agreed to by the parties. The Consultant shall permit the City to copy such books and records at its own expense. The Consultant shall ensure that inspection, audit and copying rights of the City is a condition of any subcontract, agreement or other arrangement under which any other persons or entity may perform Work under this Agreement.

## **14. INDEPENDENT CONSULTANT.**

- A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.
- B. If the City needs the Consultant to Work on City premises and/or with City equipment, the City may provide the necessary premises and equipment. Such premises and equipment are exclusively for the Work and not to be used for any other purpose.



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

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

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

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

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

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

- A. Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.
- B. Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two (2) years.
- C. Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than \$25 may be distributed by the Consultant to a City employee if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

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

Consultant confirms that the Consultant or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant's work.



As used in this Section, the term Consultant includes any worker of the Consultant who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term "close family relationship" refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

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

Consultant is responsible for professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement in the delivery of a final work product. The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by Consultants performing the same or similar services at the time said services are performed. The Final Work Product is defined as signed work product. Consultant, without additional compensation, shall correct or revise errors or mistakes immediately upon notification by the City. To the extent that the errors and mistakes are flaws in the Consultant's work product and not the result of changes to input, assumptions, or data. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

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

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

## **21. CONFIDENTIALITY.**

Under Washington State Law RCW Chapter 42.56) all materials received or created by the City of Spokane are **public records** which are subject to review and copying pursuant to a public records request. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, and other bid material. Some records or portions of records may be legally exempt from disclosure and can be redacted or withheld. RCW Ch. 42.56 describes those exemptions. Consultant must familiarize themselves with state law and the City of Spokane's process for managing records.

The City will endeavor to redact anything that clearly should be redacted under the law. For example, the City will generally redact Social Security Numbers, tax records, and financial account numbers before records are made available to a requestor. Consultant may identify any materials Consultant believes to be not subject to release under the Public Records Act. City will not be bound by Consultant's determination of whether any particular record or records are legally exempt from release under the Public Records Act.

If the City receives a public records request for records involving Consultant or Consultant's work product, City will release the records unless City determines that there are obvious exemptions or redactions (which City will make prior to release of the records). If City determines that there are exemptions that can be asserted only by Consultant, City will endeavor to notify Consultant and Consultant will be given ten days to obtain a Court order preventing the City from releasing the requested records. **If no Court order is procured by Consultant, the City will release the requested records.**

## **22. DISPUTES.**

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

## **23. TERMINATION.**

- A. For Cause: The City or Consultant may terminate the Agreement if the other party is in material breach of this Agreement, and such breach has not been corrected to the other party's reasonable satisfaction in a timely manner. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.

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

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

This Agreement scope may be expanded for new work. Any expansion for New Work (work not specified within the original Scope of Work Section of this Agreement, and/or not specified in the original RFP as intended work for the Agreement) must comply with all the following limitations and requirements: (a) the New Work is not reasonable to solicit separately; (b) the New Work is for reasonable purpose; (c) the New Work was not reasonably known either the City or Consultant at time of contract or else was mentioned as a possibility in the solicitation (such as future phases of work, or a change in law); (d) the New Work is not significant enough to be reasonably regarded as an independent body of work; (e) the New Work would not have attracted a different field of competition; and (f) the change does not vary the essential identified or main purposes of the Agreement. The City may make exceptions for immaterial changes, emergency or sole source conditions, or other situations required in City opinion. Certain changes are not New Work subject to these limitations, such as additional phases of Work anticipated at the time of solicitation, time extensions, Work Orders issued on an On-Call contract, and similar. New Work must be mutually agreed and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

#### **25. MISCELLANEOUS PROVISIONS.**

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.
- C. Americans with Disabilities Act (ADA): Specific attention by the designer is required in association with the Americans with Disabilities Act (ADA) 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611, its requirements, regulations, standards and guidelines, which were updated in 2010 and are effective and mandatory for all State and local government facilities and places of public accommodation for construction projects including alteration of existing facilities, as of March 15, 2012. The City advises that the requirements for accessibility under the ADA, may contain provisions that differ substantively from accessibility provisions in applicable State and City codes, and if the provisions of the ADA impose a greater or equal protection for the rights of individuals with disabilities or individuals associated with them than the adopted local codes, the ADA prevail unless approval for an exception is obtained by a formal documented process. Where local codes provide exceptions from accessibility requirements that differ from the ADA Standards; such exceptions may not be permitted for publicly owned facilities subject to Title II requirements unless the same exception exists in the Title II regulations. It is the responsibility of the designer to determine the code provisions.
- D. The Consultant, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Consultant shall comply with the requirements of this Section.
- E. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in the Superior Court of Spokane County.
- F. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- G. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- H. Severability: If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- I. Waiver: No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- J. Additional Provisions: This Agreement may be modified by additional terms and conditions ("Special Conditions") which shall be attached to this Agreement as Exhibit D. The parties agree that the Special Conditions shall supplement the terms and conditions of the Agreement, and in the event of ambiguity or conflict with the terms and conditions of the Agreement, these Special Conditions shall govern.
- K. Entire Agreement: This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Consultant. If conflict occurs between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.

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

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

**FINANCIAL CONSULTING SOLUTIONS,  
d/b/a FCS GROUP**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Approved as to form:

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

Attest:

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

**Attachments:**

Exhibit A – Certificate Regarding Debarment

Exhibit B – Consultant's Negotiated Proposal dated September 18, 2019

Exhibit C – Consultant's Memorandum dated August 13, 2019

## EXHIBIT A

### 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)

September 18, 2019

## LETTER OF SUBMITTAL

City of Spokane  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Subject: Rate Structure Analysis (RFP # 5115-19)

To Whom It May Concern:

We are pleased to provide the attached updated proposal to become the City's ongoing partner in managing its water, wastewater, and stormwater rates and charges. FCS GROUP has been in the business of local government utility rates and charges for 30 years. During that time, we have served as advisors on over 3,000 engagements similar to the one proposed here, and we have worked with approximately 550 state and local governments. Although we have a number of clients nationally, we are most known for our focus in the Western US, especially in the State of Washington where we maintain relationships with dozens of clients through our local offices in Redmond and Spokane.

FCS GROUP is ready to help. Our long history of service both nationally and in Washington gives us broad perspective with local focus. While we bring the expertise of a professional firm with a strong understanding of nationally accepted utility ratemaking practices, our approach connects those general practices with your specific, local needs. Doing so allows us to help you create results that can be implemented successfully and will withstand the test of time.

***Together, with you, we will deliver a process that will keep your utility rates and charges up to date and consistent with highly defensible cost-of-service principles.***

What can you expect from FCS GROUP?

- **Expertise:** Our Project Manager, Jason Mumm, is involved at the local and national level helping set the standards used in the industry for rate-setting, consistent with the American Water Works Association, among others. In 23 years of practice, he has established rates and charges for comparable water, sewer and stormwater utilities throughout the Western U.S. Most importantly, he has been deeply engaged in establishing the defensibility of Spokane's policies for the rates charged for outside-city customers of the water system.
- **Independence:** Ours is a privately-held firm of 35 people focused solely on the financial and rate setting issues facing local utilities. Our business objectives are very clear: to provide our municipal clients with the best financial solutions for their unique needs. It is an objective that has kept us in business for over 30 years (since 1988) and grown our firm to one of the largest independent providers in the country. Our objectives are aligned to yours and, because we do not try to provide engineering solutions or have any business interest in bidding for design/construction of your capital projects, we can truly say that our work for you will be unbiased.

- **Location and Responsiveness:** Initially, Jason Mumm will manage the proposed rate setting processes for Spokane. His familiarity with the City, based on his work with your legal team in recent suits brought by outside-city customers, is vital for establishing the initial frameworks and methodologies. Once the framework is established, we will localize the ongoing efforts under the direction of Angie Sanchez-Virnoche who is located in our Spokane office.
- **Value.** We recognize that you have options when considering a consulting team. We know that you are going to see several proposals that will appear inexpensive compared to the bids of highly qualified firms like ours. We have found during our 30-year history that successful partnerships with our clients demands a commitment of time and resources to make sure the job is done right, every time. The long history of our firm is testament to the quality of our work, as is the long-lasting success of the solutions we help our clients implement. When you look at our proposal, you will see more hours of effort for the dollar when compared to most of our peers.

Finally, this letter serves to communicate that FCS GROUP is a Subchapter S-corp and that no current employees formerly worked for the City of Spokane within the past 12 months, nor do any former City employees hold a position on our governing board. This proposal is effective for a period of 90 days from the due date. As a principal and vice president of the firm, I, Angie Sanchez Virnoche, am an officer of the firm and duly authorized to negotiate on its behalf. We look forward to the privilege of working with the City. Please do not hesitate to contact us at (303) 652-7548 or [jasonm@fcsgroup.com](mailto:jasonm@fcsgroup.com).

Sincerely,  
FCS GROUP



Angie Sanchez Virnoche  
Principal-in-Charge

FCS GROUP



Jason Mumm  
Project Manager



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# TECHNICAL PROPOSAL

## PROJECT APPROACH / METHODOLOGY

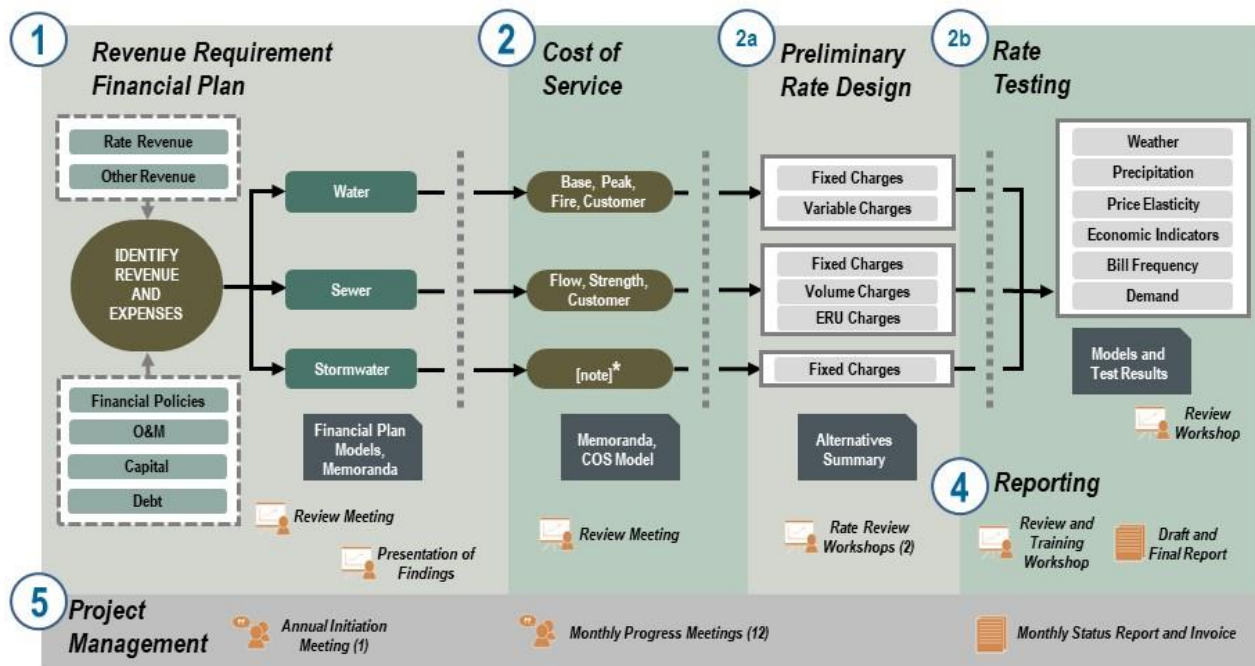
We are proposing a long-term solution for the City's utility rates and charges that includes an ongoing process that will repeat a series of tasks through a three-year cycle. In each three-year cycle, FCS GROUP will provide:

a) annual revisions to the City's long-range financial plans indicating any changes to the revenue requirements;

b) an annual proposal for short-term increases to the existing rates based on the long-range plan findings;

c) a tri-annual comprehensive cost-of-service study for each utility.

The process can be adapted each year to address the City's priorities. The typical year-to-year process is summarized in the bellow illustration, but the actual scope may include any mix of these tasks depending on the City's needs at the time. We will work with the City to determine the annual scope at an annual initiation meeting (See Task 4.1).



\* Cost of service analysis is not usually needed for stormwater.

# WORK PLAN

## Task 1 | Financial Plan

*The first step in the annual process is to verify how much total revenue the City will need from its utility sales to meet its obligations in operating expenses, capital costs, debt service, and reserve funding. The total amount needed is called the “revenue requirement.” We will prepare a comprehensive 10-year financial plan for all three utilities with the projected future rate adjustments needed for each within the bounds of the City’s stated goals, objectives, and policy decisions.*

### How

#### 1.1. Gather data inputs and financial requirements

We will issue an initial data request to recover the basic financial data we need to determine the plan for annual revenue requirements for the next ten years. Typical items include budget data, billing information, policy documentation, asset data, bond statements, CAFRs, and related financial and operational data.

#### 1.2 Populate forecast model with City’s financials and policy preferences

Based on the data/information received, we will input the City’s budgets, existing revenues, and other financial data into the forecast model. This process will also include analysis of the City’s policies for things like affordability, reserve levels, project funding preferences, staffing requirements, debt management, and other performance objectives.

#### 1.3 Review preliminary model with City

After the preliminary model, we will schedule and conduct a meeting with the City to review results in a live on-site workshop to allow the staff to evaluate and make changes to the model in a live setting. The review process is often one of evaluating the financial needs identified in the capital and operating budget against the overall goals, objectives, and policies to find a workable plan. For example, capital projects may need to be rescheduled to keep the year-to-year increases within the City’s policies. Alternatively, if the projects cannot be rescheduled, we can use the review

process to identify other strategies to keep the revenue increases consistent with local policies. Other issues may be addressed at the same time – all in an effort to comport the plan to policies.

This task and Task 1.2 can and often are repeated to arrive at a suitable recommendation.

#### 1.4 Prepare final forecast

After reviewing the projection with the City, we will prepare the final calculation of revenue requirements to use in subsequent tasks. These calculations will, in each year, provide a forward “rate path” demonstrating a 5-year recommended series of overall rate adjustments to be made across the board to all elements of the then existing rate structure.

#### 1.5 Prepare summary memoranda and presentations

We will document the findings and recommendations from the financial forecast in a summary memorandum – one for each utility. Also, we will develop a combined presentation file summarizing the findings from all three.

#### 1.6 Present findings and recommendations

If needed, we will present the financial plan findings and recommendations to the City Council or stakeholder groups.

### Benefits/Project Relevance

The forecast allows the City to proactively plan for the future by evaluating and quantifying the sensitivity associated with revenue and cost changes. This analysis offers the City the tool to craft a rate strategy to meet its short and long-term objectives and policies. Most importantly, this analysis charts a path for utility rates between tri-annual cost-of-service updates. Think of the financial plan as the key to keeping the rates on track and the cost-of-service as key to keeping the rates fair and equitable.

### Deliverable(s)

- Information request
- Financial planning models (x3)
- Review meeting (1x meeting)
- Summary memoranda (x3)

- Presentation materials
- Presentation of findings (1x meeting)

#### Scheduling and Resources

- Duration:  $\approx$  three months; 60 working days, allowing for one month per utility.
- Task Dependencies: None

## Task 2 | Cost of Service Study

*The typical annual process includes a comprehensive cost-of-service study for one or more of the three City utilities. The cost-of-service evaluation is the critical component in the rate-setting process that will establish the cost justification for any difference in rates from one customer to the next. Differences in residential and non-residential rates and differences in inside and outside-city rates are determined based on the analyses in this task.*

### How

#### 2.1 Gather the data requirements

For the selected utility enterprise, we will issue a data request that will include access to the billing system and all billing records, asset registers, and operating metrics of the water system. These are used to analyze customer demands on individual system components which forms the basis of cost allocations.

#### 2.2 Prepare preliminary cost allocation

We will develop a preliminary cost allocation using the most recent year's revenue requirement. The analysis will include all the allocation steps necessary to identify differences in costs between classes clearly, and between inside and outside-city customer types. All allocation processes will be based on generally accepted industry approaches, but specifically tailored to the unique application and circumstances for the City's utilities.

#### 2.3 Review of cost allocations

The preliminary cost allocation will need to be reviewed several times before progressing to the final design. We will continue to evaluate the preliminary results, comparing the existing revenue by class with the proposed cost of service to identify and resolve any issues. We will conduct at least one on-site review meeting with the City.

#### 2.4 Final cost-of-service

As the forecast in Task 1 are completed, we will update the cost-of-service to reflect the findings for the selected test year (the year for which rates are to be adopted) and conduct final reviews and issue identification with the City before finalizing the analyses.

## 2.5 Summary memorandum

We will prepare a summary report of the findings for the cost-of-service evaluation suitable for internal use and discussion.

### Benefits/Project Relevance

This analytical exercise will identify the cost of providing services to the City's various customer classes. The results may indicate shifts in cost recovery that could improve equity relative to the existing rate structure. It also identifies the unit cost for each function of service, which can inform revisions to the City's rate structures.

The City has historically adopted a phased-in implementation of class-based COSA results. The most recent study completed indicated that the water utility classes were within COSA range of reasonableness, while the Sewer utility continued to phase-in class-based COSA results over a six-year period. This study would recalibrate the COSA for both utilities and continue phasing-in COSA findings as needed.

The most important benefit of cost-of-service analysis, however, is that it provides the City with the best possible justification for any differences in its rates. Differences between inside-city and outside-city rates, for example, are clearly delineated in a cost-of-service analysis with obvious cost justification for the differences.

### Deliverable(s)

- Information request
- Cost-of-service model (x1)
- Review meeting (1x meeting)
- Summary memoranda (x1)

### Scheduling and Resources

- Duration: Approximately two months; 40 working days; some tasks may be completed concurrently with Task 1.
- Task Dependencies: Task 1

## Task 2(a) | Preliminary Rate and Fee Design (as needed)

*We will prepare a preliminary rate design for the same utility that is subject to the cost-of-service evaluation reflecting the recommended changes to the rate structure. The proposed changes, if any, would be based on the findings from the cost-of-service and would, therefore, be focused on structural issues rather than simple increases. Also, if there are any specific design elements the City wishes to evaluate, we will include those considerations as part of this task. This task includes development of related fees (e.g. GFCs, etc.) on an as-needed basis.*

### How

#### 2(a).1 Gather the data requirements

Any additional information needed beyond what was already collected to complete Tasks 1 and 2 would be requested in this task. Additional information for rate design may include additional billing detail, additional billing history, or related details.

#### 2(a).2 Rate & fee review workshop

We will schedule a rate & fee review workshop with the City to go over the existing rate structures in detail. During the workshop, we will evaluate the performance of the existing rates vs. the cost-of-service findings and discuss the City's objectives and goals for the rates. The objective of the workshop is to identify areas for improving the existing rate structure to meet the City's goals and objectives, including the cost-of-service objectives.

#### 2(a).3 Prepare preliminary alternatives

Based on the review workshop, we will prepare some alternative designs to address the noted gaps in the existing structure. At a minimum, we will prepare two alternatives consisting of the existing rate/fee structure as one, and at least one alternative. Up to three alternatives may be considered.

#### 2(a).4 Final rate & fee review workshop

Once we have prepared the alternative designs, we will review them again in a workshop setting structured in a way similar to Task 3.2 wherein we will discuss with the City the various pros and cons of the alternatives. The purpose of this workshop for the City to select a rate structure, or up to two such structures, for further testing and evaluation.

### Benefits/Project Relevance

Rate design allows for innovative approaches to cost recovery and can be a tool for sending the appropriate price signals to meet the City's priorities and objectives. Any rate design developed is supported by the cost of service process. We will work with City staff to determine if any rate structure changes are warranted from year to year, or if specific policy objectives need to be satisfied partly with changes to the rates. The rate design review will identify areas of consolidation, expansion and refinement.

### Deliverable(s)

- Information request
- Review workshop (1x meeting)
- Summary of alternative rate designs
- Final review workshop (1x meeting)

### Scheduling and Resources

- Duration: Approximately 2 months; 40 working days
- Task Dependencies: Task 1 and Task 2

## Task 2(b) | Rate Testing (as needed)

*Given the City's selection of up to two alternative rate structures in the previous task, FCS GROUP will then conduct a series of more strenuous analytical testing to evaluate the revenue performance and risks inherent in each structure.*

### How

#### 2(b).1 Conduct risk-based modeling.

We will prepare the models necessary for testing the rate structures. The key risk factors to be included in the modeling scenarios are those factors related to customer demand, and typically involve variables for weather, precipitation levels, price elasticity, and economic indicators. Techniques used in the testing procedure may include bill frequency analysis, Monte Carlo analysis, or other methods determined to be appropriate for the City's needs.

#### 2(b).2 Review results

We will review the preliminary results of the analysis with the City to evaluate the findings and determine whether any adjustments should be made to the rate structures.

#### 2(b).3 Prepare final testing

Based on the comments in the review workshop, we will make modifications to the rate structures as needed and prepare the final testing procedures.

#### 2(b).4 Report on testing results

We will prepare a summary memorandum to describe the testing outcomes. At a minimum, the testing results will describe the expected revenue earned from the proposed rate structure, and the expected range of revenue earnings based on the variables examined. The report will identify strategies for addressing possible revenue shortfalls (e.g., augmentation of reserve levels).

The testing output may also provide the following reports depending on the City's needs:

- Expected customer impact from the change in rates, by customer class and demand levels
- Affordability metrics
- Expected revenue for normal demand levels
- Expected revenue for max/min demand levels observed in the past ten years
- Comparison of cost-of-service to expected revenue

### Benefits/Project Relevance

Rate testing is a process of making sure the proposed rate will perform as designed before implementation. Testing serves to measure your risk exposure against one or several concurrent anticipated factors like weather variation, price elasticity response, and normal variations in demand. With thorough testing, you avoid future surprises and allow time to either develop a plan to address future challenges, or to establish appropriate safeguards.

As the City takes new rate structures to its Council for approval, the rate testing process provides an extra layer of confidence that the rates are able to do what they are supposed to.

### Deliverable(s)

- All models used for rate testing
- Review workshop (1x meeting)
- Summary report of testing results

### Scheduling and Resources

- Duration: Approximately one month; 20 working days
- Task Dependencies: Task 3



## Task 3 Reporting

*There will be an updated rate report for the City after each year of engagement. The annual report will reflect the updated financial plan from Task 1 for all utilities and will provide details of the cost-of-service, and rate design efforts undertaken for the one utility the City selected for further study for the year.*

### How

#### 3.1 Prepare a draft report

FCS GROUP will prepare the draft report to include two main parts: a) a report of the 10-year financial plan updates for all three utilities; and b) a companion report of the cost-of-service and rate structure recommendations for one of the three utilities (to be selected each year by the City). All technical exhibits will be included in the report technical appendix.

#### 3.2 City review and comment

Once the draft is completed, we will provide the City with a working copy for review and comment. We anticipate the City will need at least ten working days to review the draft and provide comments (more time available, as needed).

#### 3.3 Prepare final report

Once the City has finished its review of the draft, we will commence with the preparation of a final report.

#### 3.4 Model delivery, review, and training

We will deliver all the models, work papers, and other materials developed during the course of our work at the City's request. Also, at the City's request, we will provide an additional workshop for review and to familiarize the City's staff with the processes and principles involved in the City's rate setting.

### 3.5 Delivery of final report

We will arrange for delivery of the final report to include whatever formats the City requires.

#### Benefits/Project Relevance

The City will have a document that outlines the rate study process for future reference and use. Although our approach views the study process as a continual and evolving plan, the City will have a new document each year to provide both an audit trail of what has occurred before, as well as a reference for the years to come.

#### Deliverable(s)

- Draft report
- Final report
- Review and training workshop (1x meeting)

#### Scheduling and Resources

- Duration: Approximately 2 mos. / 40 work days. The draft report may be started early and completed concurrently with other tasks.
- Task Dependencies: Task 4



## Task 4 | Project Management

The tasks included here involve all those needed to effectively manage the project, the team, and the related scope, schedule, and budgets. These tasks take place throughout the project timeline and do not add to the total project duration.

### How

#### 4.1 Annual initiation meeting

Each year, as the annual process commences, FCS GROUP will request and schedule a project initiation meeting. This meeting will be a review of the City's goals and objectives of the overall project to focus the efforts of the project team. The meeting will include review and prioritization of the scope elements, including reordering or reconfiguring the tasks as needed to meet the City's needs.

#### 4.2 Monthly progress meetings

After the project has started, we will schedule a standing status meeting to take place at least once per month – more often if desired – to review progress, identify project risks, and revisit scheduling items.

#### 4.3 Monthly status reports.

With our monthly invoices, we will provide you with a status report summarizing the work



**FCS GROUP**  
Solutions-Oriented Consulting

Firm Headquarters  
Redmond Town Center  
7525 166th Ave NE  
Suite D-215  
Redmond, Washington 98052

Serving the Western  
U.S.  
and Canada since  
1988  
Washington |  
425.567.1802  
Oregon |  
503.541.2543

September 25, 2017

**City of Pasco**  
c/o Precilla Andaya  
Public Works Department  
PO Box 293  
545 North 3rd Ave.  
Pasco, WA 99301

**REFERENCE: WATER UTILITY COST OF SERVICE/RATE/CAPITAL EXPANSION FEE ANALYSIS**  
Work effort through September 22, 2017 includes: 1) Review and update of model provided by City. 2) Preparation for and review with client at onsite meeting in Redmond. 3) Project management and QC. Details on project budget can be found on the enclosed invoice.  
If you have any questions regarding this invoice, please call me at (425) 336-4157.

Sincerely,  
  
Angie Sanchez Virnoche  
Managing Principal  
Enclosure

that has been completed to date, the work scheduled for the next 30-day invoice period, and the key milestones outside of 30 days. *See examples below.*

### Benefits/Project Relevance

Our emphasis on communication and transparency results in a better managed project that will save time. We are proud to promote that nearly 100 percent of our projects meet and exceed expectation for adherence to scope, budget and schedule. In many cases, our clients will ask us to amend a given contract to include additional tasks or services in recognition of the value we have added for their organizations.

### Deliverable(s)

- Annual initiation meeting
- Monthly progress meetings
- Monthly status report and invoice

### Scheduling and Resources

- Duration: N/A
- Task Dependencies: None

City of Pasco, Public Works Dept.										Invoice number		" Draft "	
Project 2886 PASCO WATER UTILITY COST OF SERVICE/RATE/CAPITAL EXPANSION FEE ANALYSIS										Date		09/25/2017	
<b>Pre-Billing Worksheet</b>													
2590 Pasco Water Utility Cost of Service/Rate/Capital Expansion Fee Analysis													
Task 1-Complete Cost of Service										Phase Status: Active			
WIP - Bill As Time & Expense										To Bill			
Billing Type: Time & Expense										Units			
Billing Cutoff: 09/22/2017										Amount			
Date										Units			
Rate										Amount			
Subtotal										1.00 250.00 250.00 1.00 250.00			
Principal													
Angie Sanchez													
Redmond Office													
prep and meeting time for model review													
Subtotal										1.00 250.00 250.00 1.00 250.00			
Project Consultant													
Brooke Tack													
Redmond Office													
08/31/2017 2.50 135.00 337.50 2.50 337.50													
Provider updated model provided by City in preparation for client meeting													
Client meeting to discuss update													
Subtotal										2.50 337.50 337.50 2.50 337.50			
Labor total										3.50 587.50 587.50 3.50 587.50			
Phase Summary													
Reported % Complete										Date Entered			
Contract Spent % Billable % Remaining % WIP To Bill													
Labor 4,800.00 3,622.50 74 2,435.00 60 1,625.00 40 587.50 14 587.50													
Total 4,800.00 3,622.50 74 2,435.00 60 1,625.00 40 587.50 14 587.50													
<b>Task 2-Rate Design</b>													
Billing Type: Time & Expense										Phase Status: Active			
WIP Status										To Bill			
Billing Cutoff: 09/22/2017										Units			
Date										Amount			
Subtotal										0.00			
total										0.00			
Phase Summary													
Reported % Complete										Date Entered			
Contract Spent % Billable % Remaining % WIP To Bill													
Labor 4,800.00 4,970.00 100 4,970.00 100 0.00 0 0.00 0													
Total 4,800.00 4,970.00 100 4,970.00 100 0.00 0 0.00 0													
<b>Task 3-Capital Expansion Fee Update</b>													
Billing Type: Time & Expense										Phase Status: Active			
WIP Status										To Bill			
Billing Cutoff: 09/22/2017										Units			
Date										Amount			
Subtotal										0.00			
total										0.00			

## PROJECT SCHEDULE

Completion of the analysis is based on a variety of issues. A specific project schedule that meets the City's needs will be developed during the initial project meeting each year. However, the following is an estimate of the

timeline involved. The below schedule can be modified as needed to fit the City's needs and deadlines.

The project timeline would be different in years when the City requests us to perform the rate design tasks (Tasks 2a-b).

Figure 1: Estimated Typical Timeline (Duration = 177 calendar days; 128 work days)

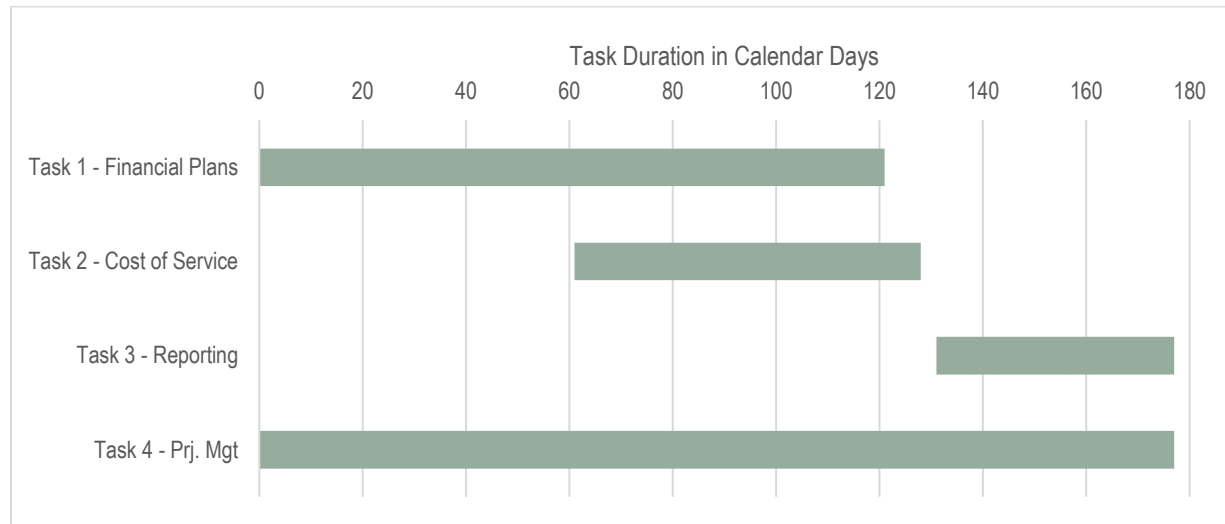
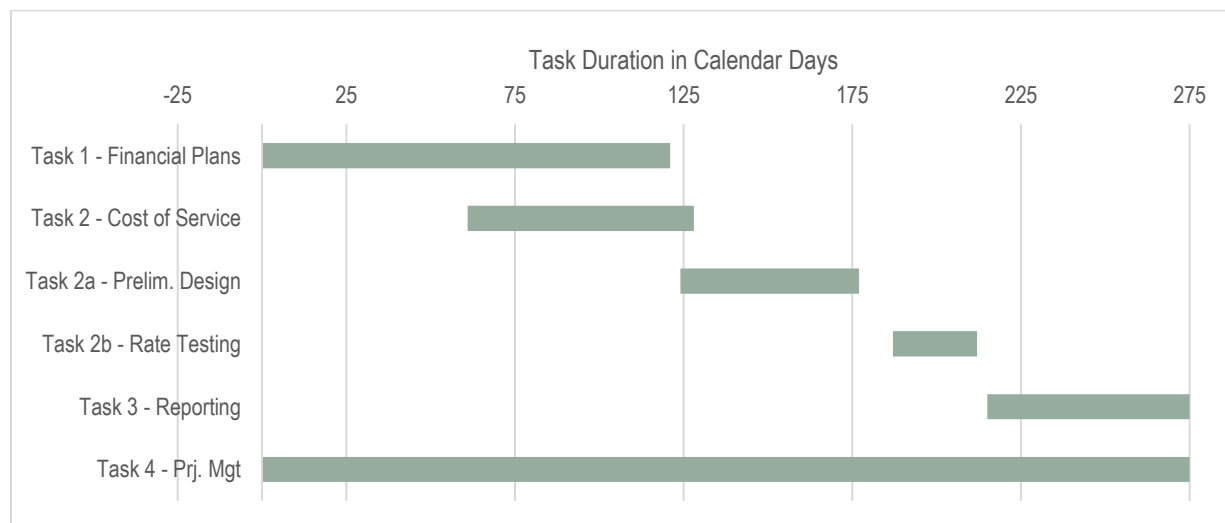


Figure 2: Estimated Timeline w/ Tasks 3-5 Included (Duration = 218 work days)



## DELIVERABLES

The following table summarizes the previously identified project deliverables by task. The actual configuration of tasks and deliverables may vary from year to year as determined during the annual initiation meeting in Task 4.1.

Summary of Deliverables		
1- Cash Revenue Requirements (Annually, all utilities)	2-Cost-of-Service (Annually, for one utility)	2a)-Preliminary Rate Design (As needed, one utility)
<ul style="list-style-type: none"> <li>Information request</li> <li>Financial planning models (x3)</li> <li>Review meeting (1x meeting)</li> <li>Summary memoranda (x3)</li> <li>Presentation materials</li> <li>Presentation of findings (1x meeting)</li> </ul>	<ul style="list-style-type: none"> <li>Information request</li> <li>Cost-of-service model (x1)</li> <li>Review meeting (1x meeting)</li> <li>Summary memoranda (x1)</li> </ul>	<ul style="list-style-type: none"> <li>Information request</li> <li>Rate review workshop (1x meeting)</li> <li>Summary of alternative rate design</li> <li>Final rate review workshop (1x meeting)</li> </ul>
2(b)- Rate Testing (As needed, one utility)	3-Reporting (As needed, one utility)	4-Project Management
<ul style="list-style-type: none"> <li>All models used for rate testing</li> <li>Review workshop (1x meeting)</li> <li>Summary report of testing results</li> </ul>	<ul style="list-style-type: none"> <li>Draft report</li> <li>Final report</li> <li>Review and training workshop (1x meeting)</li> </ul>	<ul style="list-style-type: none"> <li>Annual initiation meeting</li> <li>Monthly progress meetings</li> <li>Monthly status report and invoice</li> </ul>

## MINIMUM QUALIFICATIONS

The following table summarizes our experience against the City's stated minimum qualifications identified on RFP page . We have also referenced the benefits offered as a result of our experience.

Minimum Qualification	Experience	Benefit to the City
The firm must be licensed to do business in the State of Washington	FCS GROUP was founded and incorporated in the State of Washington in 1988. Our Washington State Business License Number is 601-098-550. We maintain offices in the cities of Spokane and Redmond, Washington, and elsewhere.	Having completed hundreds of rate studies in Washington, we are intimately familiar with utility policy, finance and management challenges throughout the State, but more importantly the issues faced by the City of Spokane.
The firm must have demonstratable experience in analyzing and recommending utility billing rates.	FCS GROUP has performed over 3,500 financial engagements for government agencies, including more than 2,500 utility billing rate studies for cities and special purpose districts throughout the western U.S.	As an independent and objective consulting firm with over 30 years' experience in utility finance we maintain the necessary expertise to deliver a long-term, sustainable financial solution that will help you achieve your performance goals.
Ideal respondents will have authored or be otherwise able to point specifically to relevant guidance set in print.	Our proposed project staff are not only active members of industry associations (AWWA, WFOA, APWA), but also engaged participants of committees tasked with establishing guiding standards and policies for rate development.	Both Jason Mumm and Angie Sanchez Virnoche are contributing authors to the AWWA M1 Manual and present on rate development topics at industry association conferences and workshops, meaning the City has access to true experts in the field.

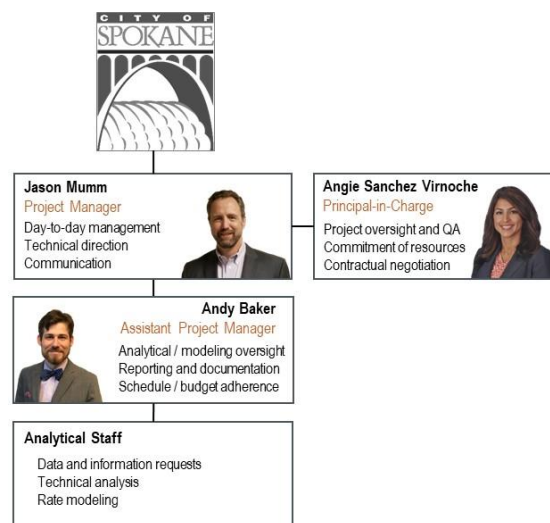
# MANAGEMENT PROPOSAL

## PROJECT MANAGEMENT

### Project Team Structure

Our project team was selected for their directly relevant experience working with municipalities like yours. Jason Mumm will anchor your team as the project manager and a nationally-recognized expert in water, wastewater and stormwater rate development. Among Jason's project experience, he has recently been supporting the City of Spokane in defense of a legal matter concerning the assessment of outside-city water rates. Andy Baker will serve as assistant project manager. Angie Sanchez Virnoche will serve as principal-in-charge. The organization chart summarizes roles, responsibilities and lines of authority. Jason will have final accountability for the proposed work. Requested 2-page resumes can be found in the appendix.

In the longer term, we anticipate shifting the day-to-day oversight of the work to Angie Sanchez Virnoche and our Spokane office. However, for the initial phases, we believe that Jason's experience with the City, serving as an expert in ongoing legal matters related to the water utility, is critical to establishing the methodologies, frameworks, and processes to be followed during the first three-year contract term and any subsequent update cycles.



### Internal Controls

 <b>Resources</b> FCS GROUP maintains a staff of 35 individuals within the PNW region. Among those, we have committed three individuals for the duration of this project. Additional analytical staff will be made available, as necessary. Staff will work from offices in Spokane, Redmond, Washington and Boulder, Colorado.	 <b>Work Quality</b> FCS GROUP is committed to delivering both technically sound and state-of-the-industry work product. As the principal, Angie will ensure compliance with our company QA/QC program, reviewing all deliverables for both technical accuracy and alignment with overall project objectives.	 <b>Cost Control</b> FCS GROUP uses a real-time project management solution to ensure proactive identification of any project schedule and budget issues. Individual deliverable progress is tracked by both the technical leads and project managers, with monthly project status reports to communicate any issues.	 <b>Responding to Issues</b> Open and active communication serves to mitigate most study needs. <b>Jason and Angie will engage directly with the City within 48 hours to address any challenges that might arise during the project.</b> Jason and Angie will also work with the City to address or negotiate any necessary scope changes.
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### Management and Organizational Capabilities

Jason will perform day-to-day project management, client communication and technical direction of your program. He will be supported by Andy Baker who direct data management, analysis and rate modeling. We anticipate using two to four project analysts during the initial contract term. They will be assigned at project execution. Jason, Angie and Andy are the core of this project team and will be available for the duration of the project term. If at any point additional staff or subject matter experts are required, we will seek the approval of the City to include those individuals.

**The strength of our team rests in the depth of our utility rate study management experience, supported by our local capacity and ability to deliver innovative and technically sound cost recovery solutions.**

FCS GROUP maintains the capacity to address this project over the initial three-year contract term and a potential two additional three-year terms.

## Staff Qualifications / Experience

**Jason Mumm**  
Program Director



FCS GROUP

Jason Mumm is an FCS GROUP Executive Consultant with 23 years of experience providing financial and rate development services in a variety of capacities for water, wastewater, reclaimed water, stormwater and solid waste utilities. He has performed over a hundred individual utility rate studies for local governments throughout the country in 20+ states including assignments in Washington for Ocean Shores, Alderwood, Pierce County, and Spokane.

Jason has also contributed much to the advancement of industry thinking in the field of finance and economics, including:

**Affordability**—developed new methods for measuring financial burden in EPA regulatory enforcement cases and his work has been promoted and advanced by the US Conference of Mayors.

**Cost of Capital**—led the industry in gaining an advanced understanding of the cost of capital to local government utilities, especially the cost inherent in raising equity capital through retained earnings.

**Wholesale Rates**—primary author of the most recent edition of the AWWA Manual M1 on the topic of calculating wholesale rates. The manual is AWWA’s primary set of guidelines for water providers in determining their user charges with cost-of-service methods.

**Regionalization**—led several studies on regionalizing local utilities and published many industry papers on the subject describing the conditions that need to exist in order for regionalization to work as a means of reducing costs.

**Angie Sanchez Virnoche**  
Principal-in-Charge



FCS GROUP

Angie Sanchez Virnoche is an FCS GROUP principal and shareholder with 26 years of experience providing financial and rate development services in a variety of capacities for water, wastewater, stormwater, solid waste and electric utilities.

Her project work includes policy development, multi-year financial plans and rate strategies, cost-of-service equity studies, rate design restructuring and modernization, capital funding prioritization, renewal and replacement funding evaluations, cost benefit analyses, reserve analysis, and community education and involvement. Angie frequently presents results to diverse audiences such as citizen rate advisory groups and boards, commissions and councils to engage and educate participants in the benefits, costs, and decision-making process to achieve consensus and move towards objective fulfillment.

Angie provides financial services to clients throughout the United States and serves on the American Water Works Association National Rates and Charges Subcommittee and is a contributing author of the AWWA M1 manual on Principles of Water Rates, Fees and Charges. She also serves on the Environmental Protection Agency (EPA) Environmental Finance Advisory Board advising on issues related to fiscal sustainability, conservation, affordability and other issues brought forth to the Board from across the United States. Angie was recently participated in the 2019 Water for Texas Conference, as a panelist on the topic of, “*Winning the Rate Race: How Much Should I Charge and How Do I Figure it Out?*”



**Andy Baker**

Assistant Project Manager

FCS GROUP



Andy Baker is a utility finance consultant with a background in surface water engineering. He has 13 years of consulting experience, serving water, wastewater, stormwater, and non-potable water utilities across the country. He leverages his experience in capital project planning and execution to bring effective insights to his clients' financial challenges. He specializes in complex financial modeling, including cost-of-service analysis, water budget-based rates, and GIS-based modeling of affordability impacts and service area changes. He has presented nationally on affordability issues for utilities under consent decrees.

## Why FCS GROUP and This Team

FCS GROUP is best suited to provide these services because:

**We support strong, solvent utilities...**by optimizing your financial performance and supporting your mission to deliver safe, reliable service.

**We promote sustainability and transparency...**by developing tailored solutions, resilient financial policies and effective communication programs.

**We build public trust...**by arming staff and elected officials with the necessary information and details to adequately engage with customers, stakeholders and citizen groups.

**We deliver defensible solutions...**by delivering unrivaled depth of analytical rigor that serves to establish confidence in both our results and your strategic decision making.

**We earn trust...**by honoring our commitment to your project scope, schedule and budget requirements—made possible by the depth and capacity of our team.

**We provide focused consulting services...**and while our tailored rate model solution is highly functional, it's not an unwieldy "black box."

**We have an unrivaled depth and breadth of experience...**FCS GROUP's 35-person technical team includes professionals with backgrounds in public administration, management, finance, accounting, economics, and engineering disciplines. These analytically-focused perspectives equip us to address government finance, IT, and operational challenges while maintaining fixed attention on organizational sensitivities, policy drivers, and stakeholder priorities.

**We are industry leaders...**FCS GROUP personnel are active leaders, participants, and contributors within the professional associations that establish the standards for the effective management of resources and set the guidelines for achieving fiscally sustainability utilities—including the American Water Works Association (AWWA), American Public Works Association (APWA), and Water Environment Federation (WEF). They are also regularly presenters at the WA Finance Officers Association (WFOA) and Association of WA Cities (AWC) conferences on topics concerning utility finance and rate development. ***In fact, Jason and Angie are both contributing authors to the AWWA M1 Manual which serves as the definitive industry standard on utility rate development methodology.***

**Local experience...**FCS GROUP staff, including members of our project team, have actively been involved with the City of Spokane and dozens of other eastern Washington cities for decades. ***In fact, Jason Mumm has been supporting the City in defense of the City in an outside-city rate case. Additionally, Angie supports our eastern Washington clients from our Spokane office.***

## EXPERIENCE OF THE FIRM

FCS GROUP, established in 1988, provides utility rate and fee consulting, asset management consulting, financial planning and analysis, and economic services to public sector clients including city and county governments, municipal corporations, ports, special purpose districts, and state agencies. As an independent and objective firm, FCS GROUP has delivered high-quality, cost-effective consulting services in over 3,500 engagements and served more than 550 clients. Our staff of 35 serves clients throughout the western United States from locations in Spokane, Washington, Redmond, Washington, Lake Oswego, Oregon, and Boulder, Colorado.



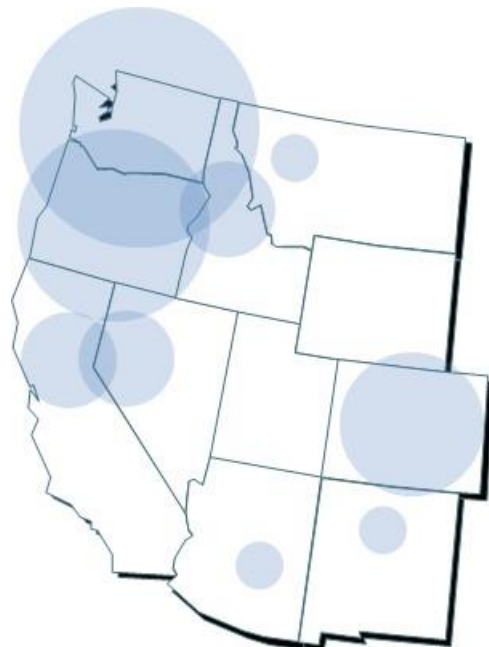
Our **Utility Rate and Fee Consulting** practice serves water, sewer, stormwater, reclaimed water, solid waste, electric, and transportation clients. We have performed more than 2,250 utility finance and rate development projects ranging from defining revenue requirements and building comprehensive financial modeling tools to performing long-term capital management strategies and developing full cost-of-service rates.

**With over 2,250 utility rate studies, FCS GROUP has performed engagements throughout the West for a wide range of city, county and special purpose district clients.**

Our **Financial Planning and Analysis** consultants specialize in helping local and state governments, regional agencies and public safety entities address and solve issues involving policy objectives, public finance and cost recovery, and organizational performance.

Our **Economic Services** group provides a unique combination of skills and knowledge about public sector infrastructure in order to support municipal goals of attracting business, creating jobs, enhancing public space and forming economically vital, sustainable communities.

Our **Asset Management Consulting** practice offers a wide range of asset management services in order to optimize the life-cycle cost of utility assets. We assist clients with size appropriate technology solutions, business process documentation, strategic asset management gap closure, critical asset identification, asset management plan (AMP) creation, asset life-cycle cost tracking and the development of capital R&R prioritization helping staff move from a reactive to a proactive asset management program approach.





## Select Washington State Experience

FCS GROUP's track record of working with municipalities and other levels of government on equivalent engagements extends across three decades for clients representing nearly every imaginable form of government and includes utilities both large and small. In working with hundreds of utilities, we have earned a reputation for providing tailored and targeted financial analyses and modeling tools that stand the test of time. We have also established a high benchmark for engaging with client staff, elected officials, and the public to educate and build consensus. The following table summarizes a selection of rate studies completed in the State of Washington.

Client	Policy Evaluation	Revenue Requirements	Cost of Service	Connection Charges	Water	Sewer	Stormwater
Airway Heights, WA	✓	✓	✓	✓	✓	✓	
Arlington, WA	✓	✓	✓	✓	✓	✓	✓
Auburn, WA	✓	✓	✓	✓	✓	✓	✓
Bainbridge Is, WA	✓	✓	✓	✓	✓	✓	✓
Battle Ground, WA	✓	✓		✓	✓	✓	✓
Bellingham, WA	✓	✓	✓	✓	✓	✓	✓
Bothell, WA	✓	✓	✓	✓	✓	✓	
Bremerton, WA	✓	✓	✓	✓	✓	✓	✓
Camas, WA	✓	✓	✓	✓	✓	✓	✓
Carnation, WA	✓	✓	✓	✓	✓	✓	
Cashmere, WA	✓	✓	✓	✓	✓	✓	
Centralia, WA	✓	✓	✓	✓	✓	✓	✓
Chehalis, WA	✓	✓	✓	✓	✓	✓	✓
Cheney, WA	✓	✓	✓		✓	✓	
College Place, WA	✓	✓	✓	✓	✓	✓	✓
Des Moines, WA	✓	✓					✓
Duvall, WA	✓	✓	✓	✓	✓	✓	✓
Edgewood, WA	✓	✓		✓		✓	✓
Edmonds, WA	✓	✓	✓	✓	✓	✓	
Enumclaw, WA	✓	✓	✓	✓	✓	✓	✓
Everett, WA	✓	✓	✓	✓	✓	✓	✓
Fife, WA	✓	✓	✓	✓	✓	✓	✓
Gig Harbor, WA	✓	✓			✓		
Issaquah, WA	✓	✓		✓	✓		✓
Kennewick, WA	✓	✓	✓		✓	✓	✓
Kent, WA	✓	✓	✓	✓	✓		✓

Client	Policy Evaluation	Revenue Requirements	Cost of Service	Connection Charges	Water	Sewer	Stormwater
Kirkland, WA	✓	✓	✓	✓	✓	✓	✓
Lacey, WA	✓	✓	✓	✓	✓	✓	✓
Longview, WA	✓	✓		✓	✓		✓
Lynnwood, WA	✓	✓	✓	✓	✓	✓	✓
Mercer Island, WA	✓	✓	✓	✓	✓		
Monroe, WA	✓	✓	✓	✓	✓	✓	✓
Mountlake Terr., WA	✓	✓		✓	✓	✓	✓
North Bend, WA	✓	✓	✓	✓	✓	✓	✓
Olympia, WA	✓	✓	✓	✓	✓		✓
Orting, WA	✓	✓	✓	✓	✓	✓	✓
Pasco, WA	✓	✓	✓		✓	✓	✓
Port Angeles, WA	✓	✓	✓	✓	✓	✓	
Port Townsend, WA	✓	✓	✓	✓	✓	✓	
Poulsbo, WA	✓	✓			✓	✓	
Redmond, WA	✓	✓	✓	✓	✓	✓	✓
Renton, WA	✓	✓	✓	✓	✓	✓	✓
Richland, WA	✓	✓	✓	✓	✓	✓	
Roslyn, WA	✓	✓			✓	✓	
Seattle, WA	✓			✓	✓		
Shelton, WA	✓	✓	✓	✓	✓	✓	
Snohomish, WA	✓	✓		✓	✓	✓	✓
Snoqualmie, WA	✓	✓	✓	✓	✓	✓	✓
Spokane County, WA	✓	✓	✓	✓		✓	
Spokane, WA	✓				✓		
Stanwood, WA	✓	✓	✓	✓	✓	✓	✓
Steilacoom, WA	✓	✓	✓	✓	✓	✓	
Sumner, WA	✓	✓	✓	✓	✓	✓	✓
Tacoma, WA	✓	✓	✓	✓	✓		
Vancouver, WA	✓	✓	✓	✓	✓	✓	
Walla Walla, WA	✓	✓	✓	✓	✓	✓	✓
Washougal, WA	✓	✓	✓	✓	✓	✓	✓
Yakima, WA	✓	✓	✓	✓	✓	✓	

# REFERENCES

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The following project references promote recent experience in the State of Washington, as requested. Please refer to the 2-page resumes in the appendix for a summary of other select projects. Additional references are available upon request.

## City of Spokane, WA Outside City Rate Analysis December 2017 – Present

**Key Personnel:** Jason Mumm

**Reference:** Sam Faggiano, City Attorney  
(509) 625-6287, sfaggiano@spokanecity.org

FCS GROUP, under the direction of Jason Mumm, has served as the City's expert for court proceedings related to the City's policies for rates charged to outside-city customers.

The details of the case, Jason's analyses and findings, and related matters are confidential while the case is in progress. However, Sam Faggiano from the City Attorney's office should be able to provide a reference as to the quality of the work and the effectiveness of the findings to date.

In essence, the analysis provides the City with cost-of-service justification for its 1.5x rate differential between inside and outside-city customers of the water system. Items considered in the analysis included:

- Rates of return to the City for investments made on behalf of outside-city services;
- Differences in the levels of service provided, including pumping cost differences;
- Differences in the sharing of non-rate revenues;
- Differences in demand characteristics.

*Please refer to the City Attorney's office for further information.*

## City of Pasco, WA Water, Wastewater, Stormwater, Irrigation Water, and Processed Water Reuse Facility Rate Study | 2016 - Present

**Key Personnel:** Angie Sanchez Virnoche

**Reference:** Dave Zabell, City Manager  
(509) 545-3404, dzabell@pasco-wa.gov

FCS GROUP has performed five separate projects for the City of Pasco including utility rate studies, capital expansion fee updates and a process water reuse facility cost allocation study. Highlights included:

- Conducted Rate studies for water, wastewater, stormwater, and irrigation utilities along with a cost-of-service analysis for both the water and wastewater utilities.
- Water and wastewater studies evaluated impacts of different funding mechanisms for a seven-year capital plan of over \$35 million for water and \$53 million for wastewater.
- Established a phase-in strategy for annual system reinvestment fiscal policy targets.
- Developed an approach for equitable allocation of combined fund balances to each utility.
- Created a methodology for allocation of process water reuse facility costs to customers based on infrastructure of benefit and differing strength parameters.

**City of Walla Walla, WA**  
**Water, Sewer, and Stormwater Utility Rate and**  
**CFC Study | 2005 - Present**

**Key Personnel:** Andy Baker

**Reference:** Ki Bealey, Public Works Director  
 (509) 527-4463, kbealey@wallawalla.gov

FCS GROUP has completed nearly 20 separate and distinct projects for the City of Walla Walla since 2005 including completed a comprehensive rate and capital facilities charge update and evaluations for water, sewer, stormwater and solid waste utilities. Most recently, since 2017 we have performed a wholesale water rate analysis, low-income rate analysis, analysis of customer bill impacts and a comparative rate survey, revenue sufficiency and CFC analyses, as well as participation in multiple meetings with the City Council and Council subcommittees in support of findings. Key recommendations were adopted. Highlights included:

- Performed the previous four City rate studies.
- Established fiscal policy targets for reserves and annual system reinvestment.
- Evaluated impacts of different funding and timing for \$75.5 million in capital projects.
- Prepared six-year cost-of-service rate transition plan to reach cost of service by class and minimize customer impacts.
- Developed a single-family conservation rate structure.
- Prepared issue paper on conservation rate structures for multi-family/commercial customers.
- Developed options for senior/low-income/disabled discount rate programs.
- Facilitated workshops with City staff and Council on the rate-setting process.
- Updated 2016 financial plan in support of water, sewer, stormwater bond issue.
- Developed connection charges for the sewer utility by basin.

**City of Lynnwood, WA**  
**Water, Sewer and Stormwater Rate Studies**  
**2006 – Present**

**Key Personnel:** Angie Sanchez Virnoche

**Reference:** Bill Franz, Public Works Director  
 (425) 670-6657, wfranz@co.lynnwood.wa.us

FCS GROUP has performed nine independent public finance and rate engagements for the City of Lynnwood primarily focused on water, sewer, and stormwater utility cost recovery. Highlights included:

- Performed the previous four City rate studies.
- Established fiscal policy targets for reserves and annual system reinvestment.
- Evaluated impacts of different funding and timing for \$75.5 million in capital projects.
- Prepared six-year cost-of-service rate transition plan to reach cost of service by class and minimize customer impacts.
- Developed a single-family conservation rate structure.
- Prepared issue paper on conservation rate structures for multi-family/commercial customers.
- Developed options for senior/low-income/disabled discount rate programs.
- Facilitated workshops with City staff and Council on the rate-setting process.
- Updated 2016 financial plan in support of water, sewer, stormwater bond issue.
- Developed connection charges for the sewer utility by basin.

**City of Stanwood, WA**  
**Water, Sewer and Stormwater Rate Studies**  
**2008- Present**

**Key Personnel:** Angie Sanchez Virnoche

**Reference:** David Hammond, Finance Director  
 (360) 629-2181 David.hammond@ci.stanwood.wa.us

FCS GROUP has performed eight studies for the City of Stanwood since 2008, including a water, wastewater and drainage utility rate study. Major task elements have consisted of:

- Fiscal policy evaluation, incorporating a phased-in system reinvestment funding plan, introducing debt management policies, and establishing a rate stabilization reserve.
- Capital funding plan and long-term rate adjustment strategy
- Stormwater cost of service to evaluate customer class cost equity; alternative rate structures were evaluated, with the single-family residential class moving to an inclining block usage rate schedule from a single volume rate for all usage.
- Comprehensive Water Master Plan financial component, including a historical performance review, capital funding plan, rate forecast, and customer affordability analysis.
- Evaluated funding alternatives for a storm water separation project including level of potential grant funding, revenue bond financing and cash financing.
- Converted existing drainage rate structure into an ERU based design.
- Development of water, wastewater and drainage utility connection charges.

**City of Camas, WA**  
**Water, Sewer, Stormwater**  
**and Solid Waste Rate Study | (2003- Present)**

**Key Personnel:** Angie Sanchez Virnoche

**Reference:** Steve Wall, Public Works Director  
 (360) 817-7899, swall@cityofcamas.us

FCS GROUP has performed 16 separate and distinct utility finance engagements for the City of Camas since 2003 including rate studies for water, sewer and stormwater utilities. Highlights include:

- Performed 2008 study for water, sewer, stormwater and solid waste. In 2013, FCS GROUP performed a solid waste rate study update as part of an overall water, sewer and stormwater study. A revenue requirement update for water and sewer was completed in 2015. Most recent work includes a 2018 cost of service rate study for the water and sewer utilities and a revenue requirement update for the stormwater utility.
- Studies included development of a self-supporting fixed-year utility financial plan and rate strategy.
- Analysis included a 5-year and 20-year financial forecast, annual rate strategy for each utility and calculation of area specific and system wide SDCs for water, sewer and stormwater utilities.
- Established fund balance minimum targets, capital funding plan for \$186 million in capital projects and \$108 million in new debt.
- Single-family rate options included a three-block conservation rate structure and a sewer volume-based rate option.
- Sensitivity analyses were provided that evaluated rate impacts resulting from incorporating a low-income senior disabled rate at various levels of participation.

**City of Auburn, WA**  
**Water, Wastewater and Surface Water Rate**  
**Studies | 2008 - Present**

**Key Personnel:** Angie Sanchez Virnoche

**Reference:** Bob Brooks  
 Financial Planning Manager  
 (253) 804-5017, bbrooks@auburnwa.gov

FCS GROUP has completed 14 studies for the City of Auburn since 2008, including a comprehensive utility rate study in 2017 for the City's water, sewer, and storm drainage utilities. Tasks included:

- Multi-year revenue needs assessment and rate strategy.
- Cost-of-service analysis to determine equitable cost recovery for individual customer classes, including wholesale customers.
- Design of conservation-based rate structures, including multi-tiered rates for single family residential and seasonal rates for non-residential.
- Update of capital connection charges and miscellaneous fees.
- Preparation of a financial chapter for inclusion in the Comprehensive Water System Plan.
- Development of a white paper regarding newly purchased water costs, outlining feasible options, methods of recovery and impacts.
- Recently completed a comprehensive cost of service rate update for all three utilities (including wholesale). The study evaluated phasing-in cost of service results, modifying stormwater credits, assessing meter-based water monthly charges, simplifying rate structures and modifying storm water rate structure towards a per ERU design.

**City of Bremerton, WA**  
**Water, Wastewater and Stormwater Rate Studies**  
**2012 – Present**

**Key Personnel:** Angie Sanchez Virnoche

**Reference:** Tom Knuckey, P.E.,  
 Director of Public Works and Utilities  
 (360) 473-2376 thomas.knuckey@ci.bremerton.wa.us

FCS GROUP has performed over ten separate and distinct projects for the City of Bremerton since 2012 including a 2017 water and sewer rate study update. Highlights include:

- Rate study for water, wastewater, and stormwater utilities along with a benchmark analysis for the water and wastewater utilities.
- Rate study included development of a self-supporting six-year financial plan and rate strategy for each utility.
- Sensitivity analyses were provided that evaluated rate impacts resulting from reduced revenue due to conservation, alternative capital plans, varying levels of system reinvestment and payment in-lieu of tax levels.
- Benchmarking analysis provided a quantitative comparative assessment of performance to national, regional and specific state agencies.
- Extensive public involvement throughout the study with a five-member utility advisory committee, public meetings, and community outreach.
- Assisted the City in developing a dedicated rate study web page and bill calculator through which the community was updated on study progress.
- Assist the City negotiate water and sewer rates for the Puget Sound Naval Shipyard.
- FCS GROUP performed an asset management evaluation gap analysis for the city of Bremerton's water utility assets, including treatment, distribution and storage. The evaluation was used to strategically prioritize gap closures and a 3-year Tactical Action Plan was delivered to identify the level of effort to close those business area gaps.

## RELATED INFORMATION

FCS GROUP has not had a contract terminated for default in the last five (5) years. We have never been terminated for default in our 30-year history.

## COST PROPOSAL

The annual budget for a typical year of the update process is shown in Exhibit 1, below. Additional budget would be necessary for the infrequent addition of Tasks 2a and 2b (see additional budget needs in Exhibit 2). We suggest including a 20% contingency in the budgets allotted for the work to account for unexpected events – we have included the contingency separately in the figures below for additional information.

**Exhibit 1: Estimated Budget for Typical Year**

Task No./Name	Labor Hrs.	Cost
Task 1 – Revenue Requirements Financial Plan	358	\$57,600
Task 2 – Cost-of-Service	260	\$44,600
Task 3 – Reporting	110	\$20,800
Task 4 – Project Management	26	\$7,100
Total Labor Costs	754	\$130,100
Expense Estimate		\$8,000
<b>Total</b>		<b>\$138,100</b>
Total w/ Contingency (information only)	904	\$165,700

**Exhibit 2: Estimated Additional Budget for Tasks 2a and 2b**

(these tasks will only be performed as needed)

Task	Labor Hrs.	Cost
Task 2a – Preliminary Design	147	\$50,300
Task 2b – Rate Testing	103	\$21,800
Total Labor Cost	250	\$72,100
Expense Estimate		\$4,000
<b>Total</b>		<b>\$76,100</b>
Total w/ Contingency (information only)	300	\$91,320

## APPENDIX A – RÉSUMÉS





**To:** Samantha Johnson      **Date:** August 13, 2019  
**From:** Jason Mumm  
**CC:** Angie Sanchez-Virnoche  
**RE** Responses to Inquiries of August 12, 2019 for RFP#5115-19

Thank you for your email of August 12, 2019. You requested the following items in support of the City's evaluation of our proposal for the Utility Billing Rate Study (RFP #5115-19).

1. Hourly rates for project members pertaining to the cost proposal on our proposal at pg. 21.
2. Timeline clarification: do you anticipate FCS could complete initial annual services by July 31, 2020?

In response to Item #1, above, please find our 2019 standard hourly rates attached to this memorandum. In addition, the hourly rates for the project members described in our proposal is as follows:

Resource Name	Standard Hourly Labor Rate
Jason Mumm	\$260
Angie Sanchez-Virnoche	\$260
Andy Baker	\$185
Analytical Staff (Dependent on Level)	\$130 - \$160

In response to Item #2, above, the answer depends on the level of services required for the initial annual services. See below:

- Assuming all tasks inclusive of Task 2a and 2b – we can complete all services by July 31, 2020 so long as we are able to start work by November 1, 2019. This schedule allows for 275 calendar days as outlined in Figure 2, pg. 8 of our proposal.
- Assuming there is no need for tasks 2a and 2b (a normal year) – we can complete the services by July 31, 2010 if we are able to start by February 1, 2020. This schedule allows for 180 calendar days per Figure 1, pg. 8 of our proposal.

**FCS GROUP**  
**2019 STANDARD FEE SCHEDULE**  
***Effective DECEMBER 15, 2018***

**LABOR**

<b><u>POSITION/TITLE</u></b>		<b><u>BILLING RATE</u></b>
Principals	Standard Rate	\$260
Senior Project Manager	Standard Rate	\$210
Senior Special Projects Manager	Standard Rate	\$200
Project Manager II	Standard Rate	\$185
Project Manager I	Standard Rate	\$175
Project Consultant	Standard Rate	\$160
Senior Analyst	Standard Rate	\$140
Analyst	Standard Rate	\$130

**Administrative and Technical Support**

Public Relations	\$155
Technical Writer/Graphic Artist	\$ 130
Administrative Support	\$ 85

**DIRECT EXPENSES**

Major direct expenses, such as travel, mileage, and lodging, will be charged at cost. Other expenses will not be directly charged unless by mutual agreement of the client and FCS GROUP and specific terms will be established in advance prior to expenditure and billing.

**SUBCONSULTANTS**

When applicable, subconsultants will be charged at invoiced cost plus 10%.

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YY)

8/27/2019

## PRODUCER

Shinstrom & Norman Inc.  
P.O. Box 638  
Kirkland, WA 98083  
(425) 827-6200

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## INSURERS AFFORDING COVERAGE

## INSURED

FINANCIAL CONSULTING SOLUTIONS  
GROUP, INC.  
7525 166TH AVE. NE, SUITE D-215  
REDMOND, WA 98052

INSURER A: **STARSTONE NATIONAL INSURANCE CO.**INSURER B: **NAIC: 25496**

INSURER C:

INSURER D:

INSURER E:

## COVERAGES

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

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$  BODILY INJURY (Per person) \$  BODILY INJURY (Per accident) \$  PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$  OTHER THAN EA ACC AUTO ONLY: AGG \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				WC STATU- TORY LIMITS OTH- ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
<b>A</b>	<b>OTHER</b> <b>PROFESSIONAL LIABILITY</b>	0955OB187APL CLAIMS MADE FORM	09/20/18	09/20/19	<b>\$2,000,000 EACH CLAIM</b> <b>\$4,000,000 AGGREGATE</b> <b>\$ 5,000 DEDUCTIBLE</b>

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

RETROACTIVE DATE: 7/26/1988

## CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

## CANCELLATION

CITY OF SPOKANE  
909 E. SPRAGUE AVE.  
SPOKANE, WA 99202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

8/27/2019

<b>PRODUCER</b> SHINSTROM & NORMAN INC PO Box 638 Kirkland, WA 98083 (425)827-6200		<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>	
<b>INSURED</b> FINANCIAL CONSULTING SOLUTIONS GROUP, INC. 7525 166TH AVENUE NE, STE #D-215 REDMOND, WA 98052		<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC#</b>
		INSURER A: <b>LIBERTY MUTUAL INS. CO.</b>	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

**COVERAGES**

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

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	BKW58035312	09/20/18	09/20/20	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	DAMAGE TO RENTED PREMISES (Ea occurrence)				\$ 1,000,000	
	<input type="checkbox"/> CLAIMSMADE <input checked="" type="checkbox"/> OCCUR	MED EXP (Any one person)				\$ 15,000	
		PERSONAL & ADV INJURY				\$ 1,000,000	
		GENERAL AGGREGATE				\$ 2,000,000	
		PRODUCTS - COMP/OP AGG				\$ 2,000,000	
GEN'L AGGREGATE LIMIT APPLIES PER:							
<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO-JECT	<input type="checkbox"/> LOC					
A		AUTOMOBILE LIABILITY	BAA58035312	09/20/18	09/20/20	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/> ANY AUTO	BODILY INJURY (Per person)				\$	
	<input type="checkbox"/> ALL OWNED AUTOS	BODILY INJURY (Per accident)				\$	
	<input checked="" type="checkbox"/> SCHEDULED AUTOS	PROPERTY DAMAGE (Per accident)				\$	
	<input checked="" type="checkbox"/> HIRED AUTOS						
<input checked="" type="checkbox"/> NON-OWNED AUTOS							
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
A		EXCESS/UMBRELLA LIABILITY	USO58035312	09/20/18	09/20/20	EACH OCCURRENCE	\$ 2,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE	AGGREGATE				\$ 2,000,000	
						\$	
	<input type="checkbox"/> DEDUCTIBLE					\$	
	<input type="checkbox"/> RETENTION \$					\$	
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	BKW58035312 WASH STOP GAP	09/20/18	09/20/20	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	E.L. EACH ACCIDENT				\$ 1,000,000	
	If yes, describe under SPECIAL PROVISIONS below	E.L. DISEASE - EA EMPLOYEE				\$ 1,000,000	
	OTHER	E.L. DISEASE - POLICY LIMIT				\$ 2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

**RE: OPERATIONS**

THE CERTIFICATE HOLDER(S) ARE INCLUDED AS PRIMARY ADDITIONAL INSURED PER ATTACHED FORM CG8810 AND INCLUDES WAIVER OF SUBROGATION.

**CERTIFICATE HOLDER**

CITY OF SPOKANE  
909 E. SPRAGUE AVE.  
SPOKANE, WA 99202

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### INDEX

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ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"	6
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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

#### A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

#### B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
  - (a) Less than 52 feet long; and
  - (b) Not being used to carry persons or property for a charge.

#### C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

#### D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:
  - a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.



- b. The last paragraph of subsection 2. Exclusions is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

2. Paragraph 6. under Section III - Limits Of Insurance is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:

- a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

- b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage) - Paragraph 9.a. of Definitions is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

#### E. MEDICAL PAYMENTS EXTENSION

If Coverage C Medical Payments is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. Insuring Agreement of Section I - Coverage C - Medical Payments, Subparagraph (b) of Paragraph a. is replaced by the following:

- (b) The expenses are incurred and reported within three years of the date of the accident; and

#### F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. Under Supplementary Payments - Coverages A and B, Paragraph 1.b. is replaced by the following:

- b. Up to \$3,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

#### G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under Section II - Who Is An Insured is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

- a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or



- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
- (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
  - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
  - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
    - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
    - (b) The construction, erection, or removal of elevators; or
    - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. Duties In the Event Of Occurrence, Offense, Claim Or Suit under Section IV - Commercial General Liability Conditions.

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- d. "Bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

#### H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

- a. The following is added to Paragraph a. Primary Insurance:

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph b. **Excess Insurance**:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. **ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. **Duties In The Event Of Occurrence, Offense, Claim or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in Section III - **Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. **WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE  
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph 2.a.(1) of Section II - **Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and

advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

**K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES**

Paragraph 3. of Section II - Who Is An Insured is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
  - d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

**L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES**

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 6. Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

**M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II - Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

**N. LIBERALIZATION CLAUSE**

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

**O. BODILY INJURY REDEFINED**

Under Section V - Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.



**P. EXTENDED PROPERTY DAMAGE**

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

**a. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU**

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 8. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

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235

of 262

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## Washington State Department of Revenue

[Services](#)[Business Lookup](#)[FCS GROUP](#)

## License Information:

[New search](#)[Back to results](#)**Entity name:** FINANCIAL CONSULTING SOLUTIONS GROUP, INC.**Business name:** FCS GROUP**Entity type:** [Profit Corporation](#)**UBI #:** 601-098-550**Business ID:** 001**Location ID:** 0002**Location:** Active**Location address:** 7525 166TH AVE NE STE D215  
REDMOND WA 98052-7871**Mailing address:** 7525 164TH AVE NE STE D215  
REDMOND WA 98052-7807**Excise tax and reseller permit status:** [Click here](#)**Secretary of State status:** [Click here](#)

## Endorsements

[Filter](#)

1 of 2

Endorsements held at this location	License #	Count	Details	Status	Expiration date	First issuance
<a href="#">Bainbridge Island General Business - Non-Resident</a>	45707			<a href="#">Active</a>	Jul-31-2020	Mar-27-2018
<a href="#">Bellingham General Business</a>	026486			<a href="#">Active</a>		Jun-04-2001
<a href="#">Blaine General Business - Non-Resident</a>				<a href="#">Active</a>	Jul-31-2020	Jan-01-1994
<a href="#">Fife General Business - Non-Resident</a>				<a href="#">Active</a>	Jul-31-2020	Nov-06-2013
<a href="#">Issaquah General Business - Non-Resident</a>	BUS03-00726			<a href="#">Active</a>	Jul-31-2020	Sep-09-2006
<a href="#">Kelso General Business - Non-Resident</a>	Y601098550			<a href="#">Active</a>	Oct-31-2019	Oct-18-2018
<a href="#">Kirkland General Business - Non-Resident</a>	OBL-0000717			<a href="#">Active</a>	Jul-31-2020	May-15-2018
<a href="#">Lake Stevens General Business - Non-Resident</a>				<a href="#">Active</a>	Jul-31-2020	Jun-04-2016
<a href="#">Olympia General Business - Non-Resident</a>	8159			<a href="#">Active</a>	Jul-31-2020	Feb-01-1996
<a href="#">Pasco General Business - Non-Resident</a>	29935			<a href="#">Active</a>	Jul-31-2020	Sep-03-2016
<a href="#">Port Townsend General Business - Non-Resident</a>	7769			<a href="#">Active</a>	Jul-31-2020	Jun-20-2008

1 of 2

**Endorsements**

<i>Filter</i>						
<b>1 of 2</b>						
Endorsements held at this location	License #	Count	Details	Status	Expiration date	First issuance
SeaTac General Business - Non-Resident				Active	Mar-31-2020	Jun-12-2019
Spokane General Business - Non-Resident	T12051365BUS			Active	Jul-31-2020	Oct-15-2012
Spokane Valley General Business - Non-Resident				Active	Jul-31-2020	Jun-24-2005
Vancouver General Business - Non-Resident				Active	Jul-31-2020	Jun-01-1999
<b>1 of 2</b>						

**Governing People** *May include governing people not registered with Secretary of State*

Governing people	Title
CHASE, EDWIN	
FINDLAY, DAVID	
GHILARDUCCI, JOHN	
VIRNOCHE, ANGIE	

**Registered Trade Names**

Registered trade names	Status	First issued
F C S G	Active	Jul-07-2004
FCS GROUP	Active	Aug-30-1988
FCS GROUP, INC.	Active	Nov-22-2004
FINANCIAL CONSULTING SOLUTIONS GROUP, INC.	Active	Nov-22-2004

[View Additional Locations](#)

The Business Lookup information is updated nightly. Search date and time: 8/20/2019 5:00:22 PM

*Working together to fund Washington's future*



## Briefing Paper

### Public Infrastructure, Environment, & Sustainability Committee

<b>Division &amp; Department:</b>	Public Works
<b>Subject:</b>	Rate Structure Analysis – Water, Sewer, and Stormwater Utilities
<b>Date:</b>	26 August 2019
<b>Author (email &amp; phone):</b>	Dan Kegley, <a href="mailto:dkegley@spokanecity.org">dkegley@spokanecity.org</a> , x7821
<b>City Council Sponsor:</b>	
<b>Executive Sponsor:</b>	Scott Simmons, Director, Public Works
<b>Committee(s) Impacted:</b>	PIES
<b>Type of Agenda item:</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (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 Water & Hydroelectric Services and Wastewater Maintenance budgets.
<b>Strategic Initiative:</b>	Innovative Infrastructure, Sustainable Resources
<b>Deadline:</b>	To support timely completion of this analysis, work needs to begin by November 2019.
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	This service will result in a clear nexus between utility charges to citizens and the City's cost to provide those services.
<b>Background/History:</b> Informal Request for Proposals #5115-19 was posted on the City's electronic bidding portal on July 3, 2019 to support an ongoing rate structure analysis for the Water, Sewer, and Stormwater utilities and more than 60 contacts were notified. Two responses were received by the closing deadline on July 24, 2019. Award is recommended to FCS Group in light of their extensive experience in this field. The initial contract would be for a three-year term, with optional renewals not to exceed two additional three-year terms at mutual consent.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>Award Recommended to FCS Group (Redmond, WA)</li> <li>Contract Value: Not to exceed \$260,000.00 annually including tax</li> <li>Initial three-year contract term, with optional renewals not to exceed two additional three-year terms at mutual consent</li> <li>Service competed on IRFP #5115-19</li> </ul>	
<b>Budget Impact:</b> 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: --- Other budget impacts: ---	
<b>Operations Impact:</b> 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: ---	

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

10/07/2019

Date Rec'd

9/25/2019

Clerk's File #

ORD C35817

Renews #Submitting Dept

FLEET OPERATIONS

Cross Ref #Contact Name/Phone

SCOTT SIMMONS X6584

Project #Contact E-Mail

SSIMMONS@SPOKANECITY.ORG

Bid #Agenda Item Type

Special Budget Ordinance

Requisition #Agenda Item Name

5100 - SBO FLEET OPERATIONS

Agenda Wording

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

Summary (Background)

The City's Fleet Services Department is an Internal Service fund responsible for the repair and maintenance of the City's Fleet. Over the last several years the Fleet Departments budget has remained flat other than the Salary and benefit adjustments that are contractually obligated per Union Contracts. With the ongoing increase in the number of vehicles and equipment in our Fleet as well as the rising prices of third party costs, Fleet Services budget has not kept pace as other depts have.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Revenue \$ 3,497,576

# 5100-71700-99999-34830

Expense \$ 88,241

# 5100-30210-48341-54141

Expense \$ 1,834,335

# 5100-71700-48348-53211

Neutral \$ 1,575,000

# 5100-71700-48348-54803

ApprovalsCouncil NotificationsDept Head

FLEIGER, NATHAN

Study Session

PIES 9/23/19

Division Director

SIMMONS, SCOTT M.

OtherFinance

ORLOB, KIMBERLY

Distribution ListLegal

SCHOEDEL, ELIZABETH

ssimmons@spokanecity.org

For the Mayor

ORMSBY, MICHAEL

dpaine@spokanecity.org

Additional Approvals

tbrazington@spokanecity.org

Purchasing

korlob@spokanecity.org

ORDINANCE NO C35817

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 Fleet Services 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 Fleet Services Fund, and the budget annexed thereto with reference to the Fleet Services Fund, the following changes be made:

FROM:	5100-71700 99999-34830	Fleet Services – Central Service Center IF Vehicle/Equipment Repair	\$ 3,497,576
TO:	5100-30210 48341-54141	Fleet Services - Administration Other Professional Services	\$ 88,241
	5100-71700 48348-53211	Fleet Services – Central Service Center Vehicle Repair & Maint Supply	\$ 1,834,335
	5100-71700 48348-54803	Fleet Services – Central Service Center Equipment Repairs/Maintenance	\$ 1,575,000

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to increased costs and increased repairs that have not been budgeted adequately over the last few years, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed the City Council \_\_\_\_\_

\_\_\_\_\_  
Council President

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

## Briefing Paper

### Public Infrastructure, Environment and Sustainability Committee

<b>Division &amp; Department:</b>	Public Works – Fleet Services
<b>Subject:</b>	Special Budget Ordinance
<b>Date:</b>	September 20, 2019
<b>Author (email &amp; phone):</b>	David Paine ( <a href="mailto:dpaine@spokanecity.org">dpaine@spokanecity.org</a> 625 6878)
<b>City Council Sponsor:</b>	
<b>Executive Sponsor:</b>	Scott Simmons
<b>Committee(s) Impacted:</b>	P.I.E.S.
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b>	
<b>Strategic Initiative:</b>	Innovative Infrastructure – Sustainable Resources
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Approval of Special Budget Ordinance to provide budget for the Fleet Services for the necessary parts and third party services for maintaining and repairing the City's Fleet.
<p><u>Background/History:</u></p> <p>The City's Fleet Services Department is an Internal Service fund responsible for the repair and maintenance of the City's Fleet. Over the last several years the Fleet Departments budget has remained flat other than the Salary and benefit adjustments that are contractually obligated per Union Contracts. With the ongoing increase in the number of vehicles and equipment in our Fleet as well as the rising prices of third party costs, Fleet Services has not made the necessary budget increases that is required for the maintenance of our Fleet. This has resulted in the department bringing an SBO forward in 2018 and now again in 2019.</p> <p>The City's operating departments who own and use this fleet have already made adjustments in their annual budgets for the trending increases that they have been seeing, therefore this SBO will not have an impact on other departmental budgets.</p> <p>Total increase to the budget of \$3,497,576 will be recouped through interfund billing.</p>	
<p><u>Executive Summary:</u></p> <ul style="list-style-type: none"> <li>This is required to align Fleet's budget with the individual operating department's budgets that Fleet provides service to.</li> </ul>	
<p><u>Budget Impact:</u></p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><u>Operations Impact:</u></p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	

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

10/07/2019

<u>Date Rec'd</u>	2/18/2019
<u>Clerk's File #</u>	RES 2019-0082
<u>Renews #</u>	

Submitting Dept	SOLID WASTE DISPOSAL	Cross Ref #	OPR 2019-0813
Contact Name/Phone	CHRIS AVERYT 625-6540	Project #	
Contact E-Mail	CAVERYT@SPOKANECITY.ORG	Bid #	SOLE SOURCE
Agenda Item Type	Resolutions	Requisition #	2020 BUDGET
Agenda Item Name	4490 SOLE SOURCE RESOLUTION & CONTRACT FOR ABB SOFTWARE		

Agenda Wording

Resolution and contract to declare ABB Inc., the sole source provider of proprietary software, service and parts support for the Digital Controls System (DCS) at the WTE. Resolution and Contract term from January 1, 2020 through December 31, 2024.

Summary (Background)

ABB Inc., owns a custom proprietary software which is used to enhance the operational effectiveness of the WTE. In 2014, ABB Inc. was awarded the sole source contract for these services. That Sole Source resolution expires in 2019, necessitating a new resolution for these services. In December of 2018, a Notice of Intent to Award Sole Source regarding this purchase from ABB went uncontested. The resolution/contract will be for five (5) years and cost a total of \$1,350,000.00.

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

Expense	\$ \$90,000.00 2020 FUNDS	# 4490-44100-37148-54201
Expense	\$ \$900,000.00 2020-2021 CAPITAL	# 4490-44100-94000-56410
Expense	\$ \$360,000.00 2021-2024 FUNDS	# 4490-44100-37148-54201
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	CONKLIN, CHUCK	<u>Study Session</u>	PIES 1/28/19
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u>	
<u>Finance</u>	ALBIN-MOORE, ANGELA	Distribution List	
<u>Legal</u>	DALTON, PAT	mdorgan@spokanecity.org	
<u>For the Mayor</u>	ORMSBY, MICHAEL	jsalstrom@spokanecity.org	
Additional Approvals		tprince@spokanecity.org	
<u>Purchasing</u>	PRINCE, THEA	rrinderle@spokanecity.org	
		ted.collins@us.abb.com	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The anticipated cost for software maintenance annually will be \$90,000.00. In 2021 and 2022, the WTE is also planning on upgrading the software and associated equipment at a cost of \$900,000.00, split between the two years.

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

## Briefing Paper

### Public Infrastructure, Environment and Sustainability Committee

<b>Division &amp; Department:</b>	Public Works Division; Solid Waste Disposal
<b>Subject:</b>	ABB Sole Source Resolution/Contract at the WTE
<b>Date:</b>	
<b>Contact (email &amp; phone):</b>	
<b>City Council Sponsor:</b>	
<b>Executive Sponsor:</b>	
<b>Committee(s) Impacted:</b>	Public Infrastructure, Environment and Sustainability Committee
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget , Comp Plan, Policy, Charter, Strategic Plan)	
<b>Strategic Initiative:</b>	Sustainable Resources – Sustainable practices; Innovative Infrastructure - Sustainability
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Council approval of the Sole Source Resolution and Contract with ABB Inc., for proprietary software to keep the WTE facility operating properly.
<b>Background/History:</b> ABB Inc., owns a custom proprietary software which is used to enhance the operational effectiveness of the WTE Facility to reduce maintenance costs to the City. In 2014, ABB Inc. was awarded the sole source contract for these services at the WTE Facility. That Sole Source resolution expires in 2019, necessitating a new resolution for these services.  In December of 2018, a Notice of Intent to Award Sole Source regarding this purchase from ABB went uncontested and will result in a five (5) year contract for \$1,350,000.00. The anticipated cost for software maintenance annually will be \$90,000.00. In 2020 and 2021, the WTE is also planning on upgrading the software at a cost of \$900,000.00, split between the two years. The contract term will run from January 1, 2020 through December 31, 2024.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>Five (5) Year Sole Source contract with ABB, Inc., for software maintenance and technical support, plus parts for the control systems at the WTE facility.</li> <li>Contract term is from January 1, 2020 through December 31, 2024.</li> <li>Total cost for all five years of the contract is \$1,350,000.00.</li> <li>The annual cost for the software maintenance is \$90,000.00 with an additional \$900,000.00 split between 2020 and 2021 for upgrades to the software.</li> <li>Utilizing a consultant who is familiar with this proprietary software, and who has the ability to purchase required parts as necessary will keep the WTE facility operating properly.</li> </ul>	
<b>Budget Impact:</b> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impact:</b>	



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:

## RESOLUTION NO. 2019-0082

A Resolution declaring Asea Brown Boveri Limited (ABB) who owns the patented software known as ABB ServiceGrid which is used to enhance the overall operational effectiveness and reduce maintenance costs at the City's Waste To Energy (WTE) Facility as sole source and thus authorizing its purchase from Asea Brown Boveri Limited (ABB), of Zurich, Switzerland, at an estimated cost for five (5) years of \$1,350,000 excluding taxes if applicable.

WHEREAS, the WTE Facility currently uses ABB ServiceGrid as a sole source provider to supply its cost effective replacement, evolution and maintenance options for the waste to electricity assets; and

WHEREAS, the WTE Facility has successfully utilized the ABB ServiceGrid product for many years; and

WHEREAS, Asea Brown Boveri Limited (ABB) provides to the WTE Facility custom and proprietary software products, exclusive to their licensed ABB ServiceGrid software; and

WHEREAS, because of the uniqueness of the WTE Facility's operation and maintenance, the City is desirous of continuing the relationship with Asea Brown Boveri Limited (ABB) and their ServiceGrid product to maintain consistent functionality which is critical to the future operations of the WTE Facility; and

WHEREAS, since Asea Brown Boveri Limited (ABB) is the sole provider of this licensed and proprietary ABB ServiceGrid product which meets the specialized needs of the City to perform the intended functions at the WTE Facility, the City would like to establish Asea Brown Boveri Limited (ABB) as a sole source provider;

WHEREAS, ABB's Power Generation Care Contract proposal will allow the City of Spokane WTEF to continue the operation of the City of Spokane WTEF seamlessly without interruption while performing upgrade to the software and computers, continued service support, training, and supply parts on an as need basis at a discounted rate.

WHEREAS, To move away from the ABB platform would require the City to expend funds in excess of what is in the (6) six year capital plan and it would have to happen in a single event requiring an extended downtime period during which we could not support the needs of the citizens.

WHEREAS, The proposal by ABB will allow the City to implement this upgrade

in phases over the course of (5) five years beginning in 2020 and ending in 2024. This supports our efforts to manage our budget according to our (6) six year capital plan; and

WHEREAS, the 2019 public bid limit for the purchase of goods is \$50,000.00;

-- Now, Therefore,

BE IT RESOLVED by the city council for the City of Spokane that it hereby declares Asea Brown Boveri Limited (ABB) who currently owns the ABB ServiceGrid rights and licenses which the WTE Facility currently utilizes and authorizes its purchase, at an estimated cost for five (5) years of \$1,350,000.00, excluding taxes if applicable.

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

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

Approved as to form:

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



**City of Spokane**

**CONTRACT**

Title: **UPGRADE, SERVICE AND MAINTENANCE  
OF SERVICEGRID SOFTWARE FOR THE CITY'S  
WASTE TO ENERGY (WTE) FACILITY**

THIS CONTRACT (hereinafter "Contract" or "Agreement") is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **ABB INC.**, whose address is 23000 Harvard Road, Cleveland, Ohio, 44122, as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE.** The Company shall provide **Upgraded Software, Service and Parts Support for the Digital Controls System (DCS) at the WTE**, in accordance with Company's March 13, 2019 Proposal which is attached as Exhibit B. Company was selected because they have historically provided the WTE with software which is used to enhance the overall operational effectiveness and reduce maintenance costs at the City's Waste to Energy (WTE) Facility. In the event of a conflict between Company's Proposal and this Contract, the terms of this contract will control.

2. **CONTRACT TERM.** The Contract shall begin January 1, 2020 and run through December 31, 2024, unless terminated sooner.

3. **COMPENSATION.** This Contract provides for annual compensation amounts for the five (5) year term as follows:

2020	\$ 90,000.00 Annual Service + \$ 450,000.00 1st half of DCS upgrade
2021	\$ 90,000.00 Annual Service + \$ 450,000.00 2nd half of DCS upgrade
2022	\$ 90,000.00 Annual Service
2023	\$ 90,000.00 Annual Service
2024	\$ 90,000.00 Annual Service

The City shall pay the Company a maximum amount not to exceed **ONE MILLION THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,350,000.00)**, excluding tax for everything furnished and done under this Contract.

4. **PAYMENT.** The Company shall send its application for payment to City of Spokane Solid Waste Disposal Department, Waste to Energy Facility, 2900 South Geiger Boulevard, Spokane, WA 99224. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt

of the Contractor's application except as provided by state law.

5. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations. Any change in such applicable laws or regulations after the date of the Company's proposal for this Contract that materially affects the Company's performance of the work hereunder will be addressed by means of a written modification to the Contract to equitably compensate the Company for such effects.

6. ASSIGNMENTS. This Contract is binding on the parties and their heirs, successors, and assigns. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent.

7. AMENDMENTS. This Contract may be amended at any time by mutual written agreement.

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

9. TERMINATION. Either party may terminate this Contract by thirty (30) days written notice to the other party. In the event of such termination, the City shall pay the Company for all work previously authorized and performed prior to the termination date and, if City terminated the Contract, all additional costs to Company arising from the termination itself.

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

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers; and
- B. General Liability Insurance on an occurrence basis, with a combined single limit of \$1,000,000 each occurrence and \$2,000,000 in the aggregate 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 and only to the extent of Contractor's indemnity obligations under Section 11;
  - i. Acceptable supplementary Umbrella insurance coverage, combined with the Company's General Liability insurance policy must be \$1,000,000, in order to meet the insurance coverages required under this Contract;
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company

shall furnish acceptable sample Certificates of Insurance (COI) to the City at the time it returns this signed Agreement, and a COI specific to this Agreement shall be furnished within thirty (30) days after full signing. The final certificate shall specify the City of Spokane as "Additional Insured" as stated in "B" above specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy provisions, and the thirty (30) day cancellation clause. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. INDEMNIFICATION. The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including reasonable attorneys' fees and litigation costs; provided that nothing herein shall require Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If such a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for such actions brought by the Company's own employees against the City and, solely for the purpose of this indemnification and defense and only to the extent permitted by applicable law, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement. The Company's obligations under this Section 11 are contingent upon the City having given the Company prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action on behalf of the City.

12. DEBARMENT AND SUSPENSION.

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

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

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

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

physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Company.

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

17. **AUDIT / RECORDS.** The Company and its subcontractors shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Contract. The Company and its subcontractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Contract, the federal law shall prevail. In all events, audits and inspections by the City under this Contract a) can take place only after the Company has been given fifteen (15) days advance written notice of the intent to audit or inspect; b) will be conducted in a confidential manner by the City; c) can take place no more than three times under this Contract; d) are limited only to those records directly relating to the quality of the work or that directly substantiate the costs or time expended that are the express basis on which the City has or will reimburse or pay the Company; and e) beyond the reasonable accommodation provide by the Company, are otherwise at the City's expense.

18. **CONFIDENTIALITY/PUBLIC RECORDS.** Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Spokane are **public records**. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material. Some records or portions of records are legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW 42.56 and RCW 19.10)8 describes those exemptions. Consultant must familiarize themselves with the Washington State Public Records Act (PRA) and the City of Spokane's process for managing records.

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

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

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

Please note the City cannot accept a generic marking of materials, such as marking everything



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

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

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

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

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

#### 19. WARRANTIES AND REMEDIES.

(a) Equipment and Services Warranty. The Company warrants that Equipment (excluding Software, which is warranted as specified in paragraph (d) below) shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The Warranty Remedy Period for Equipment (excluding Software, Spare Parts and Refurbished or Repaired Parts) shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. The Warranty Remedy Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Remedy Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Remedy Period for Services shall end ninety (90) days after the date of completion of Services.

(b) Equipment and Services Remedy. If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to the Company promptly after such discovery and within the applicable Warranty Remedy Period, the Company shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services, or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to Company promptly after discovery and within the original Warranty Remedy Period applicable to such Equipment or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, Company will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.

(c) Exceptions. Company shall not be responsible for providing working access to the nonconforming Equipment, including disassembly and re-assembly of non-Company supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at City's risk and expense. Company shall have no obligation hereunder with respect to any Equipment which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to Company's instructions; (iv) is comprised of materials provided by or a design specified by City; or (v) has failed as a result of ordinary wear and tear. Equipment supplied by Company but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

(d) Software Warranty and Remedies. Company warrants that, except as specified below, the Software will, when properly installed, execute in accordance with Company's published specification. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment and written notice of such nonconformity is provided to Company promptly after such discovery and within that period, including a description of the nonconformity and complete information about the manner of its discovery, Company shall correct the nonconformity by, at its option, either (i) modifying or making available to the City instructions for modifying the Software; or (ii) making available at Company's facility necessary corrected or replacement programs. Company shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software or (ii) City-supplied software or interfacing. Company does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the City, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs".

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE CITY'S EXCLUSIVE REMEDIES AND COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

## 20. SOFTWARE LICENSE.

(a) Company owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to City under this Agreement. As part of the sale made hereunder City hereby obtains a limited license to use the Software, subject to the following: (i) The Software may be used only in conjunction with equipment specified by Company; (ii) The Software shall be kept strictly confidential; (iii) The Software shall not be copied, reverse engineered, or modified; (iv) The City's right to use the Software shall terminate immediately when the specified equipment is no longer used by the City or when otherwise terminated, e.g. for breach, hereunder; and (v) the rights to use the Software are non-exclusive and non-transferable, except with Company's prior written consent.

(b) Nothing in this Agreement shall be deemed to convey to City any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, City shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to Company the Software and all

copies thereof and shall remove all machine readable Software from all of City's storage media.

21. PATENT PROTECTION. Company shall defend at its own expense any action brought against the City alleging that the work performed or the use of the work to practice any process for which such work is specified by Company (a "Process") directly infringes or misappropriates any claim of a patent or other intellectual property right protected in the United States of America and to pay all damages and costs finally awarded in any such action, provided the City has having given Company prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action on behalf of the City. Company shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including work or Processes which have been modified or combined with other equipment or process not supplied by Company; (ii) any work or Process supplied according to a design, other than a Company design, required by the City; (iii) any patent, copyright or trademark issued after the date hereof; or (iv) any action settled or otherwise terminated without the prior written consent of Company. If, in any such action, the work is held to constitute an infringement or misappropriation, or the practice of any Process using the work is finally enjoined, or such results are reasonably anticipated, Company shall, at its option and its own expense, procure for the City the right to continue using said work; or modify or replace it with non-infringing and/or non-misappropriating services, or, with the City's assistance, modify the Process so that it becomes non-infringing and/or non-misappropriating; or remove it and refund the portion of the price allocable to the infringing or misappropriating work. THE FOREGOING PARAGRAPH STATES THE ENTIRE LIABILITY OF COMPANY AND EQUIPMENT MANUFACTURER FOR ANY PATENT INFRINGEMENT.

22. FORCE MAJEURE. Company shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of the City, compliance with changed government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of such causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and, if the delay was within the reasonable control of the City, the Contract Compensation will be adjusted to compensate Company for such delay.

23. LIMITATION OF LIABILITY.

(a) In no event shall Company, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the City or other third parties for any such damages. Company's aggregate liability for any and all claims, whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished

under this Agreement, or from any services rendered in connection therewith, shall in no case (except as provided in the section entitled "Patent Protection") exceed the Contract price.

(b) All causes of action against Company arising out of or relating to this Contract or the performance or breach hereof shall expire unless brought within one year of the time of accrual thereof.

(c) In no event regardless of cause, shall Company be liable for penalties or penalty clauses of any description.

24. ENTIRE AGREEMENT. This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Company.

**ABB INC.**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

Approved as to form:

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

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

\_\_\_\_\_  
Title

Attest:

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

**Attachments that are part of this Agreement:**

Exhibit A – Certificate Regarding Debarment

Exhibit B – ABB Inc.'s March 13, 2019 Proposal

19-037c

**EXHIBIT A**  
**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; and
  - 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.
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.

<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> Name of Subrecipient / Contractor / Consultant (Type or Print)	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> Program Title (Type or Print)
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> Name of Certifying Official (Type or Print)	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> Signature
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> Title of Certifying Official (Type or Print)	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> Date (Type or Print)

## **EXHIBIT B**

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

10/07/2019

Date Rec'd	9/24/2019
Clerk's File #	RES 2019-0083
Renews #	

Submitting Dept	AIRPORTS	Cross Ref #	
Contact	LARRY 455-6406	Project #	
Contact E-Mail	LKRAUTER@SPOKANEAIRPORTS.NET	Bid #	
Agenda Item Type	Resolutions	Requisition #	
Agenda Item Name	SIA - SPOKANE AIRPORTS - NON-EXCLUSIVE ACCESS & UTILITY EASMENT		

Agenda Wording

Joint Resolution In the matter of granting a Non-Exclusive Access and Utility Easement to the City of Spokane for Sewer Line purposes.

Summary (Background)

The Spokane Airport Board recommends that the Board of County Commissioners approve a grant of easement to the City of Spokane to permit the installation of sanitary sewer improvements to serve development in the area of Spokane International Airport that is compatible with the approved Airport Layout Plan. A copy of the esement document and exhibit are attached.

<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>	PFISTER, TERRI	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE	lkrauter@spokaneairports.net	
<u>For the Mayor</u>	ORMSBY, MICHAEL	twoodard@spokaneairports.net	
<u>Additional Approvals</u>		bwerst@spokaneairports.net	
<u>Purchasing</u>		thart@spokaneairports.net	
		gvasquez@spokanecounty.org	

City: OPR  
Resolution No. **19 - 1335**

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON  
AND  
THE SPOKANE CITY COUNCIL OF SPOKANE, WASHINGTON

IN THE MATTER OF GRANTING A NON- )  
EXCLUSIVE ACCESS AND UTILITY )  
EASEMENT TO THE CITY OF SPOKANE )  
FOR SEWER LINE PURPOSES )

**JOINT RESOLUTION**

**WHEREAS**, pursuant to Chapter 14.08, Spokane County ("County"), by and through its Board of County Commissioners, and the City of Spokane ("City"), by and through its City Council, entered into an agreement dated August 28, 1990 ("Agreement") to provide for the joint operation of Spokane International Airport, Felts Field Airport and Spokane International Airport Business Park; and

**WHEREAS**, pursuant to Paragraph 8(b) of the Agreement, the County and City must by joint action approve the acquisition, sale, transfer or disposal of real property; and

**WHEREAS**, Spokane County along with the City of Spokane are the owners, as tenants in common, of certain real property situated within the boundaries of and operated by, the Spokane International Airport, identified in part as Assessor Parcel Numbers 24062.0429 and 24063.0504; and

**WHEREAS**, the City of Spokane, Department of Utilities has assumed responsibility for a new sewer line located on the aforementioned property; and

**WHEREAS**, the Airport Board has recommended to the County and the City the grant of an access and utility easement to the City of Spokane, Department of Utilities, for the purpose of a sewer line over, under, along, and across portions of the aforementioned property more specifically described in Attachment 1, adopted and incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners of Spokane County, Washington and by the City Council of the City of Spokane:

1. That the Chair of the Board, acting on behalf of Spokane County, is hereby authorized to execute Attachment 1 at other than a public meeting to grant an access and utility easement to the City of Spokane, Department of Utilities, for the purpose of a sewer line over, under, along, and across portions of the property described therein.
2. That the City Council by and through its Mayor, is hereby authorized to execute Attachment 1 at other than a public meeting to grant an access and utility easement to the City of Spokane, Department of Utilities, for the purpose of a sewer line over, under, along, and across portions of the property described therein.



3. The Airport Board and the Chief Executive Officer of the Airport Board be and is hereby authorized to prepare and execute any documents necessary to effectuate and execute Attachment 1.

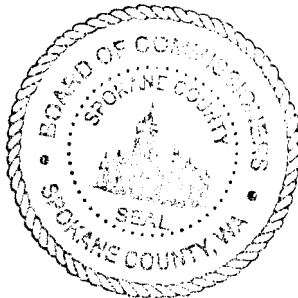
**PASSED AND ADOPTED** by the Spokane City Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

Approved as to form:

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

**PASSED AND ADOPTED** this 17<sup>th</sup> day of September, 2019.



ATTEST:

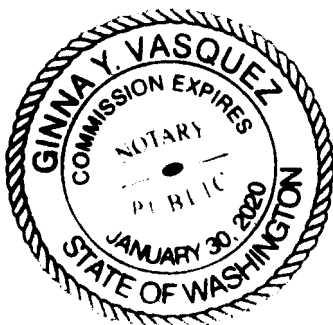
BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

  
MARY L. KINEY, CHAIR

  
AL FRENCH, VICE-CHAIR

  
Ginna Vasquez, Clerk of the Board

  
JOSH KERNS, COMMISSIONER



## Attachment 1

RETURN TO:

SPOKANE AIRPORT  
ATTN: PROPERTIES & CONTRACTS  
9000 W. Airport Dr., Suite 204  
Spokane, WA 99224

ASSESSOR'S PARCEL NOS":

24062.0429, 24063.0504

ABBREVIATED LEGAL:

HAYFORD All OF TRS 45,46,47,48,57,58 & 64 &  
PTN OF TRS 49,50 & N 1/1 OF TR  
51 \_\_\_\_\_  
\_\_\_\_\_

---

RECORDING INFORMATION ABOVE

**GRANT OF ACCESS AND UTILITY EASEMENT**

This Access and Utility Easement ("Easement") is made by and between the County of Spokane and City of Spokane, State of Washington, as tenants in common (referred to collectively as "Grantor"), and, City of Spokane, Department of Utilities, a municipality of the State of Washington ("Grantee"), and its successors and assigns.

WHEREAS, the Grantor is the owner of the certain real property situated within the boundaries of Spokane International Airport (the "Property") identified as Spokane County Assessor's Tax Parcel Numbers in Exhibit A, entitled "Parcel Numbers" and further identified by the legal description attached hereto as Exhibit B, entitled "Legal Description", and incorporated herein by reference; and

WHEREAS, Grantee has assumed responsibility for a new sewer line located on Grantor's Property as shown on Exhibit C, entitled "Property and Easement Area", attached hereto and incorporated herein by reference; and

WHEREAS, Grantor desires to grant an access and utility easement for a sewer line over, under, along, and across portions of the Property as shown on Exhibit C; and

WHEREAS, the Property is operated by the Airport Board (the "Board") pursuant to the Amended Spokane County/City Airport Agreement, dated August 28, 1990 (City of Spokane City Clerk File # OPR 1986-0318, Spokane County Resolution No. 1990-1040), (the "Airport Agreement").

NOW, THEREFORE, for and in consideration of the above recitals, which are incorporated herein by reference, and other benefits to be derived by the Grantor, and the mutual covenants and purposes herein stated, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Easement and Purpose. Grantor does hereby grant and convey unto Grantee a non-exclusive Access and Utility Easement for a sewer line only, under, along and across the Easement Area for purposes of operating, maintaining, replacing and repairing said sewer line public utilities hereinafter referred to as "Facilities", located on, under, along and across the Property and Easement Area, as shown on Exhibit C. Facilities covered by this Easement are those which are located on the herein described Property and Easement Area at the time this Easement document is recorded, as operated, maintained, and repaired by Grantee under the terms of this Easement.

2. Termination. In the event the Board determines that a particular portion of the Easement Area is required for Airport purposes, the Board and Grantee shall coordinate and mutually agree on the relocation of any Facilities impacted by the Board's decision; provided, in the event such relocation of Facilities becomes necessary, Grantor and the Board, shall offer an alternate location for the relocation of such Facilities to be completed within twelve (12) months after such available alternative location is mutually agreed upon by the Board, Grantor, and Grantee. For the purposes of this Easement, any and all costs and expenses incurred by Grantee in connection with such relocation may be paid for by the Board upon mutual agreement of such costs and expenses between the Board and Grantee. Further, Grantor may terminate this Easement in the event Grantee breaches or violates any provisions hereof. Prior to termination, Grantor shall give Grantee thirty (30) days written notice of the breach. If the breach is cured to the reasonable satisfaction of the Grantor during the thirty (30) day timeframe, or if Grantee has made reasonable progress towards curing the breach within said thirty (30) day time period, said termination shall be null and void. In the event Grantee determines that some or all of the Facilities must be relocated, this Easement shall terminate with respect to such Facilities.

3. Access and Damage. Grantee shall have the right of ingress and egress along such routes as specifically directed by the Board's Chief Executive Officer or his/her designee over and across the above described Easement Area for the purposes of repair, replacement and maintenance of said Facilities. Grantee agrees to install vehicle gates to limit access to the Easement Area to the Grantee or its agents and the Board. Grantee, at its sole cost and expense, shall restore the Easement Area, the Property, and Grantor's surrounding property, to a condition as they were prior to any such work, to the extent any damage, disturbance, or alteration of the Easement Area, the Property, or Grantor's surrounding property was caused by the Grantee's exercise of its privileges under this Easement. Grantee shall cause no liens to stand against the Property.

4. Grantor's Use of the Easement Area. The Grantor and those operating within its authority, including, but not limited to the Board, reserves the right to the full use and enjoyment of the Easement Area described in Exhibits B and C, provided, however, that the Board and Grantor shall not construct, place or maintain any buildings or structures within the Easement Area that would interfere with the maintenance, repair, replacement or safe operation of said Facilities. In the event Grantor determines the need to develop the area or install a road in the Easement Area, Grantor reserves the right to make necessary improvements as needed. Grantee shall interfere as little as possible with the Grantor's and Board's use of the Easement Area and shall not materially interfere with access to the Easement Area.

5. Indemnity. The Grantee shall defend, indemnify and hold harmless the Grantor, the Board, and their elected or appointed officials, agents and employees from any and all claims and actions of any kind and all expenses incidental to the investigation and defense thereof, including reasonable attorney's fees and costs, claimed by anyone by reason of injury or death or damages to persons or property sustained as a result of Grantee's activity or actions done, permitted or suffered by Grantee in, or about the Property and/or Spokane International Airport or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Grantor, the Board, their elected or appointed officials, agents and employees.

6. Insurance. The Grantee shall, at its expense, maintain insurance in full force and effect at all times in such amounts as to meet the minimum limits of liability specified in this paragraph and insurance shall be placed with companies or underwriters authorized to conduct business in the State of Washington and satisfactory to the Board. In the event Grantee is self insured, Grantee accepts through this Easement full financial and legal responsibility for any and all fees, attorney's fees, causes of actions, whether by suit or otherwise, claims, settlements and judgments which occur as a result of the use of the Easement Area and its operation whether against the Grantee or its agents, or assigns, contractors, or operator which have been required to be covered by insurance herein.

The insurance policy(ies) shall be the standard comprehensive insurance coverage with aircraft exclusions deleted to cover all operations of Grantee and shall include, but not by way of limitation, bodily injury, property damage, product liability, automobile, including owned, non-owned, leased and hired, and contractual coverage, including the obligations pursuant to this Easement. The Board, the County of Spokane, the City of Spokane, their elected and appointed officials, agents and employees, shall be named as additional insureds with respect to Grantee's use of the Premises which are the subject of this Easement. Grantee shall promptly upon execution of this Easement, furnish to the Board and Grantor appropriate certificates of insurance evidencing coverage affected and to be maintained for the term of this Easement. The coverage shall not be less than Five Million Dollars (\$5,000,000) combined single limit or split limits equal to and not less than Five Million Dollars (\$5,000,000), for bodily injury and property damage with respect to each occurrence; such limits are subject to periodic adjustments at sole determination of Grantor and the Board. The insurance policy(ies) shall not be subject to cancellation except after notice to the Board by registered mail at least thirty (30) days prior to the date of such cancellation or material change. Where any policy(ies) has (have) normal expirations during the term of this Easement, written evidence of renewal shall be furnished to the Board at least thirty (30) days prior to such expiration. Upon written request by the Grantor or the Board, Grantee shall permit the Grantor or the Board to inspect the originals and all applicable policies. Grantee may satisfy the insurance requirement through a program of self-insurance. In case Grantee uses a self-insurance program, Grantee shall provide Grantor evidence of adequate financial resources to meet its self-insuring obligations at any time upon request by Grantor or the Board.

7. Dimension of Easement. The width of the Easement Area for the sewer line shall be fifty feet (50') as identified on Exhibit B & C.

8. Miscellaneous Provisions. This Easement shall not be assigned by Grantee, its successors and assigns, in whole or in part, vesting in any other person, firm or corporation without the express prior written consent of the Grantor and the Board.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

It is specifically declared and agreed that time is of the essence of this Easement.

This Easement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington.

Any notice providing for or concerning this Easement shall be deemed given on: (i) the day such notices or other communications are received when sent by personal delivery; or (ii) the third day following the day on which the same have been mailed by first class delivery, postage prepaid addressed to the Grantor, Grantee or Board at their business address.

Board: Spokane International Airport  
Attn: Property & Contracts Dept.  
9000 W. Airport, Suite 204  
Spokane, WA 99224

Grantee: City of Spokane Public Works  
Attn: Director  
808 W. Spokane Falls Blvd, Fl. 2  
Spokane, WA 99220

With a Copy to: City Attorney's Office  
808 W. Spokane Falls Blvd, Fl. 5  
Spokane, WA 99220

Board of County Commissioners  
1116 W. Broadway  
Spokane, WA 99260

Grantee shall comply with all applicable Federal, State, and local laws, ordinances and regulations with regard to this Easement.

The titles to the paragraphs of this Easement are solely for the convenience of the signatories and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Easement.

This Easement constitutes the entire agreement between the Grantor and Grantee. Any prior understandings or representations of any kind preceding the date of this Easement shall not be binding except to the extent incorporated into this Easement.





ATTEST: Date: \_\_\_\_\_

GRANTOR: CITY OF SPOKANE

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

\_\_\_\_\_  
APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney  
City of Spokane

State of Washington     )  
                                      ) ss.  
County of Spokane        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and acknowledged that he signed the document, on oath stated that he was authorized to sign it and acknowledged it as the \_\_\_\_\_ of the City of Spokane, Washington, to be the free and voluntary act of such party for the uses and purposes therein mentioned.

Date: \_\_\_\_\_  
[SEAL OR STAMP]

\_\_\_\_\_  
Notary Public in and for Washington  
State residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

SPOKANE AIRPORT BOARD

Nancy Vorhees  
Nancy Vorhees, Chair

APPROVED AS TO FORM:

Brian M. Werst  
Brian M. Werst  
General Counsel

RECOMMENDED APPROVAL, TERMS  
AND CONDITIONS:

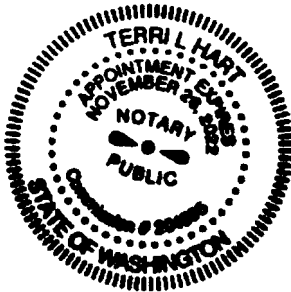
Lawrence J. Krauter  
Lawrence J. Krauter  
Chief Executive Officer

State of Washington     )  
  ) ss.  
County of Spokane     )

I certify that I know or have satisfactory evidence that Nancy Vorhees is the person who appeared before me and acknowledged that she signed the document, on oath stated that he/she was authorized to sign it and acknowledged it as the Chair of the Spokane Airport Board, Spokane, Washington, to be the free and voluntary act of such party for the uses and purposes therein mentioned.

Date: August 22, 2019  
[SEAL OR STAMP]

Terril L. Hart  
Notary Public in and for Washington  
State residing in Spokane  
My appointment expires 11/26/22



ATTEST: Date: \_\_\_\_\_

GRANTEE: CITY OF SPOKANE  
UTILITIES DEPARTMENT

\_\_\_\_\_

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

State of Washington     )  
                                      ) ss.  
County of Spokane        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and acknowledged that he/she signed the document, on oath stated that he/she was authorized to sign it and acknowledged it as the \_\_\_\_\_ of the \_\_\_\_\_, to be free and voluntary act of such party for the uses and purposes therein mentioned.

Date: \_\_\_\_\_  
[SEAL OR STAMP]

Notary Public in and for Washington  
State residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

**EXHIBIT A**

**Spokane International Airport  
Spokane County Assessor's Tax Parcel Number**

**Parcel Number: 24062.0429  
24063.0504**

**EXHIBIT B**

**Easement Legal Description**

### **Project Rose Sewer Easement Description - SIA**

A fifty (50.00) foot wide sewer line easement located in Section 6, Township 24 North, Range 42 East, Willamette Meridian, Spokane County, Washington, being more particularly described as follows:

**COMMENCING** at a Mag nail with tag L.S. 12904 marking the West Quarter Corner of said Section 6, which bears South 88°49'00" West a distance of 3214.14 feet from a 1/2" rebar with cap LS 12904 marking the Center Quarter Corner of said Section 6: thence North 88°49'00" East a distance of 1852.96 feet along the North line of the Southwest Quarter of said Section 6 to the **POINT OF BEGINNING**;

Thence continuing along said North line, North 88°49'00" East a distance of 365.35 feet;

Thence North 46°41'16" East a distance of 407.33 feet;

Thence North 43°00'55" East a distance of 50.22 feet to the West line of Tract 51 of Hayford, according to plat recorded in Volume "E" of Plats at Page 58;

Thence North 00°59'15" West a distance of 31.06 feet along said West line of Tract 51 to the Northwest corner of the South half of said Tract 51;

Thence North 89°00'45" East a distance of 30.00 feet along the North line of said South half of Tract 51;

Thence North 43°00'55" East a distance of 906.62 feet to a point on the North-South Center line of said Section 6;

Thence North 00°59'06" West a distance of 592.11 feet along said North-South Center line to the South Right of Way line of Electric Avenue;

Thence South 50°12'19" West a distance of 64.17 feet along said South Right of Way line;

Thence South 00°59'06" East a distance of 531.70 feet;

Thence South 43°00'55" West a distance of 978.22 feet;

Thence South 46°41'16" West a distance of 386.47 feet;

Thence South 88°49'00" West a distance of 371.67 feet;

Thence South 34°37'47" West a distance of 810.39 feet;

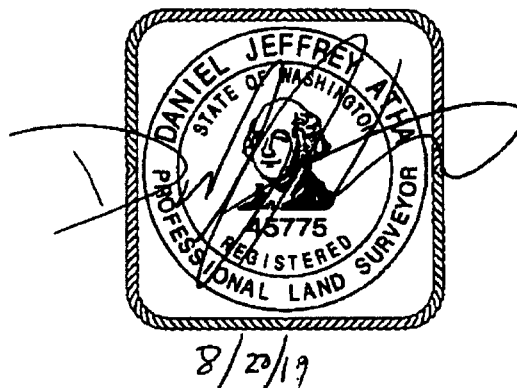
Thence South 58°54'36" West a distance of 88.76 feet;

Thence South 33°33'01" East a distance of 50.05 feet;

Thence North  $58^{\circ}54'36''$  East a distance of 97.37 feet;

Thence North  $34^{\circ}37'47''$  East a distance of 795.57 feet to the **POINT OF BEGINNING** for this description.

Containing 160,158.62 S.F. of land more or less.



**EXHIBIT C**

**Property & Easement Area**

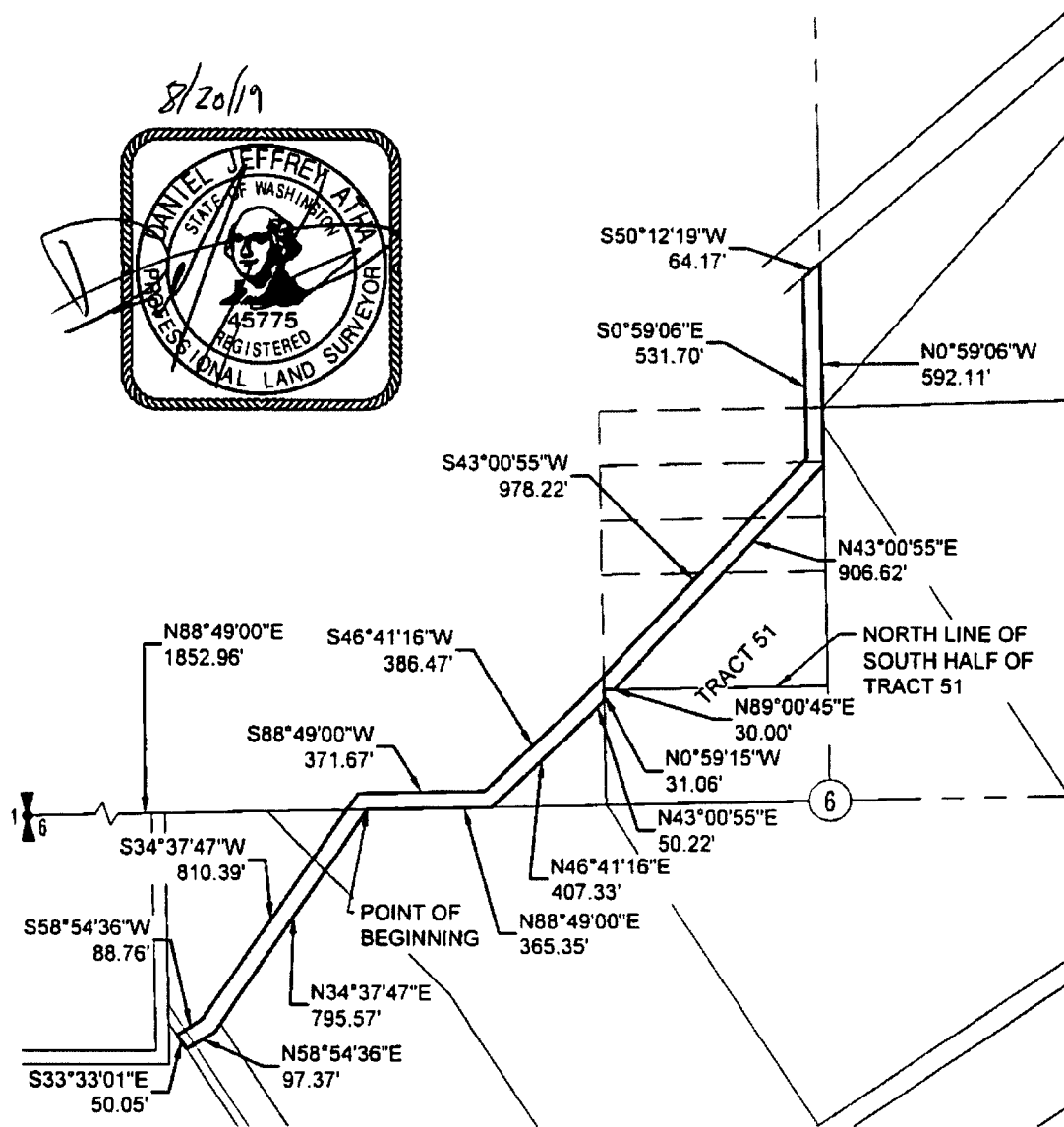
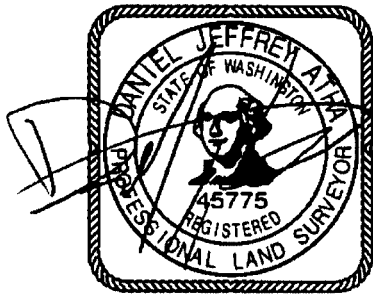


# EXHIBIT FOR SEWER SIA EASEMENT



SCALE: 1"=500'

8/20/19



**COFFMAN**  
ENGINEERS

10 N. Post Street Suite 500  
Spokane, Washington 99201  
509 328 2994 Fax 509 328 2999

project	PROJECT ROSE	by	JEA	sheet no.	101
location	SPOKANE, WA	date	08/20/19	job no.	180489
client	TRAMMELL CROW	checked	DJA		
	SEWER SIA EASEMENT	date	08/20/19		

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

10/07/2019

Date Rec'd	9/24/2019
Clerk's File #	RES 2019-0084
Renews #	

Submitting Dept	AIRPORTS	Cross Ref #	
Contact	LARRY 455-6406	Project #	
Contact E-Mail	LKRAUTER@SPOKANEAIRPORTS.NET	Bid #	
Agenda Item Type	Resolutions	Requisition #	
Agenda Item Name	SIA - AUTHORIZING AIRPORT BOARD TO SELL PROPERTY		

Agenda Wording

In the matter of authorizing the Airport Board to sell property identified as Spokane County Assessor's Parcel Nos. 15344.0102, 15344.0103, 15344.0104, 15344.0105, 15344.0106, 15344.0107, 15344.0108, 15344.0109, 15344.0110, 15344.0111 and 15344.0113.

Summary (Background)

Spokane County and the City of Spokane are joint owners and sponsors of Spokane Airport, which is managed and operated by the Spokane Airport Board pursuant to RCW 14.08.200 and the Amended Spokane County/City Airport Agreement, dated August 28, 1990 (City of Spokane City Clerk File #OPR 1986-0318, Spokane County Resolution NO. 1990-1040), (the "Airport Agreement"). On August 22, 2019, the Airport Board approved recommendation of approval of the two Real Property Purchase and Sale Agreement and

<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>	PFISTER, TERRI	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>	HUGHES, MICHELLE	Distribution List	
<u>Legal</u>	PICCOLO, MIKE	lkrauter@spokaneairports.net	
<u>For the Mayor</u>	ORMSBY, MICHAEL	twoodard@spokaneairports.net	
Additional Approvals		bwerst@spokaneairports.net	
<u>Purchasing</u>		thart@spokaneairports.net	
		gvasquez@spokanecounty.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Escrow Instructions between the Spokane Airport and Central Sprague Realty, LLC, for the sale of a total of 101.73 acres of Airport real property. Pursuant to the Airport Agreement, both the City and County must approve the sale of Airport real property.

Fiscal Impact

Select     \$

Select     \$

Budget Account

#

#

Distribution List


City: OPR  
Resolution No. 19-1336

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON  
AND  
THE SPOKANE CITY COUNCIL OF SPOKANE, WASHINGTON**

IN THE MATTER OF AUTHORIZING	)	
THE AIRPORT BOARD TO	)	JOINT RESOLUTION
SELL PROPERTY IDENTIFIED AS	)	
SPOKANE COUNTY ASSESSOR PARCELS	)	
15344.0102, 15344.0103, 15344.0104,	)	
15344.0105, 15344.0106, 15344.0107,	)	
15344.0108, 15344.0109, 15344.0110,	)	
15344.0111 AND 15344.0113	)	

WHEREAS, pursuant to Chapter 14.08 RCW, Spokane County ("County"), by and through its Board of County Commissioners, and the City of Spokane ("City"), by and through its City Council, entered into an agreement dated August 28, 1990 ("Agreement") to provide for the joint operation of Spokane International Airport, Felts Field Airport and Spokane International Airport Business Park; and

WHEREAS, pursuant to Paragraph 8(b) of the Agreement, the County and City must by joint action approve the acquisition, sale, transfer or disposal of real property; and

WHEREAS, the Airport Board has recommended to the County and City the sale of Spokane County Assessor Tax Parcels as identified on Exhibit A, attached hereto, comprised of approximately 101.73 acres of land located generally fronting on Craig Road, south of McFarlane Road in the City ("Property"); and

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Spokane County, Washington and by the City Council of the City of Spokane:

1. That the Airport Board is authorized to sell the Property, on the terms and conditions set forth in those two (2) certain Real Property Purchase and Sale Agreements and Escrow Instructions, both dated as of August 22, 2019, copies of which are attached hereto as Exhibit B and incorporated herein by this reference; and
2. That the Chief Executive Officer of the Airport Board be and is hereby authorized to prepare and execute any documents on behalf of Spokane County and City of Spokane to sell the Property.

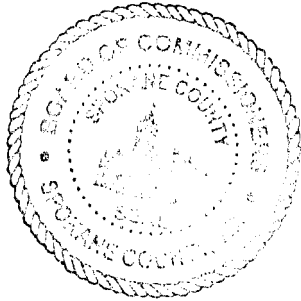
ADOPTED by the Spokane City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Terri L. Pfister, City Clerk

Approved as to form:

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

ADOPTED by the Board of County Commissioners of Spokane County, Washington this 17th  
day of Sept., 2019.



ATTEST:

Ginna Vasquez  
Ginna Vasquez  
Clerk of the Board

Mary L. Kuney  
Mary L. Kuney, Chair

Al French  
Al French, Vice-Chair

Josh Kerns  
Josh Kerns, Commissioner

EXHIBIT A

THE PROPERTY

SPOKANE COUNTY ASSESSOR TAX PARCEL NUMBERS

15344.0102  
15344.0103  
15344.0104  
15344.0105  
15344.0106  
15344.0107  
15344.0108  
15344.0109  
15344.0110  
15344.0111  
15344.0113

EXHIBIT B

REAL PROPERTY PURCHASE AND SALE AGREEMENTS AND ESCROW INSTRUCTIONS,  
DATED AS OF AUGUST 1, 2019,  
BY AND BETWEEN SPOKANE AIRPORT AND CENTRAL SPRAGUE REALTY, LLC

## AGENDA SHEET

**SUBMITTING DEPARTMENT:** *Spokane Airport Board*

**CONTACT PERSON:** *Lawrence J. Krauter, CEO*

**PHONE NUMBER:** *509.455.6419*

**CHECK TYPE OF MEETING ITEM BELOW:**

**9:00 AM CEO MEETING:** ☐

**2:00 PM CONSENT AGENDA:** ☐  
**BY LEAVE:** ☐

**5:30 PM LEGISLATIVE SESSION:** ☐  
**BY LEAVE:** ☐

**SPECIAL SESSION:** ☐

**BELOW FOR CLERK'S USE ONLY:**

Clerk's Resolution No. **19 - 1336**  
Approved: Majority/Unanimous \_\_\_\_\_  
Denied: Majority/Unanimous \_\_\_\_\_  
Renews/Amends No. \_\_\_\_\_  
Public Works No. \_\_\_\_\_  
Purchasing Dept. No. \_\_\_\_\_

**AGENDA TITLE:** *Purchase and Sales Agreements – Spokane International Airport*

**BACKGROUND:** *(Attach separate sheet(s) if necessary):*

Spokane County and the City of Spokane are joint owners and sponsors of Spokane Airport, which is managed and operated by the Spokane Airport Board pursuant to RCW 14.08.200 and the Amended Spokane County/City Airport Agreement, dated August 28, 1990 (City of Spokane City Clerk File # OPR 1986-0318, Spokane County Resolution No. 1990-1040), (the "Airport Agreement"). On August 22, 2019, the Airport Board approved recommendation of approval of the two (2) Real Property Purchase and Sale Agreements and Escrow Instructions between the Spokane Airport and Central Sprague Realty, LLC, for the sale of a total of 101.73 acres of Airport real property. Pursuant to the Airport Agreement, both the City and County must approve the sale of Airport real property.

**FISCAL IMPACT:** *None to Spokane County*

**REQUESTED BOARD ACTION:** *Approve two (2) Real Property Purchase and Sale Agreements and Escrow Instructions between the Spokane Airport and Central Sprague Realty, LLC, for the sale of a total of 101.73 acres of Airport real property.*

**SIGNATURES:** *(Signatures must be completed before submitting to the Clerk of the Board).*

\_\_\_\_\_  
1) Legal Department

\_\_\_\_\_  
2) Auditor's Office

\_\_\_\_\_  
3) Budget Office

\_\_\_\_\_  
4) Department Head/Elected Official or  
Designated Authority (Requesting Agenda Item)

\_\_\_\_\_  
5) Central Services

\_\_\_\_\_  
Other



**Submit to Clerk of the Board with accompanying paperwork (Resolution, Agreements, etc.)**

☐ ***This item will need to be codified in the Spokane County Code.***

**REAL PROPERTY PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS  
63.50 ACRES**

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement") is made as of the 22<sup>nd</sup> day of August, 2019 (the "Effective Date"), by and between the SPOKANE AIRPORT, by and through its Airport Board ("Airport Board"), created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington ("Seller"), and CENTRAL SPRAGUE REALTY, LLC, a Washington limited liability company ("Buyer"). Seller and Buyer may be referred to collectively as the "Parties" and individually as a "Party" in this Agreement.

RECITALS

Seller is the owner of the following (collectively, the "Property"):

- A. Fee simple title to real property consisting of approximately 63.50 acres located generally fronting on Craig Road, south of McFarlane Road in the City of Spokane, Spokane County, Washington, and legally described on the attached Exhibit A (the "Real Property");
- B. All mineral rights, air and water rights, and rights and easements appurtenant to the Real Property owned by Seller, if any;
- C. All licenses, permits, land use designations, approvals, various waivers or consents applicable to the Real Property (collectively, the "Permits"), to the extent transferable and held by Seller, issued or subject to the laws of the United States, the State of Washington, County of Spokane, or City of Spokane, other authority, department, commission board, bureau, agency, unit, or instrumentality, (collectively "Governmental Authorities"); and
- D. Certain surveys, soil and substrata studies, environmental reports, and other plans, diagrams, or studies, if any, with respect to the Real Property.

NOW, THEREFORE, Seller desires to sell and Buyer desires to purchase the Property upon the terms and conditions set forth in this Agreement, as follows:

1. Sale of Property. Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase and accept the Property from Seller, upon the terms and conditions set forth in this Agreement. As used in this Agreement, "Business Day" means any day other than: (i) a Saturday, (ii) a Sunday, or (iii) days on which branches of national banks located in Spokane County, Washington are closed.

2. Earnest Money and Independent Consideration.

2.1 Earnest Money. Within three (3) Business Days after the Effective Date, Buyer shall deposit with STEWART TITLE AND GUARANTY COMPANY (Attn: Kim Belcher) ("Escrow Agent" or "Title Company") the sum of Thirty Thousand Dollars (\$30,000.00) in Current Funds (as hereinafter defined) as earnest money (the "Earnest Money"), to be applied for the account of Buyer as a credit against the Purchase Price (as defined in Section 3). Upon the expiration of the Review Period (as defined in Section 4.1), the Earnest Money shall be nonrefundable to Buyer, except as otherwise set forth in this Agreement. Upon receipt, Escrow

Agent shall deposit the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be part of the Earnest Money under this Agreement. When Escrow Agent disburses the Earnest Money as provided in this Agreement, any and all interest that has accrued thereon shall be disbursed to the Party entitled to the Earnest Money.

2.2 Independent Consideration. Simultaneously with Buyer's delivery of the Earnest Money to Escrow Agent, Buyer shall pay directly to Seller an amount equal to One Hundred Dollars (\$100.00) as independent consideration for Seller's performance under this Agreement, which amount the Parties bargained for and agreed to as additional consideration for Seller's execution, delivery and performance of this Agreement and shall be retained by Seller in all instances, and shall not be applied against the Purchase Price.

3. Purchase Price. The purchase price for the Property is One Million Seven Hundred Ninety-Seven Nine Hundred Thirty-Nine and 00/100 Dollars (\$1,797,939.00) (the "Purchase Price"), together with Buyer's share of closing costs and prorations, as set forth in this Agreement. The Purchase Price will be paid as follows at Closing: (i) the Earnest Money will be credited toward the Purchase Price; and (ii) the remainder of the Purchase Price will be paid in Current Funds. As used in this Agreement, "Current Funds" means wire transfers, certified funds, or cashier's checks in a form acceptable to Escrow Agent that would permit Escrow Agent to immediately disburse such funds. The foregoing Purchase Price assumes that the Real Property will consist of sixty-three and 50/100 (63.50) acres and that Buyer will pay a purchase price equal to the total number of acres multiplied by Twenty-Eight Thousand Three Hundred Fourteen Dollars (\$28,314) per acre (i.e. \$0.65/square foot). If the actual acres of Real Property, as shown on Buyer's survey is greater or less than sixty-three and 50/100 (63.50) acres, the Purchase Price will be increased or decreased to equal the actual number of acres, multiplied by the foregoing per acre price.

4. Due Diligence Inspections and Title Review.

4.1 Review Period. As used in this Agreement, the term "Review Period" means that period of time commencing on the Effective Date and expiring at 5:00 p.m., Pacific Time, sixty (60) days thereafter, subject to extension under Section 4.4(a) below.

4.2 Review of Title. Within three (3) Business Days after the Effective Date, Buyer shall cause the Title Company to deliver a commitment for the Title Policy (as defined in Section 6.3(b)) to the Parties. The commitment must be accompanied by legible copies of all documents referred to in Schedule B of the commitment (the commitment and documents are collectively referred to in this Agreement as the "Title Report").

(a) Objections. Buyer shall review the Title Report and may, within forty-five (45) days after the Effective Date (the "Title Review Period"), provide Seller and Title Company with written notice of the title exceptions that are acceptable or objectionable to Buyer, in Buyer's discretion (each such objectionable matter or exception considered a "Disapproved Matter"). If Buyer timely notifies Seller and Title Company of any Disapproved Matter(s) within the Title Review Period, Seller may, within five (5) days following Seller's receipt of Buyer's written notice of Disapproved Matter(s), notify Buyer and Escrow Agent that: (i) Seller will remove or correct such Disapproved Matter as of or before Closing, or (ii) Seller will not remove any or certain Disapproved Matter(s). If Seller does not respond within such period, Seller will be deemed to have elected option (ii) above. If Seller elects, within its discretion, or is deemed to have elected not to eliminate those objections with reference to such Disapproved Matter(s), in form and substance acceptable to Buyer, in Buyer's discretion,

Buyer may, prior to the expiration of the Review Period, either: (i) terminate this Agreement by delivery of written notice to Seller and Escrow Agent, or (ii) give written notice to Seller and Escrow Agent, agreeing to accept title to the Property subject to such Disapproved Matters, in which case such Disapproved Matters shall be Permitted Exceptions (as defined in Section 4.2(c), below), and if Buyer fails to elect either option (i) or (ii) above, Buyer will be deemed to have elected option (ii).

(b) Supplements; Amendments. If the Title Company issues a supplement or amendment to the Title Report showing additional title exceptions which were not contained in the initial Title Report (each, an "Amended Report"), Buyer will have three (3) days from the date of receipt of each Amended Report, and a copy of each document referred to in the Amended Report that was not contained in the initial Title Report, in which to give notice of its acceptance of or objection to any additional title exceptions except if said supplements or amendments are a result of Buyer's actions, in which case Buyer shall not be entitled to object to such additional title exceptions. If Buyer provides Seller with notice of the basis of objection to the status of Seller's title as shown in the Amended Report, Seller will have the option, but not the obligation, to: (i) eliminate Buyer's objections, (ii) obtain title insurance endorsements regarding such objections, or (iii) cure any objectionable matter within three (3) days after receipt of such written notice, in each case, in form and substance acceptable to Buyer. If, prior to the expiration of the three (3) day period, Seller does not cure such objections, Buyer will have the option to terminate this Agreement within one (1) Business Day after expiration of such three (3) day period by giving written notice of termination to Seller and Escrow Agent, and if Buyer does not elect to terminate the Agreement within such one (1) Business Day period, Buyer will be deemed to have agreed to accept title subject to such objections, in which case such additional title exceptions shall be Permitted Exceptions. If Seller's three (3) day cure period would expire after the scheduled Closing Date (as defined in Section 6.1, below), the Closing Date will be extended until the expiration of the time periods set forth in this Section.

(c) Failure to Provide Written Acceptance. Any item that Buyer accepts in writing or is deemed to have accepted pursuant to the terms of this Agreement will be a "Permitted Exception." The term "Permitted Exceptions" also includes and Buyer may not disapprove or object to the following: all zoning ordinances and regulations and any other laws, ordinances, or governmental regulations and restrictions regulating the use, occupancy or enjoyment of the Property; such state of facts as would be disclosed by a survey or physical inspection of the Real Property (unless Buyer obtains a survey); the lien of taxes and assessments not yet delinquent; any exclusions from coverage set forth in the jacket of the Title Policy; the Avigation Easement (as defined below); or any exceptions caused by Buyer, its agents, representatives or employees. Notwithstanding the foregoing, Buyer will not be required to disapprove or object to, and Seller covenants to remove as an encumbrance against title to the Property on or prior to the Closing, any deeds of trust, monetary liens, or monetary encumbrances (except for real property taxes and assessments not yet due) created by Seller. If Buyer does not provide written acceptance of an exception to title as disclosed by the Title Report or an Amended Report within the applicable time period, Buyer will be deemed to have accepted such matter. If this Agreement is terminated due to Seller's failure to eliminate or cure any of Buyer's objections under this Section 4.2, the Escrow Agent shall immediately disburse to Buyer all Earnest Money, together with any documents or instruments that Buyer has deposited with the Escrow Agent, and neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement.

4.3 Review of Diligence Materials. Seller shall, no later than three (3) Business Days after the Effective Date, provide Buyer (or make available for Buyer's inspection) copies of the following items that relate to the Property (to the extent the same are in Seller's possession or control): existing environmental assessment reports; surveys; utility bills for the most recent month and past six (6) months, if any; valuation notices and any other fees, dues, and taxes applicable to the Property for the past year; and copies of any pending or threatened Claims (as defined in Section 4.4(b)) relating to the Property, and any governmental notices regarding uncured violations of laws or regulations (collectively, the "Current Diligence Materials"). In the event that the sale of the Property fails to close for any reason, all Current Diligence Materials provided to Buyer by Seller shall be returned to Seller promptly upon request and the contents of all Current Diligence Materials shall thereafter be treated by Buyer as confidential information of Seller and shall not be disclosed to any third parties (except as may be required by law or upon court order) without the prior consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. Any Current Diligence Materials provided by Seller to Buyer under this Agreement are provided as an accommodation to Buyer, and Buyer acknowledges and agrees that Seller makes no representations or warranties whatsoever with regard to the contents, completeness or accuracy of any such Current Diligence Materials.

4.4 Physical Inspections; Entry on Property.

(a) Physical Inspections. Buyer and its agents, employees or subcontractors ("Buyer's Agents") will have the right, from time to time prior to the Closing, to enter upon the Property to examine the same and the condition thereof and to conduct such surveys and to make such engineering and other inspections, tests and studies as Buyer determines to be reasonably necessary, all at Buyer's sole cost and expense. As part of Buyer's physical inspection, Buyer may, in its discretion and its sole cost and expense, obtain a current ASTM Phase I environmental site assessment (the "Phase I") for the Property, performed by an environmental consultant (the "Environmental Consultant") acceptable to and for the benefit of and reliance on by Buyer. If the Phase I recommends that a Phase II environmental site assessment (the "Phase II") be prepared or Buyer determines that a Phase II is necessary and desirable, then Buyer may, in its discretion, elect to perform a Phase II by giving written notice to Seller. Seller shall have the right to be present at any or all inspections. Buyer shall promptly provide Seller copies of the Phase I and Phase II, and any other conclusions, assessments, or reviews provided to Buyer by the Environmental Consultant. Neither Buyer nor Buyer's Agents may contact any governmental official or representative regarding hazardous materials on or the environmental condition of the Property without Seller's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned, or delayed. In addition, if Seller consents to any such governmental contacts, Seller shall be entitled to receive at least five (5) days prior written notice of the intended contact and to have a representative present when any Buyer's Agent has any such contact with any governmental official or representative.

(b) Entry on Property. Up to and through the Closing Date, if this Agreement has not been terminated, Buyer and Buyer's Agents will have the right (upon at least twenty-four (24) hours prior written notice to Seller) to enter the Property to conduct such surveys, inspections, investigations and/or studies with respect to the Property as permitted by Section 4.4(a) of this Agreement, at Buyer's sole cost and expense. Buyer shall indemnify, defend and hold Seller and the Property free and harmless from and against any and all debts, duties, obligations, liabilities, liens, suits, claims, demands, causes of actions, damages, losses, costs and expenses (including,

without limitation, reasonable legal expenses and attorneys' fees with respect to the same or to enforce the foregoing) (collectively, "Claims") incurred by reason of or in connection with such entry or such surveys, inspections, investigations and/or studies. Before entering upon the Property, Buyer shall furnish to Seller a certificate of insurance evidencing: (a) commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, (b) professional liability insurance of not less than One Million Dollars (\$1,000,000.00) for any of Buyer's Agents who conduct inspections of the Property, (c) workers' compensation insurance as required Washington statutes, and (d) employer's liability insurance of not less than One Million Dollars (\$1,000,000.00) per accident. Such insurance coverage shall (i) be issued by an insurance company licensed in Washington having a rating of at least "AVIII" by A.M. Best Company, (ii) be primary and any insurance maintained by Seller shall be excess and noncontributory, (iii) include contractual liability coverage with respect to Buyer's indemnity obligations set forth in this Agreement (it being understood, however, that the availability of such insurance shall not serve to limit or define the scope of Buyer's indemnity obligations under this Agreement in any manner whatsoever), and (iv) not contain any exclusions for "insured versus insured" claims as respects any potential claim by Seller against Buyer. The insurance certificate required herein shall also provide that the coverage may not be cancelled, non-renewed or reduced without at least thirty (30) days' prior written notice to Seller. Buyer agrees to repair any and all damages caused to the Property due to Buyer's entry thereon and otherwise to restore the Property to the Property's original condition before such entry. The obligations of Buyer under this Section 4.4 will survive Closing or earlier termination of this Agreement.

(c) No Liens or Interference. Buyer shall not permit, and shall indemnify, defend and hold harmless Seller for, from and against any and all Claims incurred by reason of or in connection with, any construction, mechanics or materialmen's liens or any other liens that attach to the Property or any portion thereof by reason of the performance of any work or the purchase of any materials by Buyer or Buyer's Agents in connection with Buyer's inspection of the Property. The provisions of this Section will survive Closing or other termination of this Agreement.

4.5 Right to Terminate Before Expiration of Review Period. Notwithstanding anything contained within this Agreement to the contrary, Seller acknowledges and understands that Buyer may, prior to the expiration of the Review Period, notify Seller in writing that Buyer elects to terminate this Agreement as a result of any matter or no matter as determined by Buyer, in Buyer's sole discretion. Seller acknowledges that Buyer has the right to so terminate this Agreement, regardless of whether Seller would be willing or able to cure any such matter to which Buyer has objected. If Buyer elects, in its sole discretion, to proceed with this transaction, Buyer shall send a written approval notice to Seller and Escrow Agent on or before expiration of the Review Period ("Approval Notice"). If Buyer fails to send an Approval Notice to Seller and Escrow Agent by the expiration of the Investigation Period, Buyer will be deemed to have elected to terminate this Agreement. Buyer may also terminate this agreement by sending written notice of termination to Seller on or before expiration of the Review Period. If this Agreement is terminated as provided in this Section 4.5, the Earnest Money will be refunded to Buyer, and the Parties will have no further rights or obligations to each other, except for those rights and obligations that expressly survive the termination of this Agreement. After the Approval Notice is sent by Buyer or upon expiration of the Review Period, the Earnest Money will be nonrefundable to Buyer, except as otherwise expressly provided in this Agreement.



#### 4.6 Entitlement Period.

(a) Duration. As used in this Agreement, the term "Entitlement Period" means that period of time commencing upon the expiration of the Review Period and expiring upon the earlier to occur of: (i) the date that is one hundred and eighty (180) days after the expiration of the Review Period; and (ii) five (5) Business Days after Buyer has received (A) Final Approval of the Entitlements (as defined below) and (B) a definitive statement of any required land dedications and impact fees, in-lieu fees and any other payments required by applicable Governmental Authorities in connection with the development of the industrial project that Buyer wishes to develop on the Real Property in a manner and design acceptable to Buyer in its sole discretion (the "Project"). Buyer shall, during the Entitlement Period, use commercially reasonable efforts to obtain Final Approval of the Entitlements, and shall provide prompt written notice to Seller upon obtaining Final Approval of its Entitlements.

(b) Entitlements. As used in this Agreement: the term (i) "Entitlements" means all governmental or other zoning, environmental, archaeological, 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 the Project, and (ii) "Final Approval" means the final, binding approvals of the Project and all Entitlements thereto by all applicable Governmental Authorities, the receipt of any and all Entitlements and the expiration of any appeal periods relating to any such Entitlements and approvals without any outstanding appeal thereto. Seller shall cooperate with Buyer and take all actions reasonably necessary to assist Buyer in Buyer's efforts to obtain Final Approval of the Project and Entitlements, including, without limitation, executing such applications and any other documents necessary or convenient with respect to the development of the Project that are required to be executed by the owner of the Property; *provided*, however, that no such applications or other documents may encumber the Property until the Closing unless otherwise consented to by Seller. Following the Effective Date, the submission and processing of the Entitlements shall be at Buyer's sole cost and at the sole control and direction of Buyer.

(c) Right to Terminate Prior to Expiration of Entitlement Period. Notwithstanding anything contained in this Agreement to the contrary, Buyer may in its sole discretion cease its pursuit of the Final Approval of the Entitlements and terminate this Agreement after the expiration of the Investigation Period and prior to the expiration of the Entitlement Period if Buyer determines, in its sole discretion, that it will not be feasible to obtain Final Approval of all of Buyer's desired Entitlements for the Project. Buyer may exercise such termination right by delivering written notice of termination to Seller and Escrow Agent prior to the expiration of the Entitlement Period (the "Entitlements Termination Notice"). If Buyer fails to deliver the Entitlement Termination Notice or in the alternative, fails to affirmatively notify Seller in writing on or before the expiration of the Entitlement Period that it intends to proceed with the transactions contemplated hereunder and expressly waives its right of termination under this Section 4.6(c) (the "Entitlements Approval Notice"), this Agreement shall terminate whereupon Escrow Agent shall immediately disburse the Earnest Money to Seller and neither party shall have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement.

5. Conditions Precedent.

5.1 Buyer's Conditions Precedent. Buyer's obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

- (a) All of the documents required to be delivered by Seller to Buyer at Closing pursuant to the terms and conditions hereof shall have been delivered;
- (b) Each of the representations of Seller set forth in Section 7 shall be true in all material respects as of the Closing Date; and
- (c) Title Company is irrevocably committed to issue, upon the condition of the payment of the applicable premium, the Title Policy, subject only to the Permitted Exceptions applicable to the Real Property.
- (d) Seller shall have satisfied the Approval Conditions (as defined below) and delivered written confirmation thereof to Buyer.

If any of the foregoing conditions are not satisfied (or waived in writing by Buyer) on or before the Closing, then Buyer shall have the right to terminate this Agreement by delivering written notice to Seller and, in the event of such termination, all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease and the Earnest Money shall be promptly refunded to Buyer; provided however, that if any of the foregoing conditions are not satisfied (or waived in writing by Buyer) on or before the Closing due to any default by Seller hereunder, then Buyer, in its discretion, and by delivering written notice to Seller, may elect to pursue any of the remedies available to Buyer pursuant to Section 13. In the event Buyer elects to terminate this Agreement pursuant to Section 13, all obligations of Seller and Buyer under this Agreement (other than those that expressly survive the termination of this Agreement and the rights and remedies arising out of any breach of such surviving obligations) shall cease.

5.2 Seller's Conditions Precedent. Seller's obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

- (a) All of the documents and funds required to be delivered by Buyer to Seller at Closing pursuant to the terms and conditions hereof shall have been delivered;
- (b) Each of the representations of Buyer set forth in Section 8 shall be true in all material respects as of the Closing Date;
- (c) Seller's receipt of written approval of the transaction contemplated by this Agreement from the board of directors of Seller's Airport Board, the City of Spokane, and County of Spokane, acting through the City Council of Spokane, and the Spokane County Board of Commissioners, respectively; and
- (d) Seller's receipt of written approval from the Federal Aviation Administration ("FAA") for release and/or disposal of the Real Property by Seller that formally authorizes the release and/or disposal and removal of the Real Property as



airport dedicated real property pursuant to Section 163 of the FAA Reauthorization Act of 2018 ("FAA Disposal Approval").

If any of the conditions delineated in Sections 5.2(a) or 5.2(b) are not satisfied (or waived in writing by Seller) on or before the Closing, then Seller shall have the right to terminate this Agreement by delivering written notice to Buyer and, in the event of such termination, all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease and the Earnest Money shall be promptly disbursed to Seller as liquidated damages. Seller shall use commercially reasonable efforts to cause the conditions set forth in Section 5.2(c)-(d) (the "Approval Conditions") to be satisfied on or before Closing. Upon satisfaction of any of the Approval Conditions, Seller shall provide prompt written notice to Buyer of the same.

6. Closing.

6.1 Closing Date. The closing ("Closing") of the purchase and sale transaction contemplated in this Agreement will occur ("Closing Date") on the earlier of (i) April 30, 2020, or (ii) provided that the Approval Conditions have been satisfied, on such earlier date designated by Buyer by not less than ten (10) Business Days prior written notice to Seller. Notwithstanding anything herein to the contrary, if Closing has not occurred by April 30, 2020 due to the failure of the Approval Conditions then either Party may, in its sole discretion and at any time thereafter, elect to terminate this Agreement by delivering written notice to the Party and, in the event of such termination (a) all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease, and (b) the Earnest Money shall be promptly refunded to Buyer.

6.2 Location. Closing will occur at the offices of the Escrow Agent, or at such other place as may be agreed to by the Parties in writing.

6.3 Closing Costs and Prorations.

(a) Closing Fees. At Closing, Buyer and Seller will each pay one-half (1/2) of any escrow fees and closing fees. Seller shall be solely responsible for any state or local transfer taxes, real estate excise tax or any similar taxes or fees attributable to the transaction contemplated in this Agreement, if applicable to Seller. Seller shall be solely responsible for all recording fees associated with recording the Avigation Easement (as defined below). Buyer shall be responsible for all recording fees associated with recording the Deed (as defined below). Any other fees and costs will be paid by, or shared by, Buyer and Seller in accordance with local custom in Spokane County, Washington.

(b) Title Policy; Survey. Seller shall pay the equivalent premium of an ALTA standard owner's title policy for the Property, and Buyer shall pay the additional premium necessary for any ALTA extended or other policy Buyer elects to acquire (the "Title Policy"). Buyer shall also pay premium of any and all endorsements to the Title Policy unless provided by Seller to remove a Disapproved Matter, in which case, Seller shall be responsible for the cost of such endorsements. The cost of any survey of the Real Property obtained by Buyer will be borne by Buyer.

(c) Taxes and Fees. Real estate taxes for the year of Closing shall be the sole responsibility of Buyer. Buyer acknowledges that Seller does not pay real estate

taxes and, as such, Buyer is free to seek a refund for that portion of time in which real estate taxes may have otherwise been required to be paid in order to close the transaction contemplated by this Agreement. Annual municipal or special district assessments (on the basis of the actual fiscal tax years for which such taxes are assessed), lienable water and sewer rentals, license, or permit and inspection fees, if any, will be apportioned as of the Closing Date between Buyer and Seller. If, on the day prior to the Closing Date, real estate taxes have been imposed upon the Real Property for the real estate tax year in which Closing occurs such taxes shall be paid by Buyer at the time of Closing.

(d) Utility Readings. Seller shall use commercially reasonable efforts to obtain readings of the utility meters on the Property (if any) to a date no sooner than two (2) Business Days prior to the Closing Date. At or prior to Closing, Seller shall pay all charges based upon such meter readings. However, if after reasonable efforts Seller is unable to obtain readings of any meters prior to Closing, Closing will be completed without such readings and upon the obtaining of such readings after Closing, Seller shall promptly pay the pre-Closing charges as reasonably determined by Seller and Buyer based upon post-Closing readings.

(e) Attorney Fees. Each Party shall pay its own attorney fees incurred with respect to this transaction.

(f) Preliminary Closing Statement. Seller and Buyer shall cooperate with Escrow Agent to prepare a preliminary closing statement (the "Closing Statement") on the basis of the real estate taxes and other sources of income and expenses for the Property on or prior to the Closing Date. All apportionments and prorations provided for in this Section 6.3 to be made as of the Closing Date will be made, on a per diem basis, as of 11:59 p.m. on the day prior to the Closing Date. The preliminary Closing Statement and the apportionments and/or prorations reflected therein will be based upon actual figures to the extent available. If any of the apportionments and/or prorations cannot be calculated accurately based on actual figures on the Closing Date, then they will be calculated based on Seller's and Buyer's good faith estimates thereof, subject to reconciliation as provided in the following Section.

(g) Post-Closing Reconciliation. If there is an error on the preliminary Closing Statement or, if after the actual figures are available as to any items that were estimated on the preliminary Closing Statement, it is determined that any actual proration or apportionment varies from the amount thereof reflected on the preliminary Closing Statement, the proration or apportionment will be adjusted based on the actual figures as soon as feasible, but not later than sixty (60) days after the Closing Date. Either Party owing the other Party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other Party.

(h) Other Costs and Survival. All other costs not addressed within this Section 6.3 will be paid in accordance with the custom followed in Spokane County, Washington. The provisions of this Section 6.3 will survive Closing for a period of six (6) months.

6.4 Deliveries at Closing.

(a) Deliveries by Seller. At Closing, Seller shall execute and deliver (or cause to be executed and delivered) all documents and take all other actions reasonably necessary to effect the Closing, including, without limitation:

(1) A duly executed and acknowledged bargain and sale deed (the "Deed"), in the form attached to this Agreement as Exhibit B.

(2) A counterpart original duly executed and completed real estate excise tax affidavit ("REETA").

(3) A counterpart original duly executed and acknowledged avigation easement ("Avigation Easement") encumbering the Real Property, in the form attached to this Agreement as Exhibit C, but only if the Title Report Buyer obtains with respect to the Real Property does not disclose the existence of a satisfactory avigation easement, as determined by Seller in its sole and absolute discretion.

(4) A non-foreign affidavit for purposes of compliance with Section 1445(b)(2) of the Internal Revenue Code of 1986 (and the regulations adopted thereunder), as amended (the "Code").

(5) Copies of all current property tax bills and tax notices pertaining to the Real Property, if any.

(6) Such documentation as Escrow Agent may reasonably require, or may otherwise be required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

(b) Deliveries by Buyer. On the Closing Date, Buyer shall execute and deliver all documents and take such other action that may be reasonably necessary to effect and complete the Closing, including, without limitation:

(1) The amounts required under Section 3 and Section 6.3 in Current Funds.

(2) A duly executed and completed REETA.

(3) A counterpart original duly executed and acknowledged Avigation Easement, if required by Seller.

(4) Such documentation as Escrow Agent may reasonably require, or may otherwise be required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

(c) Actions of Escrow Agent. When Buyer and Seller have delivered the items described above, the Escrow Agent shall:

(1) Prepare the Closing Statement and obtain signed copies from Seller and Buyer.

- (2) Record the Deed and the Avigation Easement in that order.
- (3) Deliver the balance of the Purchase Price in Current Funds to Seller, net of Seller's costs, fees, and prorations.
- (4) Issue and deliver the Title Policy to Buyer.
- (5) Deliver the above referenced documents to the applicable Party.

7. Representations and Warranties of Seller. Seller makes the representations and warranties set forth in this Section 7. Buyer expressly understands and agrees that the phrase "to Seller's knowledge" as used in this Section 7 means the actual present knowledge of Lawrence J. Krauter, acting solely in his capacity as the Chief Executive Officer of Seller, and shall not be construed to refer to the knowledge of any other partner, officer, director, agent, employee or representative of Seller, or any affiliate or parent of Seller. Such individual shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or any of Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete. Each representation and warranty: (i) is true in all material respects as of the Effective Date; (ii) will be true in all material respects on the Closing Date; and (iii) will survive Closing for a period of nine (9) months.

7.1 Authority/Binding Agreement. This Agreement and all exhibits and documents to be delivered by Seller pursuant to this Agreement have been duly executed and delivered by Seller and constitute the valid and binding obligations of Seller. Subject to obtaining the approvals described Sections 5.2(c) and 5.2(d), Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement. The execution, delivery, and performance of this Agreement will not conflict with or constitute a breach or default under (i) the organizational documents of Seller; (ii) any material instrument, contract, or other agreement to which Buyer is a party which affects the Property; or (iii) any statute or any regulation, order, judgment, or decree of any court or Governmental Authority.

7.2 Condemnation. Seller has not received from any Governmental Authority having the power of eminent domain any written notice of any condemnation of the Property or any part thereof.

7.3 Pending Litigation. Seller has received no written notice of any pending litigation initiated against Seller or the Property which would materially affect the Property after Closing.

7.4 Governmental Compliance. Seller has not received from any Governmental Authority written notice of any material violation of any building, fire or health code or any other statute applicable to the Property which will not be cured prior to Closing.

7.5 Non-Foreign Person. Seller is not a "foreign person" as defined in § 1445 of the Code and any related regulations.

7.6 Environmental Matters. To Seller's knowledge, and except as may otherwise be disclosed in the Current Diligence Materials: (a) the Property is free from Hazardous Substances; (b) the soil, surface water and ground water of, under, on or around the Property are free from Hazardous Substances; (c) the Property has never been used for or in connection with the

manufacture, refinement, treatment, storage, generation, transport or hauling of any Hazardous Substances, nor has the Property been used for or in connection with the disposal of any Hazardous Substances; and (d) the Property is now and during Seller's ownership, has been in compliance with all Environmental Laws. As used in this Agreement, the term "Hazardous Substance" means any material, waste, substance, pollutant, or contaminant which may or could pose a risk of injury or threat to health or the environment, including, without limitation: (i) those substances included within the definitions of "hazardous substance", "hazardous waste", "hazardous material", "toxic substance", "solid waste", or "pollutant or contaminant" in or otherwise regulated by, any Environmental Law; (ii) those substances listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 17.101, including appendices and amendments thereto), or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (iii) such other substances, materials, or wastes which are or become regulated or classified as hazardous or toxic under any Environmental Law; and (iv) any material, waste, or substance which is (A) petroleum or refined petroleum products; (B) radon (C) polychlorinated biphenyls; (D) flammable explosives; or (E) radioactive materials. As used in this Agreement, the term "Environmental Law" means any federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. § 1101, *et seq.*; the Clean Air Act, 41 U.S.C. § 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*; The Safe Drinking Water Act, 41 U.S.C. § 300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. § 3251, *et seq.*; and any other federal, state or local law, statute, ordinance, or regulation now in effect or hereinafter enacted which pertains to health, industrial hygiene, or the regulation or protection of the environment, including without limitation, ambient air, soil, groundwater, surface water, or land use.

7.7 Due Diligence Documents. To Seller's knowledge, all of the Current Diligence Materials delivered or made available by Seller to Buyer in connection with the Property are complete copies of such items in Seller's possession or control.

7.8 No Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated conflict with or result in the material breach of any terms, conditions, or provisions of or constitute a default under (or with the passage of time or delivery of notice, or both, would constitute a default under) any provisions of Seller's organizational documents, or any bond, note, or other evidence of indebtedness that will not be discharged at Closing or any judicial order or agreement to which Seller is a party or to which Seller is subject. Seller has not entered into any agreement to sell or otherwise transfer its interest in the Property except for this Agreement.

7.9 No Contracts. Seller has not entered into and is not a party to any contracts or commitments relating to the Property that extend beyond the Closing Date.

8. Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the representations and warranties set forth in this Section 8. Each representation and warranty: (i) is true in all respects as of the Effective Date; (ii) will be true in all respects on the Closing Date; and (iii) will survive Closing for a period of nine (9) months.

8.1 Power and Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated in this Agreement. Buyer's execution, delivery and performance of this Agreement have been duly authorized.

8.2 Bankruptcy or Insolvency. There are no attachments, executions, assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy pending against or contemplated by Buyer, and no such actions have been threatened.

8.3 Anti-Terrorism. All funds to be used by Buyer as payment of the Purchase Price at Closing are from sources operating under, and in compliance with, all federal, state and local statutes and regulations and are free of all liens and claims of lien. Neither Buyer, nor any of its members, managers or other owners is a "Prohibited Person" or "Specifically Designated National and Blocked Person" under Anti-Terrorism Laws. As used in this Agreement, the term "Anti-Terrorism Laws" means any and all present and future judicial decisions, statutes, ruling, rules, regulations, permits, certificates, orders and ordinances of any Governmental Authority relating to terrorism or money laundering including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 et seq.); the International Emergency Economic Powers Act (50 U.S.C.A. § 1701-06); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism") and the United States Treasury Department's Office of Foreign Assets Control list of "Specifically Designated National and Blocked Persons" (as published from time to time in various mediums).

9. "AS IS" Sale; Release & Waiver.

9.1 "AS IS" Purchase.

(A) SUBJECT TO SELLER'S REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 7, AND ACKNOWLEDGING THE PRIOR USE OF THE PROPERTY AND BUYER'S OPPORTUNITY TO INSPECT THE PROPERTY, BUYER AGREES TO PURCHASE THE PROPERTY "AS IS", "WHERE IS", WITH ALL FAULTS AND CONDITIONS THEREON. ANY WRITTEN OR ORAL INFORMATION, REPORTS, STATEMENTS, DOCUMENTS OR RECORDS CONCERNING THE PROPERTY ("DISCLOSURES") PROVIDED OR MADE AVAILABLE TO BUYER, ITS AGENTS OR CONSTITUENTS BY SELLER, SELLER'S AGENTS, EMPLOYEES OR THIRD PARTIES REPRESENTING OR PURPORTING TO REPRESENT SELLER, SHALL NOT BE REPRESENTATIONS OR WARRANTIES, UNLESS SPECIFICALLY SET FORTH IN SECTION 7 OF THIS AGREEMENT. IN PURCHASING THE PROPERTY OR TAKING OTHER ACTION HEREUNDER, BUYER HAS NOT AND SHALL NOT RELY ON ANY SUCH DISCLOSURES, BUT RATHER, BUYER SHALL RELY ONLY ON BUYER'S OWN INSPECTION OF THE PROPERTY. BUYER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS IS".

(B) BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7 OF THIS AGREEMENT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS



OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY INCLUDING, WITHOUT LIMITATION, (A) THE NATURE, QUALITY OR PHYSICAL CONDITION OF THE PROPERTY, (B) THE WATER, SOIL AND GEOLOGY OF THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, (F) THE COMPLIANCE OF OR BY THE PROPERTY OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION THEREOVER, (D) THE FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, (E) THE MARKETABILITY OF THE PROPERTY OR THE ABILITY TO LEASE OR SELL THE PROPERTY, (F) THE STATUS OR CONDITION OF ENTITLEMENTS PERTAINING TO THE PROPERTY, (G) DEFICIENCY OF ANY DRAINAGE ON THE REAL PROPERTY; (H) THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE; AND (I) ANY MATTER REGARDING TERMITES OR WASTES, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., OR ANY HAZARDOUS MATERIALS, AS HEREINAFTER DEFINED. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER, UNLESS OTHERWISE REQUIRED BY LAW, IS UNDER NO DUTY TO MAKE ANY AFFIRMATIVE DISCLOSURES REGARDING ANY MATTER WHICH MAY BE KNOWN TO SELLER.

Seller's Initials: LJK

Buyer's Initials: 

9.2 Release. Subject to the covenants, representations and warranties of Seller contained in this Agreement, effective as of Closing, Buyer on behalf of itself and its shareholders, members, investors or partners of each of them and any permitted assignees of Buyer hereunder and its successors and assigns (collectively, the "Buyer Affiliated Parties") waives its right to recover from, and forever releases and discharges, Seller and its affiliates, property manager, partners, trustees, beneficiaries, owners, members, managers, officers, employees and agents and representatives, and its respective heirs, successors, personal representatives and assigns from any and all Claims, whether direct or indirect, known or unknown, suspected or unsuspected, foreseen or unforeseen, that may arise on account of or in any way be connected with: (i) the physical condition of the Property, including, without limitation, all seismic elements; the condition, valuation, or utility of the Property; title and survey matters with respect to the Property; and the environmental condition of the Property and the presence of any Hazardous Substance on, under or about the Property; and (ii) any law or regulation applicable to the Property, including, without limitation, any Environmental Laws and any other federal, state or local law.

In this connection and to the extent permitted by law, Buyer hereby agrees, realizes and acknowledges that factual matters now unknown to Buyer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees that it waives (and by Closing this transaction will be deemed to have waived) any and all objections and complaints concerning the physical characteristics and any existing conditions of the Property, and that the waivers and releases herein have been negotiated and agreed upon in

light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. The releases set forth in this Section shall become effective upon the Closing. Buyer further hereby assumes the risk of changes in applicable laws, including any relevant Environmental Laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Substances or other contaminants, may not have been revealed by its investigation.

9.3 Waiver of Right to Receive Seller Disclosure Statement and Waiver of Right to Rescind. PURSUANT TO RCW CH. 64.06, AS AMENDED BY CHAPTER 64, LAWS OF 2010, WITH RESPECT TO THE REAL PROPERTY, BUYER HEREBY WAIVES ITS RIGHT TO RECEIVE THE SELLER DISCLOSURE STATEMENT REFERRED TO THEREIN. THIS WAIVER DOES NOT EXTEND TO THE SECTION OF THE DISCLOSURE STATEMENT ENTITLED "ENVIRONMENTAL". Buyer is hereby provided with the "Environmental" section of the Seller Disclosure Statement attached hereto as Exhibit E. Buyer further agrees that any information discovered by Buyer concerning the Real Property prior to Closing shall not obligate Seller to prepare and deliver to Buyer a revised or updated Seller Disclosure Statement. Buyer hereby waives any right to receive an updated or revised Seller Disclosure Statement, regardless of the source of any new information. Buyer further warrants that it is a sophisticated buyer who is familiar with the ownership of real estate similar to the Real Property and Buyer has or will have adequate opportunity to complete such independent inspections of the Property it deems necessary, and will acquire the Real Property solely on the basis of and in reliance upon such examinations and not on any information provided in any Seller Disclosure Statement or otherwise provided or to be provided by Seller (other than as expressly provided in this Agreement or in the Deed). BUYER HEREBY WAIVES, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE RIGHT TO RESCIND THIS AGREEMENT PURSUANT TO ANY PROVISION OF RCW 64.06, AS AMENDED BY CHAPTER 64, LAWS OF 2010. IT IS THE INTENT OF BUYER THAT ANY SELLER DISCLOSURE STATEMENT PROVIDED BY SELLER WILL NOT BE RELIED UPON BY BUYER, AND SHALL GIVE BUYER NO RIGHTS WITH RESPECT TO SELLER UNDER THIS AGREEMENT. THIS WAIVER OF THE RIGHT TO RESCIND APPLIES TO THE SELLER DISCLOSURE STATEMENT PROVIDED TO BUYER DURING THE REVIEW PERIOD AND APPLIES PROSPECTIVELY TO ANY UPDATED OR REVISED SELLER DISCLOSURE STATEMENTS THAT MAY BE PROVIDED BY SELLER TO BUYER.

10. Covenants.

10.1 Covenants of Seller.

(a) Normal Operations. Until the Closing Date, Seller shall (i) continue to operate the Property in substantially the same manner as in the past and will perform all necessary maintenance to the Property as its ordinary course of business dictates; and (ii) not modify or alter the Property without the prior written consent of Buyer. From and after the Effective Date, Seller shall not enter into any contracts or commitments relating to the Property without the prior written consent of Buyer (in Buyer's reasonable discretion) if any such contracts or commitments would extend beyond the Closing Date. From and after the Effective Date, Seller shall not encumber the Property with any liens, encumbrances or other instruments creating a cloud on title or securing a monetary obligation with the Property.



(b) Insurance. Until the Closing Date, Seller shall maintain substantially the same liability, casualty, and all other insurance on the Property as is in effect as of the Effective Date.

(c) Approval Conditions. Commencing on the Effective Date Seller shall use commercially reasonable efforts to satisfy the Approval Conditions prior to October 25, 2019 (the "Approval Conditions Deadline"), *provided*, however, that Seller's failure to satisfy the Approval Conditions shall not be considered a default of this Agreement. Buyer and Seller shall reasonably cooperate with each other and Buyer shall take all actions reasonably necessary to assist Seller in Seller's efforts to satisfy the Approval Conditions, including, without limitation, submitting such materials and executing such applications and any other documents that may be requested by the FAA. Seller shall provide prompt written notice to Buyer of the satisfaction of the Approval Conditions when received. If Seller fails to provide written evidence of satisfaction of the Approval Conditions prior to the Approval Conditions Deadline, Buyer shall have the right to extend the Approval Conditions Deadline until the Closing Date by delivering written notice of such election to Seller not later than five (5) Business Days following the Approval Conditions Deadline. If Seller is unable to satisfy the Approval Conditions at any time prior to the Approval Conditions Deadline (as same may have been extended), Buyer may terminate this Agreement by written notice to Seller, in which event the Earnest Money and all interest thereon shall be returned to Buyer, and thereafter all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease.

10.2 Post Closing Construction Covenant of Buyer. Buyer acknowledges and agrees that as a condition to obtaining the FAA Disposal Approval, Buyer must adhere to the requirements of 14 CFR Part 77, submitting FAA Form 7460-1 and receiving FAA's positive determination, prior to constructing any facility or feature on the Property.

11. Condemnation. Risk of loss resulting from any condemnation or eminent domain proceeding that is commenced or has been threatened before the Closing, and risk of loss to the Property due to fire, flood, or any other cause before Closing, will remain with Seller. If before Closing the Property (or any portion thereof) is subjected to a threat of condemnation or becomes the subject of any proceedings, judicial, administrative, or otherwise, with respect to the taking by eminent domain or condemnation, then Seller shall promptly provide written notice thereof to Buyer and Buyer may terminate this Agreement by written notice to Seller sent within fifteen (15) days after Seller informs Buyer in writing that the Property has been taken, in which event the Earnest Money will be returned to Buyer, and neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement. If the Closing Date is within the fifteen (15) day period, then Closing will be extended to the next Business Day following the end of the fifteen (15) day period. If no such election is made by Buyer, (i) this Agreement will remain in full force and effect, (ii) the purchase of the Property, less any interest taken by eminent domain, will be effected with no further adjustment, and (iii) upon Closing, Seller shall assign to Buyer all of the right, title, and interest of Seller in and to any awards that have been or may thereafter be made for such taking.

12. Default by Buyer: Liquidated Damages. BUYER WILL BE IN DEFAULT UNDER THIS AGREEMENT IF (I) ANY OF BUYER'S REPRESENTATIONS OR WARRANTIES ARE FALSE, (II) BUYER FAILS TO PERFORM ALL OF ITS OBLIGATIONS UNDER SECTION 6.4(b) ON OR BEFORE THE CLOSING DATE, OR (III) BUYER FAILS TO PERFORM ANY OF ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF WRITTEN NOTICE FROM SELLER OF SUCH FAILURE. IN THE EVENT OF

ANY DEFAULT BY BUYER UNDER THIS AGREEMENT, SELLER WILL BE RELIEVED OF ANY OBLIGATION TO SELL THE PROPERTY TO BUYER, SELLER WILL NOT HAVE ANY RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT, AND, AS SELLER'S SOLE AND EXCLUSIVE REMEDY AT LAW OR IN EQUITY FOR SUCH DEFAULT, THE EARNEST MONEY WILL BE RELEASED TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES THAT SELLER MIGHT SUFFER IN THE EVENT OF BUYER'S DEFAULT HEREUNDER. BUYER AND SELLER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION IS A FAIR AND REASONABLE ESTIMATE OF SUCH DAMAGES. THE FOREGOING PROVISION SHALL IN NO WAY LIMIT OR IMPAIR SELLER'S RIGHT OR ABILITY TO RECOVER FROM BUYER ATTORNEY'S FEES TO WHICH SELLER MAY OTHERWISE BE ENTITLED UNDER THIS AGREEMENT OR ANY SUMS WHICH MAY BECOME DUE TO SELLER BASED UPON ANY INDEMNITY PROVIDED BY SELLER PURSUANT TO THE TERMS OF THIS AGREEMENT.

Seller's Initials:

LJK

Buyer's Initials:

[Signature]

13. Default by Seller; Remedies. Seller will be in default under this Agreement if (i) Seller fails to perform all of its obligations under Section 6.4(a) on or before the Closing Date, or (ii) Seller fails to perform any of its obligations under this Agreement within three (3) Business Days after Buyer provides Seller with notice of such failure (a "Seller Default"). Upon a Seller Default, Buyer may, as its sole and exclusive remedy for such Seller Default, either: (i) terminate this Agreement in its entirety by delivery of notice of termination to Seller, whereupon the Earnest Money shall be immediately returned to Buyer and Seller shall reimburse Buyer for Buyer's actual and reasonable out of pocket documented expenses incurred exclusively with respect to this transaction in an amount not to exceed Sixty Thousand Four Hundred Ninety-Five and 93/100 Dollars (\$60,495.93) or (ii) continue this Agreement pending Buyer's action for specific performance hereunder provided appropriate proceedings are commenced by Buyer within forty-five (45) days following Seller's default and thereafter prosecuted with diligence. Buyer agrees that under no circumstances shall Buyer file a *lis pendens* action against the Property unless Buyer is seeking option (ii) above.

Anything in this Agreement to the contrary notwithstanding, with respect to all matters affecting title to the Real Property, Buyer acknowledges and agrees that it is relying upon the Title Policy. If Buyer has a claim under the Title Policy and the subject matter of that claim also constitutes a breach of any warranty made by Seller in this Agreement or the Deed, Buyer agrees that it will look first to its Title Policy for recovery on such claim, and Buyer shall not assert any claim against Seller for a breach of a representation, warranty or covenant with respect to such claim unless and until Buyer has pursued its remedies against the Title Company to a final judgment and has not been made whole. The time period for bringing a claim against Seller for a breach of a representation or warranty relating to title to the Real Property will be tolled during the pendency of any action by Buyer against Title Company.

14. Brokerage. Seller and Buyer have not engaged a broker in connection with this Agreement. Seller and Buyer hereby agree to indemnify, defend and hold each other harmless from and against any and all Claims arising out of any claim for commissions, fees, or other similar compensation or charges relating to the transaction contemplated in this Agreement, or the consummation thereof, which may be made by any third party as the result of the acts of Seller or Buyer or their respective representatives. The obligations of the parties under this Section 14 will survive Closing.

15. Miscellaneous.

15.1 Attorneys' Fees. Should any Party hereto bring any action against any other Party related in any way to this Agreement, the substantially prevailing Party shall be awarded its or their reasonable attorneys' fees and costs incurred for prosecution, defense, consultation, or advice in connection with such action.

15.2 Escrow Agent. The Escrow Agent hereby accepts its designation as the Escrow Agent under this Agreement and agrees to hold and disburse the Earnest Money as provided in this Agreement. The provisions of this Agreement will constitute joint instructions to the Escrow Agent to consummate the purchase in accordance with the terms and provisions of this Agreement; provided, however, that the Parties shall execute such additional escrow instructions, not inconsistent with the provisions of this Agreement, as may be deemed reasonably necessary to carry out the intentions of the Parties as expressed in this Agreement. The provisions of this Section 15.2 will survive the Closing or termination of this Agreement.

15.3 Notices. All notices required or permitted under this Agreement must be in writing and will be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt of an electronic confirmation thereof, (ii) upon delivery, if sent by electronic mail, provided that such notice is also promptly thereafter delivered in accordance with another permissible method of delivery, (iii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iv) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Seller:                      Spokane International Airport  
c/o Airport Board  
Attn: Lawrence J. Krauter  
9000 West Airport Drive, Suite 204  
Spokane, WA 99224  
Email: lkrauter@spokaneairports.net  
Fax: (509) 624-6633

with a copy to:                      Lukins & Annis, P.S.  
717 W. Sprague, Suite 1600  
Spokane, WA 99201  
Attn: Tyler J. Black, Esq.  
Email: tblack@lukins.com  
Fax: (509) 363-2487

If to Buyer:                      Central Sprague Realty, LLC  
c/o The Wolff Company  
717 W. Sprague Ave. Suite 802  
Spokane, WA 99201  
Attn: Old Fritz Wolff  
E-Mail: oldfritz@awolff.com  
Phone: 480-784-7864

with a copy to:

Lukins & Annis, P.S.  
717 W. Sprague, Suite 1600  
Spokane, WA 99201  
Attn: Brady M. Peterson, Esq.  
Email: bpeterson@lukins.com  
Fax: (509) 363-5215

If to Escrow Agent:

Stewart Title and Guaranty Company  
1420 Fifth Avenue, Suite 440  
Seattle, WA 98101  
Attn: Kim Belcher  
E-Mail: kim.belcher@stewart.com  
Fax: (509) 343-2793

15.4 Survival. Unless expressly provided otherwise in this Agreement, the representations and warranties of Seller contained in this Agreement will survive Closing for a period of nine (9) months (the "Survival Period"). Seller shall not be liable to Buyer by reason of a breach of any of Seller's representations or warranties unless the Buyer notifies the Seller of such breach (the "Warranty Notice") prior to the expiration of the Survival Period, and gives the Seller an opportunity to cure any such breach within a reasonable period of time after delivery of the Warranty Notice. Any proceeding with respect to Seller's alleged breach of any representation or warranty must be commenced within the Survival Period, and if not commenced within such time period, Buyer will be deemed to have waived its Claims for such breach or default. Seller's aggregate liability to Buyer by reason of a breach of one or more of Seller's representations or warranties shall not exceed Four Hundred Fifty-One Thousand Ninety-Three and 18/100 Dollars (\$451,093.18). Seller's liability will be limited to actual damages and will not include consequential, special, punitive or incidental damages.

15.5 Governing Law/Venue. The laws of the State of Washington govern the enforcement, and interpretation of this Agreement. The venue for any action related to this Agreement will be in Spokane County, Washington.

15.6 Integration; Modification; Waiver. This Agreement, the recitals to this Agreement, exhibits, and closing documents pursuant to this Agreement are hereby incorporated into this Agreement and, together with the Agreement, constitute the complete and final expression of the agreement of the Parties relating to the Property. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) executed by the Party against whom enforcement of the modification or waiver is sought.

15.7 Counterpart Execution. This Agreement may be executed in several counterparts and transmitted via facsimile or other electronic transmission, each of which will be fully effective as an original and all of which together will constitute one and the same instrument.

15.8 Headings; Construction. The headings used throughout this Agreement have been inserted for convenience of reference only and do not constitute matters to be construed in interpreting this Agreement. Words of any gender used in this Agreement will be construed to include any other gender, and words in the singular number will be construed to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof,"

"hereunder," and other similar compounds of the word "here" when used in this Agreement refer to the entire Agreement and not to any particular provision or section. The terms "includes," "including," or "include" as used herein shall be interpreted as being non-exclusive and shall be read to mean, respectively, "includes without limitation," "including, without limitation" and "include without limitation."

15.9 Deadlines and Dates Any deadline, unless otherwise set forth in this Agreement, will expire at 5:00 p.m., Pacific Time. Should any deadline or date in this Agreement fall on a day other than a Business Day, such deadline or date will be extended until 5:00 p.m., Pacific Time, on the next Business Day.

15.10 Severability If for any reason any provision of this Agreement is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Agreement will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.

15.11 Time of the Essence Time is of the essence of this Agreement and of the obligations of the Parties to purchase and sell the Property, it being acknowledged and agreed by and between the Parties that any delay in effecting a Closing pursuant to this Agreement may result in loss or damage to the Party in full compliance with its obligations hereunder.

15.12 Invalid Provisions If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, is held invalid or unenforceable, such provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision will not be affected thereby.

15.13 Binding Effect This Agreement is binding upon and inures to the benefit of Seller and Buyer, and their respective successors and permitted assigns.

15.14 Further Acts In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated in this Agreement.

15.15 Assignment Buyer shall not assign this Agreement without Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion; provided, however, that Buyer shall have the right to assign its rights under this Agreement without first obtaining Seller's consent if such assignment is to a special purpose entity in which Buyer or its principals, or Fritz H. Wolff, holds an ownership interest or control. No such assignment shall release Buyer from any of its obligations under this Agreement. Any assignment made in violation of this Section shall be void.

15.16 Other Parties The relationship of the Parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the Parties hereto. Neither Party has any fiduciary relationship hereunder to the other. The provisions of this Agreement are not intended to benefit any third parties.

15.17 1031 Exchange Buyer may purchase the Property and Seller may sell the Property by completing one or more Code §1031 tax-deferred exchange(s). Each Party agrees to

cooperate with the other in effecting such an exchange; *provided, however*, the cooperating Party will not incur any additional liability or financial obligations as a consequence of any such exchange.

15.18 Sole Discretion. If a Party is given the right to exercise its sole or absolute discretion, neither the other Party nor any third party (including, without limitation, an arbitrator) will have the right to challenge said exercise, whether reasonable or unreasonable, on any grounds whatsoever.

15.19 Confidentiality. Seller and Buyer agree that there will be no press or other publicity release or communication to any third party concerning the transaction contemplated in this Agreement without the prior written consent of the other. Notwithstanding the foregoing, prior to Closing, either Party shall have the right to disclose information with respect to the Property to its officers, directors, members, partners, employees, attorneys, accountants, environmental auditors, engineers, current and potential lenders, investors, insurers and permitted assignees under this Agreement and other consultants to the extent necessary to evaluate the transactions contemplated hereby and the Property provided that all such persons are told that such information is confidential and agree to keep such information confidential. If Buyer acquires the Property from Seller, either Party may disclose any information concerning the Property or the transactions contemplated hereby that the disclosing Party wishes to disclose; provided that any press release or other public disclosure by either Party regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved by the non-disclosing Party. The provisions of this Section shall survive the Closing or any termination of this Agreement.


15.20 Disclaimer—Preparation of Agreement. This Agreement has been negotiated by the Parties. Buyer and Seller agree that no presumption will apply in favor or against any Party in respect of the interpretation or enforcement of this Agreement. Each Party is advised to have this Agreement reviewed by independent legal and tax counsel prior to its execution. By executing this Agreement, each such Party represents: (i) that it has read and understands this Agreement, (ii) that it has had the opportunity to obtain independent legal and tax advice regarding this Agreement and (iii) that it has obtained such independent advice or has freely elected not to do so.

*[Signatures to appear on the following page]*

IN WITNESS WHEREOF, the Parties have executed and delivered the foregoing Agreement as of the Effective Date.

**SELLER:**

SPOKANE AIRPORT BOARD, a joint operation of the City of Spokane and County of Spokane, Washington

By: 

Name: Lawrence J. Kratter  
Title: Chief Executive Officer

**BUYER:**

Central Sprague Realty, LLC, a Washington limited liability company

By: 

Name: Alvin J. Wolff, Jr.  
Title: Manager

Approved as to form and content:



Brian Werst, General Counsel

This Real Property Purchase and Sale Agreement with Escrow Instructions, together with the earnest money deposit, is hereby acknowledged and accepted and the escrow is opened as of the \_\_\_\_ day of August, 2019. The Escrow Agent hereby agrees to act as "the person responsible for closing" the purchase and sale transaction contemplated in this Agreement within the meaning of Section 6045(e) of the Internal Revenue Code of 1986, as amended, and to file all forms and returns required thereby.

STEWART TITLE AND GUARANTY  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EXHIBIT A  
REAL PROPERTY LEGAL DESCRIPTION

TRACTS 36, 45, 46, 49, 50, 52 AND THE NORTH HALF OF TRACT 51, HAZELWOOD IRRIGATED FARMS, AS PER PLAT THEREOF RECORDED IN VOLUME "I" OF PLATS, PAGES 24 AND 25, LYING WITHIN SECTION 34, TOWNSHIP 25 NORTH, RANGE 41 EAST, W.M..

SITUATE IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON.

Tax Parcel Nos.: 15344.0104; 15344.0105; 15344.0106; 15344.0109; 15344.0110; 15344.0111; and 15344.0113.

EXHIBIT B  
FORM OF BARGAIN AND SALE DEED

Filed for Record at Request of and  
copy returned to:

Lukins & Annis, P.S.  
Attn: Brady M. Peterson, Esq.  
717 W. Sprague Avenue, Suite 1600  
Spokane, WA 99201

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BARGAIN AND SALE DEED

The grantor, SPOKANE AIRPORT, by and through its Airport Board, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington, for and in consideration of Ten Dollars (\$10.00) in hand paid, bargains, sells and conveys to \_\_\_\_\_, that real property situated in the county of Spokane, state of Washington and legally described on Schedule I attached hereto and incorporated herein by this reference (the "Property").

SUBJECT TO: (i) the lien securing non-delinquent taxes and assessments, both general and special, and (ii) all covenants, conditions, restrictions, reservations, rights, rights of way, easements, and title matters whether or not of record or visible from an inspection of the Property and all matters which an accurate survey of the Property would disclose.

DATED effective the \_\_\_\_ day of \_\_\_\_\_, 2019.

SPOKANE AIRPORT BOARD, a joint operation of the  
City of Spokane and County of Spokane, Washington

By: \_\_\_\_\_  
Name: Lawrence J. Krauter  
Its: Chief Executive Officer

STATE OF WASHINGTON    )  
  : ss  
County of Spokane        )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Lawrence J. Krauter, to me known to be the Chief Executive Officer of the SPOKANE AIRPORT BOARD, a joint operation of the City of Spokane and County of Spokane, Washington, the entity that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public   (Signature)

\_\_\_\_\_  
(Print Name)

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

(Seal or Stamp)

Schedule 1  
to  
Bargain and Sale Deed  
Legal Description

[insert]

**EXHIBIT C**  
**FORM OF AVIGATION EASEMENT**

Filed for Record at Request of and  
copy returned to:

Lukins & Annis, P.S.  
Attn: Tyler J. Black, Esq.  
717 W. Sprague Avenue, Suite 1600  
Spokane, WA 99201

DOCUMENT TITLE:	AVIGATION EASEMENT
REFERENCE NOS.:	
GRANTOR:	CENTRAL SPRAGUE REALTY, LLC
GRANTEE:	N/A
ABBREVIATED LEGAL	_____
DESCRIPTION:	
ASSESSOR'S PARCEL NO.:	_____

**AVIGATION EASEMENT**

THIS AVIGATION EASEMENT ("Easement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date"), by CENTRAL SPRAGUE REALTY, LLC, a Washington limited liability company ("Grantor") for the benefit of SPOKANE AIRPORT, by and through its Airport Board, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington, and the UNITED STATES OF AMERICA (collectively the "Grantees").

**RECITALS**

A. Grantor is the owner of fee simple title to real property consisting of approximately \_\_\_\_ ( ) acres located generally fronting on Craig Road, south of McFarlane Road in the City of Spokane, Spokane County, Washington, and legally described on the attached Schedule 1 (the "Property"), which Property was acquired by Grantor from the City of Spokane and Spokane County, as tenants in common, for Spokane Airport, by and through its Airport Board (the "Seller").

B. In consideration of Seller agreeing to sell the Property to Grantor, Grantor desires to provide Grantees an easement over the Property for the unobstructed passage of all Aircraft, on the terms and conditions set forth in this Easement. For purposes of this Easement, "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of, or flight in, the air.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Grantor agrees as follows:

1. Recitals. The recitals set forth above are incorporated by reference in this Easement as though fully set forth herein.

2. Grant of Avigation Easement for Benefit of Grantees. Grantor hereby grants and conveys to Grantees, for themselves, their heirs, administrators, executors, successors and assigns an easement over and across the airspace above the surface of the Property for the unobstructed passage and avigation of all Aircraft by whomsoever owned and operated. Grantees' foregoing avigation easement shall include the right to (i) emit such noise, vibrations, fumes, dust, fuel particles and other incidents typically resulting from the operation of Aircraft, (ii) increase the noise impact to the Property by virtue of an increase in flight frequencies, altering flight paths, or changing types of Aircraft pursuant to the continued growth and expansion of Spokane International Airport and Felts Field Airport (the "Airports"), or (iii) prevent the use of the Property in a manner that constitutes an Aircraft hazard, including, without limitation, (a) interfering with the operations of radio or electronic facilities used by any Aircraft, (b) making it difficult for pilots to distinguish between airfield lights and other lights, or (c) implementing a use that (1) results in glare in the eyes of Aircraft pilots, (2) impairs visibility in the vicinity of any Aircraft flight path, (3) creates thermal plumes hazardous to Aircrafts, (4) endangers the landing, taking off, or maneuvering of any Aircraft, (5) creates a wildlife attractant that in Grantees' sole discretion and opinion, could create a bird or wildlife strike hazard or otherwise interfere with Aircraft operations, or (6) creates a potential hazard of a fire accelerant or secondary explosion resulting from an Aircraft crash on the Property.

It is further understood and acknowledged that it is reasonable to expect that ongoing expansion of the Airports and attendant improvements will cause Aircraft effects to change, potentially increasing flight frequencies, alteration of flight paths and changing of Aircraft types as the operations of the Airports grow and expand which may have a greater future deleterious impact to the Property of the nature described in this Section.

3. Negative Covenants. Grantor hereby specifically disclaims any intention to create any other easements on the Property by this Easement, except as otherwise specifically provided herein. Grantor shall not erect, construct, alter, maintain, or allow to grow, any vegetation, object, structure, wall, fence or barrier ("Obstruction") of any kind on or in the Property that would increase the Federal Aviation Administration ("FAA") landing, approach, or departure minimum height requirements for Aircraft, or prevent or unreasonably impair the free access of any Aircraft to travel through the airspace above the surface of the Property, unless such Obstruction is specifically consented to by all appropriate Grantees. If any Obstruction violates the height restrictions described herein this Section 3, then any of the Grantees shall have the right to enter the Property to remove such Obstruction at Grantor's sole cost and expense. Grantor shall not create or cause interference with or utilize the Property in any way contrary to (i) Spokane County Zoning Code, Chapters 14.700 and 17C.180 or (ii) any FAA requirements and regulations.

4. Indemnification. Grantor shall indemnify, defend and hold harmless Grantees, their heirs, administrators, executors, successors and assigns from all claims, demands, or suits in law or equity arising from Grantor's intentional or negligent acts or breach of its obligations under this Easement.

5. Not a Public Dedication. The easements established by this Easement shall be for the benefit of and restricted solely to the use of Grantees, their heirs, administrators, executors, successors and assigns and shall be used only for the purposes described herein. Nothing contained in this Easement shall be deemed to be a public dedication of any portion of the Property described herein in the general public or for the general public or for any public purposes whatsoever.

6. Covenants Run With the Land. This Easement shall remain in effect until said Easement Area, as existing, enlarged or relocated, is abandoned or ceases to be used for Aircraft travel and Airports purposes. The covenants given and the easements granted pursuant to this Easement shall be deemed to be covenants running with the Property and shall be binding upon and benefit the heirs, successors in interest, assigns and devisees of Grantor and Grantees. The Property is the servient estate.

7. Consent to Modification. This Easement and any provision, covenant, or easement contained herein may be terminated, extended, modified, or amended only with the written consent of the Grantor and all appropriate Grantees; provided, however, that no termination, extension, modification, or amendment of this Easement shall be effective unless a written instrument setting forth the terms thereof has been executed as herein provided, acknowledged, and recorded in the offices of the Spokane County Recorder.

8. Not a Partnership. By this Easement, the Grantor does not, and any successors or assigns of Grantor shall not, in any way or for any purpose become partners or joint venturers with any of the Grantees, or of any their respective successors or assigns.

9. Construction. Wherever used herein, unless the context shall otherwise provide, the singular form shall include the plural, the plural shall include the singular, and the use of any gender will include all genders. The section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Easement or any section or provision hereof.

10. Entire Easement; Interpretation. This Easement constitutes the entire Easement with respect to the subject matter hereof. It is expressly agreed that there are no verbal understandings or other easements that in any way change the terms, covenants and conditions herein set forth. References to Grantor and Grantees shall also be deemed to refer to their respective successors and assigns.

11. Miscellaneous. This Easement shall be governed by the laws of the state of Washington. Any action related to this Easement shall be brought in Superior Court in Spokane County, Washington.

*[signature page follows]*

*[remainder of page left intentionally blank]*

[Insert SPE signature block]

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

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



Schedule 1  
to  
Avigation Easement

LEGAL DESCRIPTION OF PROPERTY

[insert]

EXHIBIT E  
ENVIRONMENTAL SECTION OF SELLER DISCLOSURE STATEMENT

[see pages that follow]

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**NOTICE TO THE BUYER: CENTRAL SPRAGUE REALTY, LLC**

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY CONSISTING OF APPROXIMATELY SIXTY-THREE AND ONE-HALF (63.50) ACRES LOCATED GENERALLY FRONTING ON CRAIG ROAD, SOUTH OF MCFARLANE ROAD IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON (THE "PROPERTY") AS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT A. SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S CURRENT AND ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED ENVIRONMENTAL SELLER DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, ELECTRICIANS, OR ON-SITE WASTEWATER TREATMENT INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES. SELLER IS NOT OCCUPYING THE PROPERTY.

**SELLER'S DISCLOSURES - ENVIRONMENTAL**

YES    NO    DON'T  
KNOW

If the answer is "Yes" to a question with an (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- \*A Have there been any flooding, standing water or drainage problems on the property that affect the property or access to the property?
- \*B Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
- \*C Are there any shorelines, wetlands, floodplains, or critical areas on the property?
- \*D Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
- \*E Is there any soil or groundwater contamination?
- \*F Has the property been used as a legal or illegal dumping site?
- \*G Has the property been used as an illegal drug manufacturing site?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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**\*\* SEE ATTACHED FOR ADDITIONAL INFORMATION.**

**ADDITIONAL NOTICES TO BUYER:** INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**VERIFICATION**

The foregoing answers and attached explanations (if any) are complete and correct to Seller's knowledge (as that term is defined in the purchase and sale agreement between Buyer and Seller) and Seller has received a copy hereof. Seller authorizes real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the Property.

Seller: SPOKANE AIRPORT BOARD, a joint operation of the City of Spokane and County of Spokane, Washington

By: Lawrence J. Krauter  
Lawrence J. Krauter, its Chief Executive Officer

Date: 8/28/19

**BUYER'S ACKNOWLEDGEMENT**

Buyer hereby acknowledges that:

1. Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
2. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
3. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
4. This information is for disclosure only and is not intended to be a part of the written agreement between Buyer and Seller.
5. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL AND CURRENT KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement under RCW 64.06, and hereby waives, to the extent permissible, any and all rights to receive a Seller Disclosure Statement. Buyer understands that this Environmental Seller Disclosure Statement is not the entire Seller Disclosure Statement, but is that portion that Seller may be required to deliver under RCW 64.06.010(7).

Buyer: CENTRAL SPRAGUE REALTY, LLC, a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**EXPLANATIONS FOR \*YES\* ANSWERS (IF ANY):**

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**EXHIBIT A**  
**Legal Description**

TRACTS 36, 45, 46, 49, 50, 52 AND THE NORTH HALF OF TRACT 51, HAZELWOOD IRRIGATED FARMS, AS PER PLAT THEREOF RECORDED IN VOLUME "I" OF PLATS, PAGES 24 AND 25, LYING WITHIN SECTION 34, TOWNSHIP 25 NORTH, RANGE 41 EAST, W.M..

SITUATE IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON.

Tax Parcel Nos.: 15344.0104; 15344.0105; 15344.0106; 15344.0109; 15344.0110; 15344.0111; and 15344.0113.

**REAL PROPERTY PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS  
38.23 ACRES**

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement") is made as of the 22<sup>nd</sup> day of August, 2019 (the "Effective Date"), by and between the SPOKANE AIRPORT, by and through its Airport Board ("Airport Board"), created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington ("Seller"), and CENTRAL SPRAGUE REALTY, LLC, a Washington limited liability company ("Buyer"). Seller and Buyer may be referred to collectively as the "Parties" and individually as a "Party" in this Agreement.

**RECITALS**

Seller is the owner of the following (collectively, the "Property"):

A. Fee simple title to real property consisting of approximately 38.23 acres located generally fronting Craig Road south of McFarlane Road in the City of Spokane, Spokane County, Washington, and legally described on the attached Exhibit A (the "Real Property");

B. All mineral rights, air and water rights, and rights and easements appurtenant to the Real Property owned by Seller, if any;

C. All licenses, permits, land use designations, approvals, various waivers or consents applicable to the Real Property (collectively, the "Permits"), to the extent transferable and held by Seller, issued or subject to the laws of the United States, the State of Washington, County of Spokane, or City of Spokane, other authority, department, commission board, bureau, agency, unit, or instrumentality, (collectively "Governmental Authorities"); and

D. Certain surveys, soil and substrata studies, environmental reports, and other plans, diagrams, or studies, if any, with respect to the Real Property.

NOW, THEREFORE, Seller desires to sell and Buyer desires to purchase the Property upon the terms and conditions set forth in this Agreement, as follows:

1. Sale of Property. Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase and accept the Property from Seller, upon the terms and conditions set forth in this Agreement. As used in this Agreement, "Business Day" means any day other than: (i) a Saturday, (ii) a Sunday, or (iii) days on which branches of national banks located in Spokane County, Washington are closed.

2. Earnest Money and Independent Consideration.

2.1 Earnest Money. Within three (3) Business Days after the Effective Date, Buyer shall deposit with STEWART TITLE AND GUARANTY COMPANY (Attn: Kim Belcher) ("Escrow Agent" or "Title Company") the sum of Thirty Thousand Dollars (\$30,000.00) in Current Funds (as hereinafter defined) as earnest money (the "Earnest Money"), to be applied for the account of Buyer as a credit against the Purchase Price (as defined in Section 3). Upon the expiration of the Review Period (as defined in Section 4.1), the Earnest Money shall be nonrefundable to Buyer, except as otherwise set forth in this Agreement. Upon receipt, Escrow



Agent shall deposit the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be part of the Earnest Money under this Agreement. When Escrow Agent disburses the Earnest Money as provided in this Agreement, any and all interest that has accrued thereon shall be disbursed to the Party entitled to the Earnest Money.

2.2 Independent Consideration. Simultaneously with Buyer's delivery of the Earnest Money to Escrow Agent, Buyer shall pay directly to Seller an amount equal to One Hundred Dollars (\$100.00) as independent consideration for Seller's performance under this Agreement, which amount the Parties bargained for and agreed to as additional consideration for Seller's execution, delivery and performance of this Agreement and shall be retained by Seller in all instances, and shall not be applied against the Purchase Price.

3. Purchase Price. The purchase price for the Property is One Million Eighty-Two Thousand Four Hundred Forty-Four and 22/100 Dollars (\$1,082,444.22) (the "Purchase Price"), together with Buyer's share of closing costs and prorations, as set forth in this Agreement. The Purchase Price will be paid as follows at Closing: (i) the Earnest Money will be credited toward the Purchase Price; and (ii) the remainder of the Purchase Price will be paid in Current Funds. As used in this Agreement, "Current Funds" means wire transfers, certified funds, or cashier's checks in a form acceptable to Escrow Agent that would permit Escrow Agent to immediately disburse such funds. The foregoing Purchase Price assumes that the Real Property will consist of approximately thirty-eight and 23/100 (38.23) acres and that Buyer will pay a purchase price equal to the total number of acres multiplied by Twenty-Eight Thousand Three Hundred Fourteen Dollars (\$28,314) per acre (i.e. \$0.65/square foot). If the actual acres of Real Property, as shown on Buyer's survey is greater or less than thirty-eight and 23/100 (38.23) acres, the Purchase Price will be increased or decreased to equal the actual number of acres, multiplied by the foregoing per acre price.

4. Due Diligence Inspections and Title Review.

4.1 Review Period. As used in this Agreement, the term "Review Period" means that period of time commencing on the Effective Date and expiring at 5:00 p.m., Pacific Time, sixty (60) days thereafter, subject to extension under Section 4.4(a) below.

4.2 Review of Title. Within three (3) Business Days after the Effective Date, Buyer shall cause the Title Company to deliver a commitment for the Title Policy (as defined in Section 6.3(b)) to the Parties. The commitment must be accompanied by legible copies of all documents referred to in Schedule B of the commitment (the commitment and documents are collectively referred to in this Agreement as the "Title Report").

(a) Objections. Buyer shall review the Title Report and may, within forty-five (45) days after the Effective Date (the "Title Review Period"), provide Seller and Title Company with written notice of the title exceptions that are acceptable or objectionable to Buyer, in Buyer's discretion (each such objectionable matter or exception considered a "Disapproved Matter"). If Buyer timely notifies Seller and Title Company of any Disapproved Matter(s) within the Title Review Period, Seller may, within five (5) days following Seller's receipt of Buyer's written notice of Disapproved Matter(s), notify Buyer and Escrow Agent that: (i) Seller will remove or correct such Disapproved Matter as of or before Closing, or (ii) Seller will not remove any or certain Disapproved Matter(s). If Seller does not respond within such period, Seller will be deemed to have elected option (ii) above. If Seller elects, within its discretion, or is deemed to have elected not to eliminate those objections with reference to such Disapproved Matter(s), in form and substance acceptable to Buyer, in Buyer's discretion,



Buyer may, prior to the expiration of the Review Period, either: (i) terminate this Agreement by delivery of written notice to Seller and Escrow Agent, or (ii) give written notice to Seller and Escrow Agent, agreeing to accept title to the Property subject to such Disapproved Matters, in which case such Disapproved Matters shall be Permitted Exceptions (as defined in Section 4.2(c), below), and if Buyer fails to elect either option (i) or (ii) above, Buyer will be deemed to have elected option (ii).

(b) Supplements; Amendments. If the Title Company issues a supplement or amendment to the Title Report showing additional title exceptions which were not contained in the initial Title Report (each, an "Amended Report"), Buyer will have three (3) days from the date of receipt of each Amended Report, and a copy of each document referred to in the Amended Report that was not contained in the initial Title Report, in which to give notice of its acceptance of or objection to any additional title exceptions except if said supplements or amendments are a result of Buyer's actions, in which case Buyer shall not be entitled to object to such additional title exceptions. If Buyer provides Seller with notice of the basis of objection to the status of Seller's title as shown in the Amended Report, Seller will have the option, but not the obligation, to: (i) eliminate Buyer's objections, (ii) obtain title insurance endorsements regarding such objections, or (iii) cure any objectionable matter within three (3) days after receipt of such written notice, in each case, in form and substance acceptable to Buyer. If, prior to the expiration of the three (3) day period, Seller does not cure such objections, Buyer will have the option to terminate this Agreement within one (1) Business Day after expiration of such three (3) day period by giving written notice of termination to Seller and Escrow Agent, and if Buyer does not elect to terminate the Agreement within such one (1) Business Day period, Buyer will be deemed to have agreed to accept title subject to such objections, in which case such additional title exceptions shall be Permitted Exceptions. If Seller's three (3) day cure period would expire after the scheduled Closing Date (as defined in Section 6.1, below), the Closing Date will be extended until the expiration of the time periods set forth in this Section.

(c) Failure to Provide Written Acceptance. Any item that Buyer accepts in writing or is deemed to have accepted pursuant to the terms of this Agreement will be a "Permitted Exception." The term "Permitted Exceptions" also includes and Buyer may not disapprove or object to the following: all zoning ordinances and regulations and any other laws, ordinances, or governmental regulations and restrictions regulating the use, occupancy or enjoyment of the Property; such state of facts as would be disclosed by a survey or physical inspection of the Real Property (unless Buyer obtains a survey); the lien of taxes and assessments not yet delinquent; any exclusions from coverage set forth in the jacket of the Title Policy; the Avigation Easement (as defined below); or any exceptions caused by Buyer, its agents, representatives or employees. Notwithstanding the foregoing, Buyer will not be required to disapprove or object to, and Seller covenants to remove as an encumbrance against title to the Property on or prior to the Closing, any deeds of trust, monetary liens, or monetary encumbrances (except for real property taxes and assessments not yet due) created by Seller. If Buyer does not provide written acceptance of an exception to title as disclosed by the Title Report or an Amended Report within the applicable time period, Buyer will be deemed to have accepted such matter. If this Agreement is terminated due to Seller's failure to eliminate or cure any of Buyer's objections under this Section 4.2, the Escrow Agent shall immediately disburse to Buyer all Earnest Money, together with any documents or instruments that Buyer has deposited with the Escrow Agent, and neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement.

4.3 Review of Diligence Materials. Seller shall, no later than three (3) Business Days after the Effective Date, provide Buyer (or make available for Buyer's inspection) copies of the following items that relate to the Property (to the extent the same are in Seller's possession or control): existing environmental assessment reports; surveys; utility bills for the most recent month and past six (6) months, if any; valuation notices and any other fees, dues, and taxes applicable to the Property for the past year; and copies of any pending or threatened Claims (as defined in Section 4.4(b)) relating to the Property, and any governmental notices regarding uncured violations of laws or regulations (collectively, the "Current Diligence Materials"). In the event that the sale of the Property fails to close for any reason, all Current Diligence Materials provided to Buyer by Seller shall be returned to Seller promptly upon request and the contents of all Current Diligence Materials shall thereafter be treated by Buyer as confidential information of Seller and shall not be disclosed to any third parties (except as may be required by law or upon court order) without the prior consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. Any Current Diligence Materials provided by Seller to Buyer under this Agreement are provided as an accommodation to Buyer, and Buyer acknowledges and agrees that Seller makes no representations or warranties whatsoever with regard to the contents, completeness or accuracy of any such Current Diligence Materials.

4.4 Physical Inspections; Entry on Property.

(a) Physical Inspections. Buyer and its agents, employees or subcontractors ("Buyer's Agents") will have the right, from time to time prior to the Closing, to enter upon the Property to examine the same and the condition thereof and to conduct such surveys and to make such engineering and other inspections, tests and studies as Buyer determines to be reasonably necessary, all at Buyer's sole cost and expense. As part of Buyer's physical inspection, Buyer may, in its discretion and its sole cost and expense, obtain a current ASTM Phase I environmental site assessment (the "Phase I") for the Property, performed by an environmental consultant (the "Environmental Consultant") acceptable to and for the benefit of and reliance on by Buyer. If the Phase I recommends that a Phase II environmental site assessment (the "Phase II") be prepared or Buyer determines that a Phase II is necessary and desirable, then Buyer may, in its discretion, elect to perform a Phase II by giving written notice to Seller. Seller shall have the right to be present at any or all inspections. Buyer shall promptly provide Seller copies of the Phase I and Phase II, and any other conclusions, assessments, or reviews provided to Buyer by the Environmental Consultant. Neither Buyer nor Buyer's Agents may contact any governmental official or representative regarding hazardous materials on or the environmental condition of the Property without Seller's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned, or delayed. In addition, if Seller consents to any such governmental contacts, Seller shall be entitled to receive at least five (5) days prior written notice of the intended contact and to have a representative present when any Buyer's Agent has any such contact with any governmental official or representative.

(b) Entry on Property. Up to and through the Closing Date, if this Agreement has not been terminated, Buyer and Buyer's Agents will have the right (upon at least twenty-four (24) hours prior written notice to Seller) to enter the Property to conduct such surveys, inspections, investigations and/or studies with respect to the Property as permitted by Section 4.4(a) of this Agreement, at Buyer's sole cost and expense. Buyer shall indemnify, defend and hold Seller and the Property free and harmless from and against any and all debts, duties, obligations, liabilities, liens, suits, claims, demands, causes of actions, damages, losses, costs and expenses (including,

without limitation, reasonable legal expenses and attorneys' fees with respect to the same or to enforce the foregoing) (collectively, "Claims") incurred by reason of or in connection with such entry or such surveys, inspections, investigations and/or studies. Before entering upon the Property, Buyer shall furnish to Seller a certificate of insurance evidencing: (a) commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, (b) professional liability insurance of not less than One Million Dollars (\$1,000,000.00) for any of Buyer's Agents who conduct inspections of the Property, (c) workers' compensation insurance as required Washington statutes, and (d) employer's liability insurance of not less than One Million Dollars (\$1,000,000.00) per accident. Such insurance coverage shall (i) be issued by an insurance company licensed in Washington having a rating of at least "AVIII" by A.M. Best Company, (ii) be primary and any insurance maintained by Seller shall be excess and noncontributory, (iii) include contractual liability coverage with respect to Buyer's indemnity obligations set forth in this Agreement (it being understood, however, that the availability of such insurance shall not serve to limit or define the scope of Buyer's indemnity obligations under this Agreement in any manner whatsoever), and (iv) not contain any exclusions for "insured versus insured" claims as respects any potential claim by Seller against Buyer. The insurance certificate required herein shall also provide that the coverage may not be cancelled, non-renewed or reduced without at least thirty (30) days' prior written notice to Seller. Buyer agrees to repair any and all damages caused to the Property due to Buyer's entry thereon and otherwise to restore the Property to the Property's original condition before such entry. The obligations of Buyer under this Section 4.4 will survive Closing or earlier termination of this Agreement.

(c) No Liens or Interference. Buyer shall not permit, and shall indemnify, defend and hold harmless Seller for, from and against any and all Claims incurred by reason of or in connection with, any construction, mechanics or materialmen's liens or any other liens that attach to the Property or any portion thereof by reason of the performance of any work or the purchase of any materials by Buyer or Buyer's Agents in connection with Buyer's inspection of the Property. The provisions of this Section will survive Closing or other termination of this Agreement.

4.5 Right to Terminate Before Expiration of Review Period. Notwithstanding anything contained within this Agreement to the contrary, Seller acknowledges and understands that Buyer may, prior to the expiration of the Review Period, notify Seller in writing that Buyer elects to terminate this Agreement as a result of any matter or no matter as determined by Buyer, in Buyer's sole discretion. Seller acknowledges that Buyer has the right to so terminate this Agreement, regardless of whether Seller would be willing or able to cure any such matter to which Buyer has objected. If Buyer elects, in its sole discretion, to proceed with this transaction, Buyer shall send a written approval notice to Seller and Escrow Agent on or before expiration of the Review Period ("Approval Notice"). If Buyer fails to send an Approval Notice to Seller and Escrow Agent by the expiration of the Investigation Period, Buyer will be deemed to have elected to terminate this Agreement. Buyer may also terminate this agreement by sending written notice of termination to Seller on or before expiration of the Review Period. If this Agreement is terminated as provided in this Section 4.5, the Earnest Money will be refunded to Buyer, and the Parties will have no further rights or obligations to each other, except for those rights and obligations that expressly survive the termination of this Agreement. After the Approval Notice is sent by Buyer or upon expiration of the Review Period, the Earnest Money will be nonrefundable to Buyer, except as otherwise expressly provided in this Agreement.

#### 4.6 Entitlement Period.

(a) Duration. As used in this Agreement, the term "Entitlement Period" means that period of time commencing upon the expiration of the Review Period and expiring upon the earlier to occur of: (i) the date that is one hundred and eighty (180) days after the expiration of the Review Period; and (ii) five (5) Business Days after Buyer has received (A) Final Approval of the Entitlements (as defined below) and (B) a definitive statement of any required land dedications and impact fees, in-lieu fees and any other payments required by applicable Governmental Authorities in connection with the development of the industrial project that Buyer wishes to develop on the Real Property in a manner and design acceptable to Buyer in its sole discretion (the "Project"). Buyer shall, during the Entitlement Period, use commercially reasonable efforts to obtain Final Approval of the Entitlements, and shall provide prompt written notice to Seller upon obtaining Final Approval of its Entitlements.

(b) Entitlements. As used in this Agreement: the term (i) "Entitlements" means all governmental or other zoning, environmental, archaeological, 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 the Project, and (ii) "Final Approval" means the final, binding approvals of the Project and all Entitlements thereto by all applicable Governmental Authorities, the receipt of any and all Entitlements and the expiration of any appeal periods relating to any such Entitlements and approvals without any outstanding appeal thereto. Seller shall cooperate with Buyer and take all actions reasonably necessary to assist Buyer in Buyer's efforts to obtain Final Approval of the Project and Entitlements, including, without limitation, executing such applications and any other documents necessary or convenient with respect to the development of the Project that are required to be executed by the owner of the Property; *provided*, however, that no such applications or other documents may encumber the Property until the Closing unless otherwise consented to by Seller. Following the Effective Date, the submission and processing of the Entitlements shall be at Buyer's sole cost and at the sole control and direction of Buyer.

(c) Right to Terminate Prior to Expiration of Entitlement Period. Notwithstanding anything contained in this Agreement to the contrary, Buyer may in its sole discretion cease its pursuit of the Final Approval of the Entitlements and terminate this Agreement after the expiration of the Investigation Period and prior to the expiration of the Entitlement Period if Buyer determines, in its sole discretion, that it will not be feasible to obtain Final Approval of all of Buyer's desired Entitlements for the Project. Buyer may exercise such termination right by delivering written notice of termination to Seller and Escrow Agent prior to the expiration of the Entitlement Period (the "Entitlements Termination Notice"). If Buyer fails to deliver the Entitlement Termination Notice or in the alternative, fails to affirmatively notify Seller in writing on or before the expiration of the Entitlement Period that it intends to proceed with the transactions contemplated hereunder and expressly waives its right of termination under this Section 4.6(c) (the "Entitlements Approval Notice"), this Agreement shall terminate whereupon Escrow Agent shall immediately disburse the Earnest Money to Seller and neither party shall have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement.

5. Conditions Precedent.

5.1 Buyer's Conditions Precedent. Buyer's obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

(a) All of the documents required to be delivered by Seller to Buyer at Closing pursuant to the terms and conditions hereof shall have been delivered;

(b) Each of the representations of Seller set forth in Section 7 shall be true in all material respects as of the Closing Date; and

(c) Title Company is irrevocably committed to issue, upon the condition of the payment of the applicable premium, the Title Policy, subject only to the Permitted Exceptions applicable to the Real Property.

(d) Seller shall have satisfied the Approval Conditions (as defined below) and delivered written confirmation thereof to Buyer.

If any of the foregoing conditions are not satisfied (or waived in writing by Buyer) on or before the Closing, then Buyer shall have the right to terminate this Agreement by delivering written notice to Seller and, in the event of such termination, all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease and the Earnest Money shall be promptly refunded to Buyer; provided however, that if any of the foregoing conditions are not satisfied (or waived in writing by Buyer) on or before the Closing due to any default by Seller hereunder, then Buyer, in its discretion, and by delivering written notice to Seller, may elect to pursue any of the remedies available to Buyer pursuant to Section 13. In the event Buyer elects to terminate this Agreement pursuant to Section 13, all obligations of Seller and Buyer under this Agreement (other than those that expressly survive the termination of this Agreement and the rights and remedies arising out of any breach of such surviving obligations) shall cease.

5.2 Seller's Conditions Precedent. Seller's obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

(a) All of the documents and funds required to be delivered by Buyer to Seller at Closing pursuant to the terms and conditions hereof shall have been delivered;

(b) Each of the representations of Buyer set forth in Section 8 shall be true in all material respects as of the Closing Date;

(c) Seller's receipt of written approval of the transaction contemplated by this Agreement from the board of directors of Seller's Airport Board, the City of Spokane, and County of Spokane, acting through the City Council of Spokane, and the Spokane County Board of Commissioners, respectively; and

(d) Seller's receipt of written approval from the Federal Aviation Administration ("FAA") for release and/or disposal of the Real Property by Seller that formally authorizes the release and/or disposal and removal of the Real Property as

airport dedicated real property pursuant to Section 163 of the FAA Reauthorization Act of 2018 ("FAA Disposal Approval").

If any of the conditions delineated in Sections 5.2(a) or 5.2(b) are not satisfied (or waived in writing by Seller) on or before the Closing, then Seller shall have the right to terminate this Agreement by delivering written notice to Buyer and, in the event of such termination, all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease and the Earnest Money shall be promptly disbursed to Seller as liquidated damages. Seller shall use commercially reasonable efforts to cause the conditions set forth in Section 5.2(c)-(d) (the "Approval Conditions") to be satisfied on or before Closing. Upon satisfaction of any of the Approval Conditions, Seller shall provide prompt written notice to Buyer of the same.

6. Closing.

6.1 Closing Date. The closing ("Closing") of the purchase and sale transaction contemplated in this Agreement will occur ("Closing Date") on the earlier of (i) April 30, 2020, or (ii) provided that the Approval Conditions have been satisfied, on such earlier date designated by Buyer by not less than four (4) Business Days prior written notice to Seller. Notwithstanding anything herein to the contrary, if Closing has not occurred by April 30, 2020 due to the failure of the Approval Conditions then either Party may, in its sole discretion and at any time thereafter, elect to terminate this Agreement by delivering written notice to the Party and, in the event of such termination (a) all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease, and (b) the Earnest Money shall be promptly refunded to Buyer.

6.2 Location. Closing will occur at the offices of the Escrow Agent, or at such other place as may be agreed to by the Parties in writing.

6.3 Closing Costs and Prorations.

(a) Closing Fees. At Closing, Buyer and Seller will each pay one-half (1/2) of any escrow fees and closing fees. Seller shall be solely responsible for any state or local transfer taxes, real estate excise tax or any similar taxes or fees attributable to the transaction contemplated in this Agreement, if applicable to Seller. Seller shall be solely responsible for all recording fees associated with recording the Avigation Easement (as defined below). Buyer shall be responsible for all recording fees associated with recording the Deed (as defined below). Any other fees and costs will be paid by, or shared by, Buyer and Seller in accordance with local custom in Spokane County, Washington.

(b) Title Policy; Survey. Seller shall pay the equivalent premium of an ALTA standard owner's title policy for the Property, and Buyer shall pay the additional premium necessary for any ALTA extended or other policy Buyer elects to acquire (the "Title Policy"). Buyer shall also pay premium of any and all endorsements to the Title Policy unless provided by Seller to remove a Disapproved Matter, in which case, Seller shall be responsible for the cost of such endorsements. The cost of any survey of the Real Property obtained by Buyer will be borne by Buyer.

(c) Taxes and Fees. Real estate taxes for the year of Closing shall be the sole responsibility of Buyer. Buyer acknowledges that Seller does not pay real estate



taxes and, as such, Buyer is free to seek a refund for that portion of time in which real estate taxes may have otherwise been required to be paid in order to close the transaction contemplated by this Agreement. Annual municipal or special district assessments (on the basis of the actual fiscal tax years for which such taxes are assessed), lienable water and sewer rentals, license, or permit and inspection fees, if any, will be apportioned as of the Closing Date between Buyer and Seller. If, on the day prior to the Closing Date, real estate taxes have been imposed upon the Real Property for the real estate tax year in which Closing occurs such taxes shall be paid by Buyer at the time of Closing.

(d) Utility Readings. Seller shall use commercially reasonable efforts to obtain readings of the utility meters on the Property (if any) to a date no sooner than two (2) Business Days prior to the Closing Date. At or prior to Closing, Seller shall pay all charges based upon such meter readings. However, if after reasonable efforts Seller is unable to obtain readings of any meters prior to Closing, Closing will be completed without such readings and upon the obtaining of such readings after Closing, Seller shall promptly pay the pre-Closing charges as reasonably determined by Seller and Buyer based upon post-Closing readings.

(e) Attorney Fees. Each Party shall pay its own attorney fees incurred with respect to this transaction.

(f) Preliminary Closing Statement. Seller and Buyer shall cooperate with Escrow Agent to prepare a preliminary closing statement (the "Closing Statement") on the basis of the real estate taxes and other sources of income and expenses for the Property on or prior to the Closing Date. All apportionments and prorations provided for in this Section 6.3 to be made as of the Closing Date will be made, on a per diem basis, as of 11:59 p.m. on the day prior to the Closing Date. The preliminary Closing Statement and the apportionments and/or prorations reflected therein will be based upon actual figures to the extent available. If any of the apportionments and/or prorations cannot be calculated accurately based on actual figures on the Closing Date, then they will be calculated based on Seller's and Buyer's good faith estimates thereof, subject to reconciliation as provided in the following Section.

(g) Post-Closing Reconciliation. If there is an error on the preliminary Closing Statement or, if after the actual figures are available as to any items that were estimated on the preliminary Closing Statement, it is determined that any actual proration or apportionment varies from the amount thereof reflected on the preliminary Closing Statement, the proration or apportionment will be adjusted based on the actual figures as soon as feasible, but not later than sixty (60) days after the Closing Date. Either Party owing the other Party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other Party.

(h) Other Costs and Survival. All other costs not addressed within this Section 6.3 will be paid in accordance with the custom followed in Spokane County, Washington. The provisions of this Section 6.3 will survive Closing for a period of six (6) months.

6.4 Deliveries at Closing.

(a) Deliveries by Seller. At Closing, Seller shall execute and deliver (or cause to be executed and delivered) all documents and take all other actions reasonably necessary to effect the Closing, including, without limitation:

(1) A duly executed and acknowledged bargain and sale deed (the "Deed"), in the form attached to this Agreement as Exhibit B.

(2) A counterpart original duly executed and completed real estate excise tax affidavit ("REETA").

(3) A counterpart original duly executed and acknowledged avigation easement ("Avigation Easement") encumbering the Real Property, in the form attached to this Agreement as Exhibit C, but only if the Title Report Buyer obtains with respect to the Real Property does not disclose the existence of a satisfactory avigation easement, as determined by Seller in its sole and absolute discretion.

(4) A non-foreign affidavit for purposes of compliance with Section 1445(b)(2) of the Internal Revenue Code of 1986 (and the regulations adopted thereunder), as amended (the "Code").

(5) Copies of all current property tax bills and tax notices pertaining to the Real Property, if any.

(6) Such documentation as Escrow Agent may reasonably require, or may otherwise be required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

(b) Deliveries by Buyer. On the Closing Date, Buyer shall execute and deliver all documents and take such other action that may be reasonably necessary to effect and complete the Closing, including, without limitation:

(1) The amounts required under Section 3 and Section 6.3 in Current Funds.

(2) A duly executed and completed REETA.

(3) A counterpart original duly executed and acknowledged Avigation Easement, if required by Seller.

(4) Such documentation as Escrow Agent may reasonably require, or may otherwise be required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

(c) Actions of Escrow Agent. When Buyer and Seller have delivered the items described above, the Escrow Agent shall:

(1) Prepare the Closing Statement and obtain signed copies from Seller and Buyer.



- (2) Record the Deed and the Avigation Easement in that order.
- (3) Deliver the balance of the Purchase Price in Current Funds to Seller, net of Seller's costs, fees, and prorations.
- (4) Issue and deliver the Title Policy to Buyer.
- (5) Deliver the above referenced documents to the applicable Party.

7. Representations and Warranties of Seller. Seller makes the representations and warranties set forth in this Section 7. Buyer expressly understands and agrees that the phrase "to Seller's knowledge" as used in this Section 7 means the actual present knowledge of Lawrence J. Krauter, acting solely in his capacity as the Chief Executive Officer of Seller, and shall not be construed to refer to the knowledge of any other partner, officer, director, agent, employee or representative of Seller, or any affiliate or parent of Seller. Such individual shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or any of Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete. Each representation and warranty: (i) is true in all material respects as of the Effective Date; (ii) will be true in all material respects on the Closing Date; and (iii) will survive Closing for a period of nine (9) months.

7.1 Authority/Binding Agreement. This Agreement and all exhibits and documents to be delivered by Seller pursuant to this Agreement have been duly executed and delivered by Seller and constitute the valid and binding obligations of Seller. Subject to obtaining the approvals described Sections 5.2(c) and 5.2(d), Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement. The execution, delivery, and performance of this Agreement will not conflict with or constitute a breach or default under (i) the organizational documents of Seller; (ii) any material instrument, contract, or other agreement to which Buyer is a party which affects the Property; or (iii) any statute or any regulation, order, judgment, or decree of any court or Governmental Authority.

7.2 Condemnation. Seller has not received from any Governmental Authority having the power of eminent domain any written notice of any condemnation of the Property or any part thereof.

7.3 Pending Litigation. Seller has received no written notice of any pending litigation initiated against Seller or the Property which would materially affect the Property after Closing.

7.4 Governmental Compliance. Seller has not received from any Governmental Authority written notice of any material violation of any building, fire or health code or any other statute applicable to the Property which will not be cured prior to Closing.

7.5 Non-Foreign Person. Seller is not a "foreign person" as defined in § 1445 of the Code and any related regulations.

7.6 Environmental Matters. To Seller's knowledge, and except as may otherwise be disclosed in the Current Diligence Materials: (a) the Property is free from Hazardous Substances; (b) the soil, surface water and ground water of, under, on or around the Property are free from Hazardous Substances; (c) the Property has never been used for or in connection with the

manufacture, refinement, treatment, storage, generation, transport or hauling of any Hazardous Substances, nor has the Property been used for or in connection with the disposal of any Hazardous Substances; and (d) the Property is now and during Seller's ownership, has been in compliance with all Environmental Laws. As used in this Agreement, the term "Hazardous Substance" means any material, waste, substance, pollutant, or contaminant which may or could pose a risk of injury or threat to health or the environment, including, without limitation: (i) those substances included within the definitions of "hazardous substance", "hazardous waste", "hazardous material", "toxic substance", "solid waste", or "pollutant or contaminant" in or otherwise regulated by, any Environmental Law; (ii) those substances listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 17.101, including appendices and amendments thereto), or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (iii) such other substances, materials, or wastes which are or become regulated or classified as hazardous or toxic under any Environmental Law; and (iv) any material, waste, or substance which is (A) petroleum or refined petroleum products; (B) radon (C) polychlorinated biphenyls; (D) flammable explosives; or (E) radioactive materials. As used in this Agreement, the term "Environmental Law" means any federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. § 1101, *et seq.*; the Clean Air Act, 41 U.S.C. § 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*; The Safe Drinking Water Act, 41 U.S.C. § 300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. § 3251, *et seq.*; and any other federal, state or local law, statute, ordinance, or regulation now in effect or hereinafter enacted which pertains to health, industrial hygiene, or the regulation or protection of the environment, including without limitation, ambient air, soil, groundwater, surface water, or land use.

7.7 Due Diligence Documents. To Seller's knowledge, all of the Current Diligence Materials delivered or made available by Seller to Buyer in connection with the Property are complete copies of such items in Seller's possession or control.

7.8 No Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated conflict with or result in the material breach of any terms, conditions, or provisions of or constitute a default under (or with the passage of time or delivery of notice, or both, would constitute a default under) any provisions of Seller's organizational documents, or any bond, note, or other evidence of indebtedness that will not be discharged at Closing or any judicial order or agreement to which Seller is a party or to which Seller is subject. Seller has not entered into any agreement to sell or otherwise transfer its interest in the Property except for this Agreement.

7.9 No Contracts. Seller has not entered into and is not a party to any contracts or commitments relating to the Property that extend beyond the Closing Date.

8. Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the representations and warranties set forth in this Section 8. Each representation and warranty: (i) is true in all respects as of the Effective Date; (ii) will be true in all respects on the Closing Date; and (iii) will survive Closing for a period of nine (9) months.

8.1 Power and Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated in this Agreement. Buyer's execution, delivery and performance of this Agreement have been duly authorized.

8.2 Bankruptcy or Insolvency. There are no attachments, executions, assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy pending against or contemplated by Buyer, and no such actions have been threatened.

8.3 Anti-Terrorism. All funds to be used by Buyer as payment of the Purchase Price at Closing are from sources operating under, and in compliance with, all federal, state and local statutes and regulations and are free of all liens and claims of lien. Neither Buyer, nor any of its members, managers or other owners is a "Prohibited Person" or "Specifically Designated National and Blocked Person" under Anti-Terrorism Laws. As used in this Agreement, the term "Anti-Terrorism Laws" means any and all present and future judicial decisions, statutes, ruling, rules, regulations, permits, certificates, orders and ordinances of any Governmental Authority relating to terrorism or money laundering including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 et seq.); the International Emergency Economic Powers Act (50 U.S.C.A. § 1701-06); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism") and the United States Treasury Department's Office of Foreign Assets Control list of "Specifically Designated National and Blocked Persons" (as published from time to time in various mediums).

9. "AS IS" Sale; Release & Waiver.

9.1 "AS IS" Purchase.

(A) SUBJECT TO SELLER'S REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 7, AND ACKNOWLEDGING THE PRIOR USE OF THE PROPERTY AND BUYER'S OPPORTUNITY TO INSPECT THE PROPERTY, BUYER AGREES TO PURCHASE THE PROPERTY "AS IS", "WHERE IS", WITH ALL FAULTS AND CONDITIONS THEREON. ANY WRITTEN OR ORAL INFORMATION, REPORTS, STATEMENTS, DOCUMENTS OR RECORDS CONCERNING THE PROPERTY ("DISCLOSURES") PROVIDED OR MADE AVAILABLE TO BUYER, ITS AGENTS OR CONSTITUENTS BY SELLER, SELLER'S AGENTS, EMPLOYEES OR THIRD PARTIES REPRESENTING OR PURPORTING TO REPRESENT SELLER, SHALL NOT BE REPRESENTATIONS OR WARRANTIES, UNLESS SPECIFICALLY SET FORTH IN SECTION 7 OF THIS AGREEMENT. IN PURCHASING THE PROPERTY OR TAKING OTHER ACTION HEREUNDER, BUYER HAS NOT AND SHALL NOT RELY ON ANY SUCH DISCLOSURES, BUT RATHER, BUYER SHALL RELY ONLY ON BUYER'S OWN INSPECTION OF THE PROPERTY. BUYER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS IS".

(B) BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7 OF THIS AGREEMENT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS

OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY INCLUDING, WITHOUT LIMITATION, (A) THE NATURE, QUALITY OR PHYSICAL CONDITION OF THE PROPERTY, (B) THE WATER, SOIL AND GEOLOGY OF THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, (F) THE COMPLIANCE OF OR BY THE PROPERTY OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION THEREOVER, (D) THE FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, (E) THE MARKETABILITY OF THE PROPERTY OR THE ABILITY TO LEASE OR SELL THE PROPERTY, (F) THE STATUS OR CONDITION OF ENTITLEMENTS PERTAINING TO THE PROPERTY, (G) DEFICIENCY OF ANY DRAINAGE ON THE REAL PROPERTY; (H) THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE; AND (I) ANY MATTER REGARDING TERMITES OR WASTES, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., OR ANY HAZARDOUS MATERIALS, AS HEREINAFTER DEFINED. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER, UNLESS OTHERWISE REQUIRED BY LAW, IS UNDER NO DUTY TO MAKE ANY AFFIRMATIVE DISCLOSURES REGARDING ANY MATTER WHICH MAY BE KNOWN TO SELLER.

Seller's Initials: LJK

Buyer's Initials: 

9.2 Release. Subject to the covenants, representations and warranties of Seller contained in this Agreement, effective as of Closing, Buyer on behalf of itself and its shareholders, members, investors or partners of each of them and any permitted assignees of Buyer hereunder and its successors and assigns (collectively, the "Buyer Affiliated Parties") waives its right to recover from, and forever releases and discharges, Seller and its affiliates, property manager, partners, trustees, beneficiaries, owners, members, managers, officers, employees and agents and representatives, and its respective heirs, successors, personal representatives and assigns from any and all Claims, whether direct or indirect, known or unknown, suspected or unsuspected, foreseen or unforeseen, that may arise on account of or in any way be connected with: (i) the physical condition of the Property, including, without limitation, all seismic elements; the condition, valuation, or utility of the Property; title and survey matters with respect to the Property; and the environmental condition of the Property and the presence of any Hazardous Substance on, under or about the Property; and (ii) any law or regulation applicable to the Property, including, without limitation, any Environmental Laws and any other federal, state or local law.

In this connection and to the extent permitted by law, Buyer hereby agrees, realizes and acknowledges that factual matters now unknown to Buyer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees that it waives (and by Closing this transaction will be deemed to have waived) any and all objections and complaints concerning the physical characteristics and any existing conditions of the Property, and that the waivers and releases herein have been negotiated and agreed upon in



light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. The releases set forth in this Section shall become effective upon the Closing. Buyer further hereby assumes the risk of changes in applicable laws, including any relevant Environmental Laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Substances or other contaminants, may not have been revealed by its investigation.

9.3 Waiver of Right to Receive Seller Disclosure Statement and Waiver of Right to Rescind. PURSUANT TO RCW CH. 64.06, AS AMENDED BY CHAPTER 64, LAWS OF 2010, WITH RESPECT TO THE REAL PROPERTY, BUYER HEREBY WAIVES ITS RIGHT TO RECEIVE THE SELLER DISCLOSURE STATEMENT REFERRED TO THEREIN. THIS WAIVER DOES NOT EXTEND TO THE SECTION OF THE DISCLOSURE STATEMENT ENTITLED "ENVIRONMENTAL". Buyer is hereby provided with the "Environmental" section of the Seller Disclosure Statement attached hereto as Exhibit E. Buyer further agrees that any information discovered by Buyer concerning the Real Property prior to Closing shall not obligate Seller to prepare and deliver to Buyer a revised or updated Seller Disclosure Statement. Buyer hereby waives any right to receive an updated or revised Seller Disclosure Statement, regardless of the source of any new information. Buyer further warrants that it is a sophisticated buyer who is familiar with the ownership of real estate similar to the Real Property and Buyer has or will have adequate opportunity to complete such independent inspections of the Property it deems necessary, and will acquire the Real Property solely on the basis of and in reliance upon such examinations and not on any information provided in any Seller Disclosure Statement or otherwise provided or to be provided by Seller (other than as expressly provided in this Agreement or in the Deed). BUYER HEREBY WAIVES, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE RIGHT TO RESCIND THIS AGREEMENT PURSUANT TO ANY PROVISION OF RCW 64.06, AS AMENDED BY CHAPTER 64, LAWS OF 2010. IT IS THE INTENT OF BUYER THAT ANY SELLER DISCLOSURE STATEMENT PROVIDED BY SELLER WILL NOT BE RELIED UPON BY BUYER, AND SHALL GIVE BUYER NO RIGHTS WITH RESPECT TO SELLER UNDER THIS AGREEMENT. THIS WAIVER OF THE RIGHT TO RESCIND APPLIES TO THE SELLER DISCLOSURE STATEMENT PROVIDED TO BUYER DURING THE REVIEW PERIOD AND APPLIES PROSPECTIVELY TO ANY UPDATED OR REVISED SELLER DISCLOSURE STATEMENTS THAT MAY BE PROVIDED BY SELLER TO BUYER.

10. Covenants.

10.1 Covenants of Seller.

(a) Normal Operations. Until the Closing Date, Seller shall (i) continue to operate the Property in substantially the same manner as in the past and will perform all necessary maintenance to the Property as its ordinary course of business dictates; and (ii) not modify or alter the Property without the prior written consent of Buyer. From and after the Effective Date, Seller shall not enter into any contracts or commitments relating to the Property without the prior written consent of Buyer (in Buyer's reasonable discretion) if any such contracts or commitments would extend beyond the Closing Date. From and after the Effective Date, Seller shall not encumber the Property with any liens, encumbrances or other instruments creating a cloud on title or securing a monetary obligation with the Property.

(b) Insurance. Until the Closing Date, Seller shall maintain substantially the same liability, casualty, and all other insurance on the Property as is in effect as of the Effective Date.

(c) Approval Conditions. Commencing on the Effective Date Seller shall use commercially reasonable efforts to satisfy the Approval Conditions prior to October 25, 2019 (the "Approval Conditions Deadline"), *provided*, however, that Seller's failure to satisfy the Approval Conditions shall not be considered a default of this Agreement. Buyer and Seller shall reasonably cooperate with each other and Buyer shall take all actions reasonably necessary to assist Seller in Seller's efforts to satisfy the Approval Conditions, including, without limitation, submitting such materials and executing such applications and any other documents that may be requested by the FAA. Seller shall provide prompt written notice to Buyer of the satisfaction of the Approval Conditions when received. If Seller fails to provide written evidence of satisfaction of the Approval Conditions prior to the Approval Conditions Deadline, Buyer shall have the right to extend the Approval Conditions Deadline until the Closing Date by delivering written notice of such election to Seller not later than five (5) Business Days following the Approval Conditions Deadline. If Seller is unable to satisfy the Approval Conditions at any time prior to the Approval Conditions Deadline (as same may have been extended), Buyer may terminate this Agreement by written notice to Seller, in which event the Earnest Money and all interest thereon shall be returned to Buyer, and thereafter all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease.

10.2 Post Closing Construction Covenant of Buyer. Buyer acknowledges and agrees that as a condition to obtaining the FAA Disposal Approval, Buyer must adhere to the requirements of 14 CFR Part 77, submitting FAA Form 7460-1 and receiving FAA's positive determination, prior to constructing any facility or feature on the Property.

11. Condemnation. Risk of loss resulting from any condemnation or eminent domain proceeding that is commenced or has been threatened before the Closing, and risk of loss to the Property due to fire, flood, or any other cause before Closing, will remain with Seller. If before Closing the Property (or any portion thereof) is subjected to a threat of condemnation or becomes the subject of any proceedings, judicial, administrative, or otherwise, with respect to the taking by eminent domain or condemnation, then Seller shall promptly provide written notice thereof to Buyer and Buyer may terminate this Agreement by written notice to Seller sent within fifteen (15) days after Seller informs Buyer in writing that the Property has been taken, in which event the Earnest Money will be returned to Buyer, and neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement. If the Closing Date is within the fifteen (15) day period, then Closing will be extended to the next Business Day following the end of the fifteen (15) day period. If no such election is made by Buyer, (i) this Agreement will remain in full force and effect, (ii) the purchase of the Property, less any interest taken by eminent domain, will be effected with no further adjustment, and (iii) upon Closing, Seller shall assign to Buyer all of the right, title, and interest of Seller in and to any awards that have been or may thereafter be made for such taking.

12. Default by Buyer; Liquidated Damages. BUYER WILL BE IN DEFAULT UNDER THIS AGREEMENT IF (I) ANY OF BUYER'S REPRESENTATIONS OR WARRANTIES ARE FALSE, (II) BUYER FAILS TO PERFORM ALL OF ITS OBLIGATIONS UNDER SECTION 6.4(b) ON OR BEFORE THE CLOSING DATE, OR (III) BUYER FAILS TO PERFORM ANY OF ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF WRITTEN NOTICE FROM SELLER OF SUCH FAILURE. IN THE EVENT OF

ANY DEFAULT BY BUYER UNDER THIS AGREEMENT, SELLER WILL BE RELIEVED OF ANY OBLIGATION TO SELL THE PROPERTY TO BUYER, SELLER WILL NOT HAVE ANY RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT, AND, AS SELLER'S SOLE AND EXCLUSIVE REMEDY AT LAW OR IN EQUITY FOR SUCH DEFAULT, THE EARNEST MONEY WILL BE RELEASED TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES THAT SELLER MIGHT SUFFER IN THE EVENT OF BUYER'S DEFAULT HEREUNDER. BUYER AND SELLER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION IS A FAIR AND REASONABLE ESTIMATE OF SUCH DAMAGES. THE FOREGOING PROVISION SHALL IN NO WAY LIMIT OR IMPAIR SELLER'S RIGHT OR ABILITY TO RECOVER FROM BUYER ATTORNEY'S FEES TO WHICH SELLER MAY OTHERWISE BE ENTITLED UNDER THIS AGREEMENT OR ANY SUMS WHICH MAY BECOME DUE TO SELLER BASED UPON ANY INDEMNITY PROVIDED BY SELLER PURSUANT TO THE TERMS OF THIS AGREEMENT.

Seller's Initials: LJK

Buyer's Initials: 

13. Default by Seller; Remedies. Seller will be in default under this Agreement if (i) Seller fails to perform all of its obligations under Section 6.4(a) on or before the Closing Date, or (ii) Seller fails to perform any of its obligations under this Agreement within three (3) Business Days after Buyer provides Seller with notice of such failure (a "Seller Default"). Upon a Seller Default, Buyer may, as its sole and exclusive remedy for such Seller Default, either: (i) terminate this Agreement in its entirety by delivery of notice of termination to Seller, whereupon the Earnest Money shall be immediately returned to Buyer and Seller shall reimburse Buyer for Buyer's actual and reasonable out of pocket documented expenses incurred exclusively with respect to this transaction in an amount not to exceed Thirty-Six Thousand Four Hundred Twenty-One and 41/100 Dollars (\$36,421.41) or (ii) continue this Agreement pending Buyer's action for specific performance hereunder provided appropriate proceedings are commenced by Buyer within forty-five (45) days following Seller's default and thereafter prosecuted with diligence. Buyer agrees that under no circumstances shall Buyer file a *lis pendens* action against the Property unless Buyer is seeking option (ii) above.

Anything in this Agreement to the contrary notwithstanding, with respect to all matters affecting title to the Real Property, Buyer acknowledges and agrees that it is relying upon the Title Policy. If Buyer has a claim under the Title Policy and the subject matter of that claim also constitutes a breach of any warranty made by Seller in this Agreement or the Deed, Buyer agrees that it will look first to its Title Policy for recovery on such claim, and Buyer shall not assert any claim against Seller for a breach of a representation, warranty or covenant with respect to such claim unless and until Buyer has pursued its remedies against the Title Company to a final judgment and has not been made whole. The time period for bringing a claim against Seller for a breach of a representation or warranty relating to title to the Real Property will be tolled during the pendency of any action by Buyer against Title Company.

14. Brokerage. Seller and Buyer have not engaged a broker in connection with this Agreement. Seller and Buyer hereby agree to indemnify, defend and hold each other harmless from and against any and all Claims arising out of any claim for commissions, fees, or other similar compensation or charges relating to the transaction contemplated in this Agreement, or the consummation thereof, which may be made by any third party as the result of the acts of Seller or Buyer or their respective representatives. The obligations of the parties under this Section 14 will survive Closing.

15. Miscellaneous.

15.2 Escrow Agent. The Escrow Agent hereby accepts its designation as the Escrow Agent under this Agreement and agrees to hold and disburse the Earnest Money as provided in this Agreement. The provisions of this Agreement will constitute joint instructions to the Escrow Agent to consummate the purchase in accordance with the terms and provisions of this Agreement; provided, however, that the Parties shall execute such additional escrow instructions, not inconsistent with the provisions of this Agreement, as may be deemed reasonably necessary to carry out the intentions of the Parties as expressed in this Agreement. The provisions of this Section 15.2 will survive the Closing or termination of this Agreement.

**If to Seller:** Spokane International Airport  
c/o Airport Board  
Attn: Lawrence J. Krauter  
9000 West Airport Drive, Suite 204  
Spokane, WA 99224  
Email: lkrauter@spokaneairports.net  
Fax: (509) 624-6633

with a copy to: Lukins & Annis, P.S.  
717 W. Sprague, Suite 1600  
Spokane, WA 99201  
Attn: Tyler J. Black, Esq.  
Email: [tblack@lukins.com](mailto:tblack@lukins.com)  
Fax: (509) 363-2487

**If to Buyer:** Central Sprague Realty, LLC  
c/o The Wolff Company  
717 W. Sprague Ave. Suite 802  
Spokane, WA 99201  
Attn: Old Fritz Wolff  
E-Mail: [oldfritz@awolff.com](mailto:oldfritz@awolff.com)  
Phone: 480-784-7864



with a copy to:

Lukins & Annis, P.S.  
717 W. Sprague, Suite 1600  
Spokane, WA 99201  
Attn: Brady M. Peterson, Esq.  
Email: bpeterson@lukins.com  
Fax: (509) 363-5215

If to Escrow Agent:

Stewart Title and Guaranty Company  
1420 Fifth Avenue, Suite 440  
Seattle, WA 98101  
Attn: Kim Belcher  
E-Mail: kim.belcher@stewart.com  
Fax: (509) 343-2793

15.4 Survival. Unless expressly provided otherwise in this Agreement, the representations and warranties of Seller contained in this Agreement will survive Closing for a period of nine (9) months (the "Survival Period"). Seller shall not be liable to Buyer by reason of a breach of any of Seller's representations or warranties unless the Buyer notifies the Seller of such breach (the "Warranty Notice") prior to the expiration of the Survival Period, and gives the Seller an opportunity to cure any such breach within a reasonable period of time after delivery of the Warranty Notice. Any proceeding with respect to Seller's alleged breach of any representation or warranty must be commenced within the Survival Period, and if not commenced within such time period, Buyer will be deemed to have waived its Claims for such breach or default. Seller's aggregate liability to Buyer by reason of a breach of one or more of Seller's representations or warranties shall not exceed Two Hundred Seventy-One Thousand Five Hundred Seventy-Nine and 41/100 Dollars (\$271,579.41). Seller's liability will be limited to actual damages and will not include consequential, special, punitive or incidental damages.

15.5 Governing Law/Venue. The laws of the State of Washington govern the enforcement, and interpretation of this Agreement. The venue for any action related to this Agreement will be in Spokane County, Washington.

15.6 Integration; Modification; Waiver. This Agreement, the recitals to this Agreement, exhibits, and closing documents pursuant to this Agreement are hereby incorporated into this Agreement and, together with the Agreement, constitute the complete and final expression of the agreement of the Parties relating to the Property. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) executed by the Party against whom enforcement of the modification or waiver is sought.

15.7 Counterpart Execution. This Agreement may be executed in several counterparts and transmitted via facsimile or other electronic transmission, each of which will be fully effective as an original and all of which together will constitute one and the same instrument.

15.8 Headings; Construction. The headings used throughout this Agreement have been inserted for convenience of reference only and do not constitute matters to be construed in interpreting this Agreement. Words of any gender used in this Agreement will be construed to include any other gender, and words in the singular number will be construed to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof,"

"hereunder," and other similar compounds of the word "here" when used in this Agreement refer to the entire Agreement and not to any particular provision or section. The terms "includes," "including," or "include" as used herein shall be interpreted as being non-exclusive and shall be read to mean, respectively, "includes without limitation," "including, without limitation" and "include without limitation."

15.9 Deadlines and Dates. Any deadline, unless otherwise set forth in this Agreement, will expire at 5:00 p.m., Pacific Time. Should any deadline or date in this Agreement fall on a day other than a Business Day, such deadline or date will be extended until 5:00 p.m., Pacific Time, on the next Business Day.

15.10 Severability. If for any reason any provision of this Agreement is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Agreement will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.

15.11 Time of the Essence. Time is of the essence of this Agreement and of the obligations of the Parties to purchase and sell the Property, it being acknowledged and agreed by and between the Parties that any delay in effecting a Closing pursuant to this Agreement may result in loss or damage to the Party in full compliance with its obligations hereunder.

15.12 Invalid Provisions. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, is held invalid or unenforceable, such provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision will not be affected thereby.

15.13 Binding Effect. This Agreement is binding upon and inures to the benefit of Seller and Buyer, and their respective successors and permitted assigns.

15.14 Further Acts. In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated in this Agreement.

15.15 Assignment. Buyer shall not assign this Agreement without Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion; provided, however, that Buyer shall have the right to assign its rights under this Agreement without first obtaining Seller's consent if such assignment is to a special purpose entity in which Buyer or its principals hold an ownership interest or control. No such assignment shall release Buyer from any of its obligations under this Agreement. Any assignment made in violation of this Section shall be void.

15.16 Other Parties. The relationship of the Parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the Parties hereto. Neither Party has any fiduciary relationship hereunder to the other. The provisions of this Agreement are not intended to benefit any third parties.

15.17 1031 Exchange. Buyer may purchase the Property and Seller may sell the Property by completing one or more Code §1031 tax-deferred exchange(s). Each Party agrees to

cooperate with the other in effecting such an exchange; *provided, however*, the cooperating Party will not incur any additional liability or financial obligations as a consequence of any such exchange.

15.18 Sole Discretion. If a Party is given the right to exercise its sole or absolute discretion, neither the other Party nor any third party (including, without limitation, an arbitrator) will have the right to challenge said exercise, whether reasonable or unreasonable, on any grounds whatsoever.

15.19 Confidentiality. Seller and Buyer agree that there will be no press or other publicity release or communication to any third party concerning the transaction contemplated in this Agreement without the prior written consent of the other. Notwithstanding the foregoing, prior to Closing, either Party shall have the right to disclose information with respect to the Property to its officers, directors, members, partners, employees, attorneys, accountants, environmental auditors, engineers, current and potential lenders, investors, insurers and permitted assignees under this Agreement and other consultants to the extent necessary to evaluate the transactions contemplated hereby and the Property provided that all such persons are told that such information is confidential and agree to keep such information confidential. If Buyer acquires the Property from Seller, either Party may disclose any information concerning the Property or the transactions contemplated hereby that the disclosing Party wishes to disclose; provided that any press release or other public disclosure by either Party regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved by the non-disclosing Party. The provisions of this Section shall survive the Closing or any termination of this Agreement.

15.20 Disclaimer—Preparation of Agreement. This Agreement has been negotiated by the Parties. Buyer and Seller agree that no presumption will apply in favor or against any Party in respect of the interpretation or enforcement of this Agreement. Each Party is advised to have this Agreement reviewed by independent legal and tax counsel prior to its execution. By executing this Agreement, each such Party represents: (i) that it has read and understands this Agreement, (ii) that it has had the opportunity to obtain independent legal and tax advice regarding this Agreement and (iii) that it has obtained such independent advice or has freely elected not to do so.

*[Signatures to appear on the following page]*

IN WITNESS WHEREOF, the Parties have executed and delivered the foregoing Agreement as of the Effective Date.

SELLER:

SPOKANE AIRPORT BOARD, a joint operation  
of the City of Spokane and County of Spokane,  
Washington


By:   
Name: Lawrence J. Kraeger  
Its: Chief Executive Officer

BUYER:

CENTRAL SPRAGUE REALTY, LLC, a  
Washington limited liability company

By:   
Name: Alvin J. Wolff, Jr.  
Title: Manager

Approved as to form and content:

  
Brian Werst, General Counsel

This Real Property Purchase and Sale Agreement with Escrow Instructions, together with the earnest money deposit, is hereby acknowledged and accepted and the escrow is opened as of the \_\_\_\_ day of August, 2019. The Escrow Agent hereby agrees to act as "the person responsible for closing" the purchase and sale transaction contemplated in this Agreement within the meaning of Section 6045(e) of the Internal Revenue Code of 1986, as amended, and to file all forms and returns required thereby.

STEWART TITLE AND GUARANTY  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A  
REAL PROPERTY LEGAL DESCRIPTION

TRACTS 34, 35, 47, AND 48, HAZELWOOD IRRIGATED FARMS, AS PER PLAT THEREOF  
RECORDED IN VOLUME "I" OF PLATS, PAGES 24 AND 25, LYING WITHIN SECTION 34,  
TOWNSHIP 25 NORTH, RANGE 41 EAST, W.M..

SITUATE IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON.

Tax Account No.: 15344.0102, 15344.0103, 15344.0107 and 15344.0108

EXHIBIT B  
FORM OF BARGAIN AND SALE DEED

Filed for Record at Request of and  
copy returned to:

Lukins & Annis, P.S.  
Attn: Brady M. Peterson, Esq.  
717 W. Sprague Avenue, Suite 1600  
Spokane, WA 99201

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BARGAIN AND SALE DEED

The grantor, SPOKANE AIRPORT, by and through its Airport Board, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington, for and in consideration of Ten Dollars (\$10.00) in hand paid, bargains, sells and conveys to \_\_\_\_\_, that real property situated in the county of Spokane, state of Washington and legally described on Schedule I attached hereto and incorporated herein by this reference (the "Property").

SUBJECT TO: (i) the lien securing non-delinquent taxes and assessments, both general and special, and (ii) all covenants, conditions, restrictions, reservations, rights, rights of way, easements, and title matters whether or not of record or visible from an inspection of the Property and all matters which an accurate survey of the Property would disclose.

DATED effective the \_\_\_\_ day of \_\_\_\_\_, 2019.

SPOKANE AIRPORT BOARD, a joint operation of the  
City of Spokane and County of Spokane, Washington

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

Name: Lawrence J. Krauter

Its: Chief Executive Officer

STATE OF WASHINGTON    )  
                                  : ss  
County of Spokane        )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Lawrence J. Krauter, to me known to be the Chief Executive Officer of the SPOKANE AIRPORT BOARD, a joint operation of the City of Spokane and County of Spokane, Washington, the entity that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public   (Signature)

\_\_\_\_\_  
(Print Name)

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

(Seal or Stamp)



**Schedule 1  
to  
Bargain and Sale Deed  
Legal Description**

[insert]

**EXHIBIT C**  
**FORM OF AVIGATION EASEMENT**

Filed for Record at Request of and  
copy returned to:

Lukins & Annis, P.S.  
Attn: Tyler J. Black, Esq.  
717 W. Sprague Avenue, Suite 1600  
Spokane, WA 99201

DOCUMENT TITLE:	AVIGATION EASEMENT
REFERENCE NOS.:	
GRANTOR:	CENTRAL SPRAGUE REALTY, LLC
GRANTEE:	N/A
ABBREVIATED LEGAL DESCRIPTION:	_____
ASSESSOR'S PARCEL NO.:	_____

**AVIGATION EASEMENT**

THIS AVIGATION EASEMENT ("Easement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date"), by CENTRAL SPRAGUE REALTY, LLC, a Washington limited liability company ("Grantor") for the benefit of SPOKANE AIRPORT, by and through its Airport Board, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington, and the UNITED STATES OF AMERICA (collectively the "Grantees").

**RECITALS**

A. Grantor is the owner of fee simple title to real property consisting of approximately \_\_\_\_ ( ) acres located generally located generally fronting Craig Road south of McFarlane Road in the City of Spokane, Spokane County, Washington, and legally described on the attached Schedule 1 (the "Property"), which Property was acquired by Grantor from the City of Spokane and Spokane County, as tenants in common, for Spokane Airport, by and through its Airport Board (the "Seller").

B. In consideration of Seller agreeing to sell the Property to Grantor, Grantor desires to provide Grantees an easement over the Property for the unobstructed passage of all Aircraft, on the terms and conditions set forth in this Easement. For purposes of this Easement, "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of, or flight in, the air.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Grantor agrees as follows:

1. Recitals. The recitals set forth above are incorporated by reference in this Easement as though fully set forth herein.

2. Grant of Avigation Easement for Benefit of Grantees. Grantor hereby grants and conveys to Grantees, for themselves, their heirs, administrators, executors, successors and assigns an easement over and across the airspace above the surface of the Property for the unobstructed passage and avigation of all Aircraft by whomsoever owned and operated. Grantees' foregoing avigation easement shall include the right to (i) emit such noise, vibrations, fumes, dust, fuel particles and other incidents typically resulting from the operation of Aircraft, (ii) increase the noise impact to the Property by virtue of an increase in flight frequencies, altering flight paths, or changing types of Aircraft pursuant to the continued growth and expansion of Spokane International Airport and Felts Field Airport (the "Airports"), or (iii) prevent the use of the Property in a manner that constitutes an Aircraft hazard, including, without limitation, (a) interfering with the operations of radio or electronic facilities used by any Aircraft, (b) making it difficult for pilots to distinguish between airfield lights and other lights, or (c) implementing a use that (1) results in glare in the eyes of Aircraft pilots, (2) impairs visibility in the vicinity of any Aircraft flight path, (3) creates thermal plumes hazardous to Aircrafts, (4) endangers the landing, taking off, or maneuvering of any Aircraft, (5) creates a wildlife attractant that in Grantees' sole discretion and opinion, could create a bird or wildlife strike hazard or otherwise interfere with Aircraft operations, or (6) creates a potential hazard of a fire accelerant or secondary explosion resulting from an Aircraft crash on the Property.

It is further understood and acknowledged that it is reasonable to expect that ongoing expansion of the Airports and attendant improvements will cause Aircraft effects to change, potentially increasing flight frequencies, alteration of flight paths and changing of Aircraft types as the operations of the Airports grow and expand which may have a greater future deleterious impact to the Property of the nature described in this Section.

3. Negative Covenants. Grantor hereby specifically disclaims any intention to create any other easements on the Property by this Easement, except as otherwise specifically provided herein. Grantor shall not erect, construct, alter, maintain, or allow to grow, any vegetation, object, structure, wall, fence or barrier ("Obstruction") of any kind on or in the Property that would increase the Federal Aviation Administration ("FAA") landing, approach, or departure minimum height requirements for Aircraft, or prevent or unreasonably impair the free access of any Aircraft to travel through the airspace above the surface of the Property, unless such Obstruction is specifically consented to by all appropriate Grantees. If any Obstruction violates the height restrictions described herein this Section 3, then any of the Grantees shall have the right to enter the Property to remove such Obstruction at Grantor's sole cost and expense. Grantor shall not create or cause interference with or utilize the Property in any way contrary to (i) Spokane County Zoning Code, Chapters 14.700 and 17C.180 or (ii) any FAA requirements and regulations.

4. Indemnification. Grantor shall indemnify, defend and hold harmless Grantees, their heirs, administrators, executors, successors and assigns from all claims, demands, or suits in law or equity arising from Grantor's intentional or negligent acts or breach of its obligations under this Easement.

5. Not a Public Dedication. The easements established by this Easement shall be for the benefit of and restricted solely to the use of Grantees, their heirs, administrators, executors, successors and assigns and shall be used only for the purposes described herein. Nothing contained in this Easement shall be deemed to be a public dedication of any portion of the Property described herein in the general public or for the general public or for any public purposes whatsoever.

6. Covenants Run With the Land. This Easement shall remain in effect until said Easement Area, as existing, enlarged or relocated, is abandoned or ceases to be used for Aircraft travel and Airports purposes. The covenants given and the easements granted pursuant to this Easement shall be deemed to be covenants running with the Property and shall be binding upon and benefit the heirs, successors in interest, assigns and devisees of Grantor and Grantees. The Property is the servient estate.

7. Consent to Modification. This Easement and any provision, covenant, or easement contained herein may be terminated, extended, modified, or amended only with the written consent of the Grantor and all appropriate Grantees; provided, however, that no termination, extension, modification, or amendment of this Easement shall be effective unless a written instrument setting forth the terms thereof has been executed as herein provided, acknowledged, and recorded in the offices of the Spokane County Recorder.

8. Not a Partnership. By this Easement, the Grantor does not, and any successors or assigns of Grantor shall not, in any way or for any purpose become partners or joint venturers with any of the Grantees, or of any their respective successors or assigns.

9. Construction. Wherever used herein, unless the context shall otherwise provide, the singular form shall include the plural, the plural shall include the singular, and the use of any gender will include all genders. The section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Easement or any section or provision hereof.

10. Entire Easement; Interpretation. This Easement constitutes the entire Easement with respect to the subject matter hereof. It is expressly agreed that there are no verbal understandings or other easements that in any way change the terms, covenants and conditions herein set forth. References to Grantor and Grantees shall also be deemed to refer to their respective successors and assigns.

11. Miscellaneous. This Easement shall be governed by the laws of the state of Washington. Any action related to this Easement shall be brought in Superior Court in Spokane County, Washington.

*[signature page follows]*

[remainder of page left intentionally blank]

**[Insert SPE signature block]**

**My commission expires:** \_\_\_\_\_

Schedule I  
to  
Avigation Easement

LEGAL DESCRIPTION OF PROPERTY

[insert]

EXHIBIT E  
ENVIRONMENTAL SECTION OF SELLER DISCLOSURE STATEMENT

[see pages that follow]

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**NOTICE TO THE BUYER: CENTRAL SPRAGUE REALTY, LLC**

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY CONSISTING OF APPROXIMATELY TWENTY (20.00) ACRES FRONTING CRAIG ROAD SOUTH OF MCFARLANE ROAD IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON (THE "PROPERTY") AS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT A. SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S CURRENT AND ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED ENVIRONMENTAL SELLER DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, ELECTRICIANS, OR ON-SITE WASTEWATER TREATMENT INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES. SELLER IS NOT OCCUPYING THE PROPERTY.

**SELLER'S DISCLOSURES - ENVIRONMENTAL**

**YES      NO      DON'T  
KNOW**

If the answer is "Yes" to a question with an (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- \*A. Have there been any flooding, standing water or drainage problems on the property that affect the property or access to the property?
- \*B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
- \*C. Are there any shorelines, wetlands, floodplains, or critical areas on the property?
- \*D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
- \*E. Is there any soil or groundwater contamination?
- \*F. Has the property been used as a legal or illegal dumping site?
- \*G. Has the property been used as an illegal drug manufacturing site?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**\*\* SEE ATTACHED FOR ADDITIONAL INFORMATION.**

**ADDITIONAL NOTICES TO BUYER:** INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.



**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**VERIFICATION**

The foregoing answers and attached explanations (if any) are complete and correct to Seller's knowledge (as that term is defined in the purchase and sale agreement between Buyer and Seller) and Seller has received a copy hereof. Seller authorizes real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the Property.

Seller: SPOKANE AIRPORT BOARD, a joint operation of the City of Spokane and County of Spokane,  
Washington

By: Laurence J. Krauter  
Laurence J. Krauter, its Chief Executive Officer

Date: 8/28/19

**BUYER'S ACKNOWLEDGEMENT**

Buyer hereby acknowledges that:

1. Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
2. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
3. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
4. This information is for disclosure only and is not intended to be a part of the written agreement between Buyer and Seller.
5. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL AND CURRENT KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement under RCW 64.06, and hereby waives, to the extent permissible, any and all rights to receive a Seller Disclosure Statement. Buyer understands that this Environmental Seller Disclosure Statement is not the entire Seller Disclosure Statement, but is that portion that Seller may be required to deliver under RCW 64.06.010(7).

Buyer: CENTRAL SPRAGUE REALTY, LLC, a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**EXPLANATIONS FOR \*YES\* ANSWERS (IF ANY):**

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**EXHIBIT A  
Legal Description**

TRACTS 34, 35, 47, and 48, HAZELWOOD IRRIGATED FARMS, AS PER PLAT THEREOF  
RECORDED IN VOLUME "I" OF PLATS, PAGES 24 AND 25, LYING WITHIN SECTION 34,  
TOWNSHIP 25 NORTH, RANGE 41 EAST, W.M..

SITUATE IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON.

Tax Account Nos.: 15344.0102, 15344.0103, 15344.0107 and 15344.0108.

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

10/07/2019

Date Rec'd	9/24/2019
Clerk's File #	RES 2019-0085
Renews #	

Submitting Dept	AIRPORTS	Cross Ref #	
Contact	LARRY 455-6406	Project #	
Contact E-Mail	LKRAUTER@SPOKANEAIRPORTS.NET	Bid #	
Agenda Item Type	Resolutions	Requisition #	
Agenda Item Name	SIA - JOINT RESOLUTION - PURCHASE AND SALE AGREEMENT		

Agenda Wording

Joint Resolution with Spokane County in the matter of Authorizing the Airport Board to sell property identified as Spokane County Assessor Parcels 15362.0025, 15362.0026, 15362.0027, and 15362.0028.

Summary (Background)

Spokane County and the City of Spokane are joint owners and sponsors of Spokane Airport, which is managed and operated by the Spokane Airport Board pursuant to RCW 14.08.200 and the Amended Spokane County/City Airport Agreement, dated August 28, 1990 (City of Spokane City Clerk File #OPR 1986-0318, Spokane County Resolution NO. 1990-1040), (the "Airport Agreement"). On July 31, 2019, the Airport Board approved recommendation of approval of a Real Property Purchase and Sale Agreement and Escrow

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

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

Approvals		Council Notifications	
<u>Dept Head</u>	PFISTER, TERRI	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>	HUGHES, MICHELLE	Distribution List	
<u>Legal</u>	PICCOLO, MIKE	gvasquez@spokanecounty.org	
<u>For the Mayor</u>	ORMSBY, MICHAEL	lkrauter@spokaneairports.net	
Additional Approvals		twoard@spokaneairports.net	
<u>Purchasing</u>		bwerst@spokaneairports.net	
		thart@spokaneairports.net	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Instructions between the Spokane Airport and AT Acquisitions, LLC, for the sale of a total of 29.28 acres of Airport real property. Pursuant to the Airport Agreement, both the City and County must approve the sale of Airport real property.

Fiscal Impact

Select      \$

Select      \$

Budget Account

#

#

Distribution List


City: OPR  
Resolution No. 19-1337 3

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON  
AND  
THE SPOKANE CITY COUNCIL OF SPOKANE, WASHINGTON**

IN THE MATTER OF AUTHORIZING	)	
THE AIRPORT BOARD TO	)	JOINT RESOLUTION
SELL PROPERTY IDENTIFIED AS	)	
SPOKANE COUNTY ASSESSOR PARCELS	)	
15362.0025, 15362.0026, 15362.0027	)	
AND 15362.0028	)	

WHEREAS, pursuant to Chapter 14.08 RCW, Spokane County ("County"), by and through its Board of County Commissioners, and the City of Spokane ("City"), by and through its City Council, entered into an agreement dated August 28, 1990 ("Agreement") to provide for the joint operation of Spokane International Airport, Felts Field Airport and Spokane International Airport Business Park; and

WHEREAS, pursuant to Paragraph 8(b) of the Agreement, the County and City must by joint action approve the acquisition, sale, transfer or disposal of real property; and

WHEREAS, the Airport Board has recommended to the County and City the sale of Spokane County Assessor Tax Parcels as identified on Exhibit A, attached hereto, comprised of approximately 29.28 acres of land located generally at the south side of McFarlane Road between South Russell Street and South Hayden Street in the City ("Property"); and

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Spokane County, Washington and by the City Council of the City of Spokane:

1. That the Airport Board is authorized to sell the Property, on the terms and conditions set forth in that certain Real Property Purchase and Sale Agreement and Escrow Instructions, dated as of August 1, 2019, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and
2. That the Chief Executive Officer of the Airport Board be and is hereby authorized to prepare and execute any documents on behalf of Spokane County and City of Spokane to sell the Property.

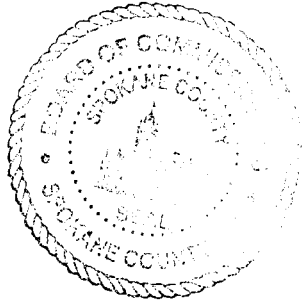
ADOPTED by the Spokane City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Terri L. Pfister, City Clerk

Approved as to form:

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

ADOPTED by the Board of County Commissioners of Spokane County, Washington this 17th  
day of Sept., 2019.



ATTEST:

Ginna Vasquez  
Ginna Vasquez  
Clerk of the Board

Mary L. Kuney  
Mary L. Kuney, Chair

Al French  
Al French, Vice-Chair

Josh Kerns  
Josh Kerns, Commissioner

EXHIBIT A

THE PROPERTY

SPOKANE COUNTY ASSESSOR TAX PARCEL NUMBERS

15362.0025

15362.0026

15362.0027

15362.0028



EXHIBIT B

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS,  
DATED AS OF AUGUST 1, 2019,  
BY AND BETWEEN SPOKANE AIRPORT AND AT ACQUISITIONS, LLC

## REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement") is made as of the 1<sup>st</sup> day of August, 2019 (the "Effective Date"), by and between the SPOKANE AIRPORT, by and through its Airport Board ("Airport Board"), created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington ("Seller"), and AT ACQUISITIONS, LLC, a Washington limited liability company ("Buyer"). Seller and Buyer may be referred to collectively as the "Parties" and individually as a "Party" in this Agreement.

### RECITALS

Seller is the owner of the following (collectively, the "Property"):

A. Fee simple title to real property consisting of approximately 29.28 acres located generally at the south side of West McFarlane Road between South Russell Street and South Hayden Street in the City of Spokane, Spokane County, Washington, and legally described on the attached Exhibit A (the "Real Property");

B. All mineral rights, air and water rights, and rights and easements appurtenant to the Real Property owned by Seller, if any;

C. All licenses, permits, land use designations, approvals, various waivers or consents applicable to the Real Property (collectively, the "Permits"), to the extent transferable and held by Seller, issued or subject to the laws of the United States, the State of Washington, County of Spokane, or City of Spokane, other authority, department, commission board, bureau, agency, unit, or instrumentality, (collectively "Governmental Authorities"); and

D. Certain surveys, soil and substrata studies, environmental reports, and other plans, diagrams, or studies, if any, with respect to the Real Property.

NOW, THEREFORE, Seller desires to sell and Buyer desires to purchase the Property upon the terms and conditions set forth in this Agreement, as follows:

1. Sale of Property. Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase and accept the Property from Seller, upon the terms and conditions set forth in this Agreement. As used in this Agreement, "Business Day" means any day other than: (i) a Saturday, (ii) a Sunday, or (iii) days on which branches of national banks located in Spokane County, Washington are closed.

2. Earnest Money and Independent Consideration.

2.1 Earnest Money. Within three (3) Business Days after the Effective Date, Buyer shall deposit with STEWART TITLE AND GUARANTY COMPANY (Attn: Kim Belcher) ("Escrow Agent" or "Title Company") the sum of Thirty Thousand Dollars (\$30,000.00) in Current Funds (as hereinafter defined) as earnest money (the "Earnest Money"), to be applied for the account of Buyer as a credit against the Purchase Price (as defined in Section 3). Upon the expiration of the Review Period (as defined in Section 4.1), the Earnest Money shall be nonrefundable to Buyer, except as otherwise set forth in this Agreement. Upon receipt, Escrow Agent shall deposit the Earnest Money in an interest-bearing account. Any interest earned on the

Earnest Money will be part of the Earnest Money under this Agreement. When Escrow Agent disburses the Earnest Money as provided in this Agreement, any and all interest that has accrued thereon shall be disbursed to the Party entitled to the Earnest Money.

2.2 Independent Consideration. Simultaneously with Buyer's delivery of the Earnest Money to Escrow Agent, Buyer shall pay directly to Seller an amount equal to One Hundred Dollars (\$100.00) as independent consideration for Seller's performance under this Agreement, which amount the Parties bargained for and agreed to as additional consideration for Seller's execution, delivery and performance of this Agreement and shall be retained by Seller in all instances, and shall not be applied against the Purchase Price.

3. Purchase Price. The purchase price for the Property is One Million Five Hundred Ninety-Four Thousand Two Hundred Ninety-Five Dollars (\$1,594,295.00) (the "Purchase Price"), together with Buyer's share of closing costs and prorations, as set forth in this Agreement. The Purchase Price will be paid as follows at Closing: (i) the Earnest Money will be credited toward the Purchase Price; and (ii) the remainder of the Purchase Price will be paid in Current Funds. As used in this Agreement, "Current Funds" means wire transfers, certified funds, or cashier's checks in a form acceptable to Escrow Agent that would permit Escrow Agent to immediately disburse such funds. The foregoing Purchase Price assumes that the Real Property will consist of twenty-nine and 28/100 (29.28) acres and that Buyer will pay a purchase price equal to the total number of acres multiplied by Fifty-Four Thousand Four Hundred Fifty Dollars (\$54,450) per acre (i.e. \$1.25/square foot). If the actual acres of Real Property, as shown on Buyer's survey is greater or less than twenty-nine and 28/100 (29.28) acres, the Purchase Price will be increased or decreased to equal the actual number of acres, multiplied by the foregoing per acre price.

4. Due Diligence Inspections and Title Review.

4.1 Review Period. As used in this Agreement, the term "Review Period" means that period of time commencing on the Effective Date and expiring at 5:00 p.m., Pacific Time, sixty (60) days thereafter, subject to extension under Section 4.4(a) below.

4.2 Review of Title. Within three (3) Business Days after the Effective Date, Buyer shall cause the Title Company to deliver a commitment for the Title Policy (as defined in Section 6.3(b)) to the Parties. The commitment must be accompanied by legible copies of all documents referred to in Schedule B of the commitment (the commitment and documents are collectively referred to in this Agreement as the "Title Report").

(a) Objections. Buyer shall review the Title Report and may, within forty-five (45) days after the Effective Date (the "Title Review Period"), provide Seller and Title Company with written notice of the title exceptions that are acceptable or objectionable to Buyer, in Buyer's discretion (each such objectionable matter or exception considered a "Disapproved Matter"). If Buyer timely notifies Seller and Title Company of any Disapproved Matter(s) within the Title Review Period, Seller may, within five (5) days following Seller's receipt of Buyer's written notice of Disapproved Matter(s), notify Buyer and Escrow Agent that: (i) Seller will remove or correct such Disapproved Matter as of or before Closing, or (ii) Seller will not remove any or certain Disapproved Matter(s). If Seller does not respond within such period, Seller will be deemed to have elected option (ii) above. If Seller elects, within its discretion, or is deemed to have elected not to eliminate those objections with reference to such Disapproved Matter(s), in form and substance acceptable to Buyer, in Buyer's discretion, Buyer may, prior to the expiration of the Review Period, either: (i) terminate this

Agreement by delivery of written notice to Seller and Escrow Agent, or (ii) give written notice to Seller and Escrow Agent, agreeing to accept title to the Property subject to such Disapproved Matters, in which case such Disapproved Matters shall be Permitted Exceptions (as defined in Section 4.2(c), below), and if Buyer fails to elect either option (i) or (ii) above, Buyer will be deemed to have elected option (ii).

(b) Supplements; Amendments. If the Title Company issues a supplement or amendment to the Title Report showing additional title exceptions which were not contained in the initial Title Report (each, an "Amended Report"), Buyer will have three (3) days from the date of receipt of each Amended Report, and a copy of each document referred to in the Amended Report that was not contained in the initial Title Report, in which to give notice of its acceptance of or objection to any additional title exceptions except if said supplements or amendments are a result of Buyer's actions, in which case Buyer shall not be entitled to object to such additional title exceptions. If Buyer provides Seller with notice of the basis of objection to the status of Seller's title as shown in the Amended Report, Seller will have the option, but not the obligation, to: (i) eliminate Buyer's objections, (ii) obtain title insurance endorsements regarding such objections, or (iii) cure any objectionable matter within three (3) days after receipt of such written notice, in each case, in form and substance acceptable to Buyer. If, prior to the expiration of the three (3) day period, Seller does not cure such objections, Buyer will have the option to terminate this Agreement within one (1) Business Day after expiration of such three (3) day period by giving written notice of termination to Seller and Escrow Agent, and if Buyer does not elect to terminate the Agreement within such one (1) Business Day period, Buyer will be deemed to have agreed to accept title subject to such objections, in which case such additional title exceptions shall be Permitted Exceptions. If Seller's three (3) day cure period would expire after the scheduled Closing Date (as defined in Section 6.1, below), the Closing Date will be extended until the expiration of the time periods set forth in this Section.

(c) Failure to Provide Written Acceptance. Any item that Buyer accepts in writing or is deemed to have accepted pursuant to the terms of this Agreement will be a "Permitted Exception." The term "Permitted Exceptions" also includes and Buyer may not disapprove or object to the following: all zoning ordinances and regulations and any other laws, ordinances, or governmental regulations and restrictions regulating the use, occupancy or enjoyment of the Property; such state of facts as would be disclosed by a survey or physical inspection of the Real Property (unless Buyer obtains a survey); the lien of taxes and assessments not yet delinquent; any exclusions from coverage set forth in the jacket of the Title Policy; the Avigation Easement (as defined below); or any exceptions caused by Buyer, its agents, representatives or employees. Notwithstanding the foregoing, Buyer will not be required to disapprove or object to, and Seller covenants to remove as an encumbrance against title to the Property on or prior to the Closing, any deeds of trust, monetary liens, or monetary encumbrances (except for real property taxes and assessments not yet due) created by Seller. If Buyer does not provide written acceptance of an exception to title as disclosed by the Title Report or an Amended Report within the applicable time period, Buyer will be deemed to have accepted such matter. If this Agreement is terminated due to Seller's failure to eliminate or cure any of Buyer's objections under this Section 4.2, the Escrow Agent shall immediately disburse to Buyer all Earnest Money, together with any documents or instruments that Buyer has deposited with the Escrow Agent, and neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement.

4.3 Review of Diligence Materials. Seller shall, no later than three (3) Business Days after the Effective Date, provide Buyer (or make available for Buyer's inspection) copies of the following items that relate to the Property (to the extent the same are in Seller's possession or control): existing environmental assessment reports; surveys; utility bills for the most recent month and past six (6) months, if any; valuation notices and any other fees, dues, and taxes applicable to the Property for the past year; and copies of any pending or threatened Claims (as defined in Section 4.4(b)) relating to the Property, and any governmental notices regarding uncured violations of laws or regulations (collectively, the "Current Diligence Materials"). In the event that the sale of the Property fails to close for any reason, all Current Diligence Materials provided to Buyer by Seller shall be returned to Seller promptly upon request and the contents of all Current Diligence Materials shall thereafter be treated by Buyer as confidential information of Seller and shall not be disclosed to any third parties (except as may be required by law or upon court order) without the prior consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. Any Current Diligence Materials provided by Seller to Buyer under this Agreement are provided as an accommodation to Buyer, and Buyer acknowledges and agrees that Seller makes no representations or warranties whatsoever with regard to the contents, completeness or accuracy of any such Current Diligence Materials.

4.4 Physical Inspections; Entry on Property.

(a) Physical Inspections. Buyer and its agents, employees or subcontractors ("Buyer's Agents") will have the right, from time to time prior to the Closing, to enter upon the Property to examine the same and the condition thereof and to conduct such surveys and to make such engineering and other inspections, tests and studies as Buyer determines to be reasonably necessary, all at Buyer's sole cost and expense. As part of Buyer's physical inspection, Buyer may, in its discretion and its sole cost and expense, obtain a current ASTM Phase I environmental site assessment (the "Phase I") for the Property, performed by an environmental consultant (the "Environmental Consultant") acceptable to and for the benefit of and reliance on by Buyer. If the Phase I recommends that a Phase II environmental site assessment (the "Phase II") be prepared or Buyer determines that a Phase II is necessary and desirable, then Buyer may, in its discretion, elect to perform a Phase II by giving written notice to Seller. Seller shall have the right to be present at any or all inspections. Buyer shall promptly provide Seller copies of the Phase I and Phase II, and any other conclusions, assessments, or reviews provided to Buyer by the Environmental Consultant. Neither Buyer nor Buyer's Agents may contact any governmental official or representative regarding hazardous materials on or the environmental condition of the Property without Seller's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned, or delayed. In addition, if Seller consents to any such governmental contacts, Seller shall be entitled to receive at least five (5) days prior written notice of the intended contact and to have a representative present when any Buyer's Agent has any such contact with any governmental official or representative.

(b) Entry on Property. Up to and through the Closing Date, if this Agreement has not been terminated, Buyer and Buyer's Agents will have the right (upon at least twenty-four (24) hours prior written notice to Seller) to enter the Property to conduct such surveys, inspections, investigations and/or studies with respect to the Property as permitted by Section 4.4(a) of this Agreement, at Buyer's sole cost and expense. Buyer shall indemnify, defend and hold Seller and the Property free and harmless from and against any and all debts, duties, obligations, liabilities, liens, suits, claims, demands, causes of actions, damages, losses, costs and expenses (including,

without limitation, reasonable legal expenses and attorneys' fees with respect to the same or to enforce the foregoing) (collectively, "Claims") incurred by reason of or in connection with such entry or such surveys, inspections, investigations and/or studies. Before entering upon the Property, Buyer shall furnish to Seller a certificate of insurance evidencing: (a) commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, (b) professional liability insurance of not less than One Million Dollars (\$1,000,000.00) for any of Buyer's Agents who conduct inspections of the Property, (c) workers' compensation insurance as required Washington statutes, and (d) employer's liability insurance of not less than One Million Dollars (\$1,000,000.00) per accident. Such insurance coverage shall (i) be issued by an insurance company licensed in Washington having a rating of at least "AVIII" by A.M. Best Company, (ii) be primary and any insurance maintained by Seller shall be excess and noncontributory, (iii) include contractual liability coverage with respect to Buyer's indemnity obligations set forth in this Agreement (it being understood, however, that the availability of such insurance shall not serve to limit or define the scope of Buyer's indemnity obligations under this Agreement in any manner whatsoever), and (iv) not contain any exclusions for "insured versus insured" claims as respects any potential claim by Seller against Buyer. The insurance certificate required herein shall also provide that the coverage may not be cancelled, non-renewed or reduced without at least thirty (30) days' prior written notice to Seller. Buyer agrees to repair any and all damages caused to the Property due to Buyer's entry thereon and otherwise to restore the Property to the Property's original condition before such entry. The obligations of Buyer under this Section 4.4 will survive Closing or earlier termination of this Agreement.

(c) No Liens or Interference. Buyer shall not permit, and shall indemnify, defend and hold harmless Seller for, from and against any and all Claims incurred by reason of or in connection with, any construction, mechanics or materialmen's liens or any other liens that attach to the Property or any portion thereof by reason of the performance of any work or the purchase of any materials by Buyer or Buyer's Agents in connection with Buyer's inspection of the Property. The provisions of this Section will survive Closing or other termination of this Agreement.

4.5 Right to Terminate Before Expiration of Review Period. Notwithstanding anything contained within this Agreement to the contrary, Seller acknowledges and understands that Buyer may, prior to the expiration of the Review Period, notify Seller in writing that Buyer elects to terminate this Agreement as a result of any matter or no matter as determined by Buyer, in Buyer's sole discretion. Seller acknowledges that Buyer has the right to so terminate this Agreement, regardless of whether Seller would be willing or able to cure any such matter to which Buyer has objected. If Buyer elects, in its sole discretion, to proceed with this transaction, Buyer shall send a written approval notice to Seller and Escrow Agent on or before expiration of the Review Period ("Approval Notice"). If Buyer fails to send an Approval Notice to Seller and Escrow Agent by the expiration of the Investigation Period, Buyer will be deemed to have elected to terminate this Agreement. Buyer may also terminate this agreement by sending written notice of termination to Seller on or before expiration of the Review Period. If this Agreement is terminated as provided in this Section 4.5, the Earnest Money will be refunded to Buyer, and the Parties will have no further rights or obligations to each other, except for those rights and obligations that expressly survive the termination of this Agreement. After the Approval Notice is sent by Buyer or upon expiration of the Review Period, the Earnest Money will be nonrefundable to Buyer, except as otherwise expressly provided in this Agreement.

#### 4.6 Entitlement Period.

(a) Duration. As used in this Agreement, the term "Entitlement Period" means that period of time commencing upon the expiration of the Review Period and expiring upon the earlier to occur of: (i) the date that is one hundred and eighty (180) days after the expiration of the Review Period; and (ii) five (5) Business Days after Buyer has received (A) Final Approval of the Entitlements (as defined below) and (B) a definitive statement of any required land dedications and impact fees, in-lieu fees and any other payments required by applicable Governmental Authorities in connection with the development of the industrial project that Buyer wishes to develop on the Real Property in a manner and design acceptable to Buyer in its sole discretion (the "Project"). Buyer shall, during the Entitlement Period, use commercially reasonable efforts to obtain Final Approval of the Entitlements, and shall provide prompt written notice to Seller upon obtaining Final Approval of its Entitlements.

(b) Entitlements. As used in this Agreement: the term (i) "Entitlements" means all governmental or other zoning, environmental, archaeological, 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 the Project, and (ii) "Final Approval" means the final, binding approvals of the Project and all Entitlements thereto by all applicable Governmental Authorities, the receipt of any and all Entitlements and the expiration of any appeal periods relating to any such Entitlements and approvals without any outstanding appeal thereto. Seller shall cooperate with Buyer and take all actions reasonably necessary to assist Buyer in Buyer's efforts to obtain Final Approval of the Project and Entitlements, including, without limitation, executing such applications and any other documents necessary or convenient with respect to the development of the Project that are required to be executed by the owner of the Property; *provided*, however, that no such applications or other documents may encumber the Property until the Closing unless otherwise consented to by Seller. Following the Effective Date, the submission and processing of the Entitlements shall be at Buyer's sole cost and at the sole control and direction of Buyer.

(c) Right to Terminate Prior to Expiration of Entitlement Period. Notwithstanding anything contained in this Agreement to the contrary, Buyer may in its sole discretion cease its pursuit of the Final Approval of the Entitlements and terminate this Agreement after the expiration of the Investigation Period and prior to the expiration of the Entitlement Period if Buyer determines, in its sole discretion, that it will not be feasible to obtain Final Approval of all of Buyer's desired Entitlements for the Project. Buyer may exercise such termination right by delivering written notice of termination to Seller and Escrow Agent prior to the expiration of the Entitlement Period (the "Entitlements Termination Notice"). If Buyer fails to deliver the Entitlement Termination Notice or in the alternative, fails to affirmatively notify Seller in writing on or before the expiration of the Entitlement Period that it intends to proceed with the transactions contemplated hereunder and expressly waives its right of termination under this Section 4.6(c) (the "Entitlements Approval Notice"), this Agreement shall terminate whereupon Escrow Agent shall immediately disburse the Earnest Money to Seller and neither party shall have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement.

5. Conditions Precedent.

5.1 Buyer's Conditions Precedent. Buyer's obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

(a) All of the documents required to be delivered by Seller to Buyer at Closing pursuant to the terms and conditions hereof shall have been delivered;

(b) Each of the representations of Seller set forth in Section 7 shall be true in all material respects as of the Closing Date; and

(c) Title Company is irrevocably committed to issue, upon the condition of the payment of the applicable premium, the Title Policy, subject only to the Permitted Exceptions applicable to the Real Property.

(d) Seller shall have satisfied the Approval Conditions (as defined below) and delivered written confirmation thereof to Buyer.

If any of the foregoing conditions are not satisfied (or waived in writing by Buyer) on or before the Closing, then Buyer shall have the right to terminate this Agreement by delivering written notice to Seller and, in the event of such termination, all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease and the Earnest Money shall be promptly refunded to Buyer; provided however, that if any of the foregoing conditions are not satisfied (or waived in writing by Buyer) on or before the Closing due to any default by Seller hereunder, then Buyer, in its discretion, and by delivering written notice to Seller, may elect to pursue any of the remedies available to Buyer pursuant to Section 13. In the event Buyer elects to terminate this Agreement pursuant to Section 13, all obligations of Seller and Buyer under this Agreement (other than those that expressly survive the termination of this Agreement and the rights and remedies arising out of any breach of such surviving obligations) shall cease.

5.2 Seller's Conditions Precedent. Seller's obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

(a) All of the documents and funds required to be delivered by Buyer to Seller at Closing pursuant to the terms and conditions hereof shall have been delivered;

(b) Each of the representations of Buyer set forth in Section 8 shall be true in all material respects as of the Closing Date;

(c) Seller's receipt of written approval of the transaction contemplated by this Agreement from the board of directors of Seller's Airport Board, the City of Spokane, and County of Spokane, acting through the City Council of Spokane, and the Spokane County Board of Commissioners, respectively; and

(d) Seller's receipt of written approval from the Federal Aviation Administration ("FAA") for release and/or disposal of the Real Property by Seller that formally authorizes the release and/or disposal and removal of the Real Property as



airport dedicated real property pursuant to Section 163 of the FAA Reauthorization Act of 2018 ("FAA Disposal Approval").

If any of the conditions delineated in Sections 5.2(a) or 5.2(b) are not satisfied (or waived in writing by Seller) on or before the Closing, then Seller shall have the right to terminate this Agreement by delivering written notice to Buyer and, in the event of such termination, all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease and the Earnest Money shall be promptly disbursed to Seller as liquidated damages. Seller shall use commercially reasonable efforts to cause the conditions set forth in Section 5.2(c)-(d) (the "Approval Conditions") to be satisfied on or before Closing. Upon satisfaction of any of the Approval Conditions, Seller shall provide prompt written notice to Buyer of the same.

6. Closing.

6.1 Closing Date. The closing ("Closing") of the purchase and sale transaction contemplated in this Agreement will occur ("Closing Date") on the earlier of (i) March 31, 2020, or (ii) provided that the Approval Conditions have been satisfied, on such earlier date designated by Buyer by not less than ten (10) Business Days prior written notice to Seller. Notwithstanding anything herein to the contrary, if Closing has not occurred by March 31, 2020 due to the failure of the Approval Conditions then either Party may, in its sole discretion and at any time thereafter, elect to terminate this Agreement by delivering written notice to the Party and, in the event of such termination (a) all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease, and (b) the Earnest Money shall be promptly refunded to Buyer.

6.2 Location. Closing will occur at the offices of the Escrow Agent, or at such other place as may be agreed to by the Parties in writing.

6.3 Closing Costs and Prorations.

(a) Closing Fees. At Closing, Buyer and Seller will each pay one-half (1/2) of any escrow fees and closing fees. Seller shall be solely responsible for any state or local transfer taxes, real estate excise tax or any similar taxes or fees attributable to the transaction contemplated in this Agreement, if applicable to Seller. Seller shall be solely responsible for all recording fees associated with recording the Avigation Easement (as defined below). Buyer shall be responsible for all recording fees associated with recording the Deed (as defined below). Any other fees and costs will be paid by, or shared by, Buyer and Seller in accordance with local custom in Spokane County, Washington.

(b) Title Policy; Survey. Seller shall pay the equivalent premium of an ALTA standard owner's title policy for the Property, and Buyer shall pay the additional premium necessary for any ALTA extended or other policy Buyer elects to acquire (the "Title Policy"). Buyer shall also pay premium of any and all endorsements to the Title Policy unless provided by Seller to remove a Disapproved Matter, in which case, Seller shall be responsible for the cost of such endorsements. The cost of any survey of the Real Property obtained by Buyer will be borne by Buyer.

(c) Taxes and Fees. Real estate taxes for the year of Closing shall be the sole responsibility of Buyer. Buyer acknowledges that Seller does not pay real estate

taxes and, as such, Buyer is free to seek a refund for that portion of time in which real estate taxes may have otherwise been required to be paid in order to close the transaction contemplated by this Agreement. Annual municipal or special district assessments (on the basis of the actual fiscal tax years for which such taxes are assessed), lienable water and sewer rentals, license, or permit and inspection fees, if any, will be apportioned as of the Closing Date between Buyer and Seller. If, on the day prior to the Closing Date, real estate taxes have been imposed upon the Real Property for the real estate tax year in which Closing occurs such taxes shall be paid by Buyer at the time of Closing.

(d) Utility Readings. Seller shall use commercially reasonable efforts to obtain readings of the utility meters on the Property (if any) to a date no sooner than two (2) Business Days prior to the Closing Date. At or prior to Closing, Seller shall pay all charges based upon such meter readings. However, if after reasonable efforts Seller is unable to obtain readings of any meters prior to Closing, Closing will be completed without such readings and upon the obtaining of such readings after Closing, Seller shall promptly pay the pre-Closing charges as reasonably determined by Seller and Buyer based upon post-Closing readings.

(e) Attorney Fees. Each Party shall pay its own attorney fees incurred with respect to this transaction.

(f) Preliminary Closing Statement. Seller and Buyer shall cooperate with Escrow Agent to prepare a preliminary closing statement (the "Closing Statement") on the basis of the real estate taxes and other sources of income and expenses for the Property on or prior to the Closing Date. All apportionments and prorations provided for in this Section 6.3 to be made as of the Closing Date will be made, on a per diem basis, as of 11:59 p.m. on the day prior to the Closing Date. The preliminary Closing Statement and the apportionments and/or prorations reflected therein will be based upon actual figures to the extent available. If any of the apportionments and/or prorations cannot be calculated accurately based on actual figures on the Closing Date, then they will be calculated based on Seller's and Buyer's good faith estimates thereof, subject to reconciliation as provided in the following Section.

(g) Post-Closing Reconciliation. If there is an error on the preliminary Closing Statement or, if after the actual figures are available as to any items that were estimated on the preliminary Closing Statement, it is determined that any actual proration or apportionment varies from the amount thereof reflected on the preliminary Closing Statement, the proration or apportionment will be adjusted based on the actual figures as soon as feasible, but not later than sixty (60) days after the Closing Date. Either Party owing the other Party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other Party.

(h) Other Costs and Survival. All other costs not addressed within this Section 6.3 will be paid in accordance with the custom followed in Spokane County, Washington. The provisions of this Section 6.3 will survive Closing for a period of six (6) months.

#### 6.4 Deliveries at Closing.

(a) Deliveries by Seller. At Closing, Seller shall execute and deliver (or cause to be executed and delivered) all documents and take all other actions reasonably necessary to effect the Closing, including, without limitation:

(1) A duly executed and acknowledged bargain and sale deed (the "Deed"), in the form attached to this Agreement as Exhibit B.

(2) A counterpart original duly executed and completed real estate excise tax affidavit ("REETA").

(3) A counterpart original duly executed and acknowledged avigation easement ("Avigation Easement") encumbering the Real Property, in the form attached to this Agreement as Exhibit C, but only if the Title Report Buyer obtains with respect to the Real Property does not disclose the existence of a satisfactory avigation easement, as determined by Seller in its sole and absolute discretion.

(4) A non-foreign affidavit for purposes of compliance with Section 1445(b)(2) of the Internal Revenue Code of 1986 (and the regulations adopted thereunder), as amended (the "Code").

(5) Copies of all current property tax bills and tax notices pertaining to the Real Property, if any.

(6) Such documentation as Escrow Agent may reasonably require, or may otherwise be required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

(b) Deliveries by Buyer. On the Closing Date, Buyer shall execute and deliver all documents and take such other action that may be reasonably necessary to effect and complete the Closing, including, without limitation:

(1) The amounts required under Section 3 and Section 6.3 in Current Funds.

(2) A duly executed and completed REETA.

(3) A counterpart original duly executed and acknowledged Avigation Easement, if required by Seller.

(4) Such documentation as Escrow Agent may reasonably require, or may otherwise be required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

(c) Actions of Escrow Agent. When Buyer and Seller have delivered the items described above, the Escrow Agent shall:

(1) Prepare the Closing Statement and obtain signed copies from Seller and Buyer.

(2) Record the Deed and the Avigation Easement in that order.

(3) Deliver the balance of the Purchase Price in Current Funds to Seller, net of Seller's costs, fees, and prorations.

(4) Issue and deliver the Title Policy to Buyer.

(5) Deliver the above referenced documents to the applicable Party.

7. Representations and Warranties of Seller. Seller makes the representations and warranties set forth in this Section 7. Buyer expressly understands and agrees that the phrase "to Seller's knowledge" as used in this Section 7 means the actual present knowledge of Lawrence J. Krauter, acting solely in his capacity as the Chief Executive Officer of Seller, and shall not be construed to refer to the knowledge of any other partner, officer, director, agent, employee or representative of Seller, or any affiliate or parent of Seller. Such individual shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or any of Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete. Each representation and warranty: (i) is true in all material respects as of the Effective Date; (ii) will be true in all material respects on the Closing Date; and (iii) will survive Closing for a period of nine (9) months.

7.1 Authority/Binding Agreement. This Agreement and all exhibits and documents to be delivered by Seller pursuant to this Agreement have been duly executed and delivered by Seller and constitute the valid and binding obligations of Seller. Subject to obtaining the approvals described Sections 5.2(c) and 5.2(d), Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement. The execution, delivery, and performance of this Agreement will not conflict with or constitute a breach or default under (i) the organizational documents of Seller; (ii) any material instrument, contract, or other agreement to which Buyer is a party which affects the Property; or (iii) any statute or any regulation, order, judgment, or decree of any court or Governmental Authority.

7.2 Condemnation. Seller has not received from any Governmental Authority having the power of eminent domain any written notice of any condemnation of the Property or any part thereof.

7.3 Pending Litigation. Seller has received no written notice of any pending litigation initiated against Seller or the Property which would materially affect the Property after Closing.

7.4 Governmental Compliance. Seller has not received from any Governmental Authority written notice of any material violation of any building, fire or health code or any other statute applicable to the Property which will not be cured prior to Closing.

7.5 Non-Foreign Person. Seller is not a "foreign person" as defined in § 1445 of the Code and any related regulations.

7.6 Environmental Matters. To Seller's knowledge, and except as may otherwise be disclosed in the Current Diligence Materials: (a) the Property is free from Hazardous Substances; (b) the soil, surface water and ground water of, under, on or around the Property are free from Hazardous Substances; (c) the Property has never been used for or in connection with the manufacture, refinement, treatment, storage, generation, transport or hauling of any Hazardous Substances, nor has the Property been used for or in connection with the disposal of any

Hazardous Substances; and (d) the Property is now and during Seller's ownership, has been in compliance with all Environmental Laws. As used in this Agreement, the term "Hazardous Substance" means any material, waste, substance, pollutant, or contaminant which may or could pose a risk of injury or threat to health or the environment, including, without limitation: (i) those substances included within the definitions of "hazardous substance", "hazardous waste", "hazardous material", "toxic substance", "solid waste", or "pollutant or contaminant" in or otherwise regulated by, any Environmental Law; (ii) those substances listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 17.101, including appendices and amendments thereto), or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (iii) such other substances, materials, or wastes which are or become regulated or classified as hazardous or toxic under any Environmental Law; and (iv) any material, waste, or substance which is (A) petroleum or refined petroleum products; (B) radon (C) polychlorinated biphenyls; (D) flammable explosives; or (E) radioactive materials. As used in this Agreement, the term "Environmental Law" means any federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. § 1101, *et seq.*; the Clean Air Act, 41 U.S.C. § 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*; The Safe Drinking Water Act, 41 U.S.C. § 300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. § 3251, *et seq.*; and any other federal, state or local law, statute, ordinance, or regulation now in effect or hereinafter enacted which pertains to health, industrial hygiene, or the regulation or protection of the environment, including without limitation, ambient air, soil, groundwater, surface water, or land use.

7.7 Due Diligence Documents. To Seller's knowledge, all of the Current Diligence Materials delivered or made available by Seller to Buyer in connection with the Property are complete copies of such items in Seller's possession or control.

7.8 No Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated conflict with or result in the material breach of any terms, conditions, or provisions of or constitute a default under (or with the passage of time or delivery of notice, or both, would constitute a default under) any provisions of Seller's organizational documents, or any bond, note, or other evidence of indebtedness that will not be discharged at Closing or any judicial order or agreement to which Seller is a party or to which Seller is subject. Seller has not entered into any agreement to sell or otherwise transfer its interest in the Property except for this Agreement.

7.9 No Contracts. Seller has not entered into and is not a party to any contracts or commitments relating to the Property that extend beyond the Closing Date.

8. Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the representations and warranties set forth in this Section 8. Each representation and warranty: (i) is true in all respects as of the Effective Date; (ii) will be true in all respects on the Closing Date; and (iii) will survive Closing for a period of nine (9) months.

8.1 Power and Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated in this Agreement. Buyer's execution, delivery and performance of this Agreement have been duly authorized.

8.2 Bankruptcy or Insolvency. There are no attachments, executions, assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy pending against or contemplated by Buyer, and no such actions have been threatened.

8.3 Anti-Terrorism. All funds to be used by Buyer as payment of the Purchase Price at Closing are from sources operating under, and in compliance with, all federal, state and local statutes and regulations and are free of all liens and claims of lien. Neither Buyer, nor any of its members, managers or other owners is a "Prohibited Person" or "Specifically Designated National and Blocked Person" under Anti-Terrorism Laws. As used in this Agreement, the term "Anti-Terrorism Laws" means any and all present and future judicial decisions, statutes, ruling, rules, regulations, permits, certificates, orders and ordinances of any Governmental Authority relating to terrorism or money laundering including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 et seq.); the International Emergency Economic Powers Act (50 U.S.C.A. § 1701-06); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism") and the United States Treasury Department's Office of Foreign Assets Control list of "Specifically Designated National and Blocked Persons" (as published from time to time in various mediums).

9. "AS IS" Sale; Release & Waiver.

9.1 "AS IS" Purchase.

(A) SUBJECT TO SELLER'S REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 7, AND ACKNOWLEDGING THE PRIOR USE OF THE PROPERTY AND BUYER'S OPPORTUNITY TO INSPECT THE PROPERTY, BUYER AGREES TO PURCHASE THE PROPERTY "AS IS", "WHERE IS", WITH ALL FAULTS AND CONDITIONS THEREON. ANY WRITTEN OR ORAL INFORMATION, REPORTS, STATEMENTS, DOCUMENTS OR RECORDS CONCERNING THE PROPERTY ("DISCLOSURES") PROVIDED OR MADE AVAILABLE TO BUYER, ITS AGENTS OR CONSTITUENTS BY SELLER, SELLER'S AGENTS, EMPLOYEES OR THIRD PARTIES REPRESENTING OR PURPORTING TO REPRESENT SELLER, SHALL NOT BE REPRESENTATIONS OR WARRANTIES, UNLESS SPECIFICALLY SET FORTH IN SECTION 7 OF THIS AGREEMENT. IN PURCHASING THE PROPERTY OR TAKING OTHER ACTION HEREUNDER, BUYER HAS NOT AND SHALL NOT RELY ON ANY SUCH DISCLOSURES, BUT RATHER, BUYER SHALL RELY ONLY ON BUYER'S OWN INSPECTION OF THE PROPERTY. BUYER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS IS".

(B) BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7 OF THIS AGREEMENT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS

OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY INCLUDING, WITHOUT LIMITATION, (A) THE NATURE, QUALITY OR PHYSICAL CONDITION OF THE PROPERTY, (B) THE WATER, SOIL AND GEOLOGY OF THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, (F) THE COMPLIANCE OF OR BY THE PROPERTY OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION THEREOVER, (D) THE FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, (E) THE MARKETABILITY OF THE PROPERTY OR THE ABILITY TO LEASE OR SELL THE PROPERTY, (F) THE STATUS OR CONDITION OF ENTITLEMENTS PERTAINING TO THE PROPERTY, (G) DEFICIENCY OF ANY DRAINAGE ON THE REAL PROPERTY; (H) THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE; AND (I) ANY MATTER REGARDING TERMITES OR WASTES, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., OR ANY HAZARDOUS MATERIALS, AS HEREINAFTER DEFINED. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER, UNLESS OTHERWISE REQUIRED BY LAW, IS UNDER NO DUTY TO MAKE ANY AFFIRMATIVE DISCLOSURES REGARDING ANY MATTER WHICH MAY BE KNOWN TO SELLER.

Seller's Initials: LJK

Buyer's Initials: \_\_\_\_\_

9.2 Release. Subject to the covenants, representations and warranties of Seller contained in this Agreement, effective as of Closing, Buyer on behalf of itself and its shareholders, members, investors or partners of each of them and any permitted assignees of Buyer hereunder and its successors and assigns (collectively, the "Buyer Affiliated Parties") waives its right to recover from, and forever releases and discharges, Seller and its affiliates, property manager, partners, trustees, beneficiaries, owners, members, managers, officers, employees and agents and representatives, and its respective heirs, successors, personal representatives and assigns from any and all Claims, whether direct or indirect, known or unknown, suspected or unsuspected, foreseen or unforeseen, that may arise on account of or in any way be connected with: (i) the physical condition of the Property, including, without limitation, all seismic elements; the condition, valuation, or utility of the Property; title and survey matters with respect to the Property; and the environmental condition of the Property and the presence of any Hazardous Substance on, under or about the Property; and (ii) any law or regulation applicable to the Property, including, without limitation, any Environmental Laws and any other federal, state or local law.

In this connection and to the extent permitted by law, Buyer hereby agrees, realizes and acknowledges that factual matters now unknown to Buyer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees that it waives (and by Closing this transaction will be deemed to have waived) any and all objections and complaints concerning the physical characteristics and any existing conditions of the Property, and that the waivers and releases herein have been negotiated and agreed upon in

OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY INCLUDING, WITHOUT LIMITATION, (A) THE NATURE, QUALITY OR PHYSICAL CONDITION OF THE PROPERTY, (B) THE WATER, SOIL AND GEOLOGY OF THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, (F) THE COMPLIANCE OF OR BY THE PROPERTY OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION THEREOVER, (D) THE FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, (E) THE MARKETABILITY OF THE PROPERTY OR THE ABILITY TO LEASE OR SELL THE PROPERTY, (F) THE STATUS OR CONDITION OF ENTITLEMENTS PERTAINING TO THE PROPERTY, (G) DEFICIENCY OF ANY DRAINAGE ON THE REAL PROPERTY; (H) THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE; AND (I) ANY MATTER REGARDING TERMITES OR WASTES, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., OR ANY HAZARDOUS MATERIALS, AS HEREINAFTER DEFINED. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER, UNLESS OTHERWISE REQUIRED BY LAW, IS UNDER NO DUTY TO MAKE ANY AFFIRMATIVE DISCLOSURES REGARDING ANY MATTER WHICH MAY BE KNOWN TO SELLER.

Seller's Initials: \_\_\_\_\_

Buyer's Initials: \_\_\_\_\_

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9.2 Release. Subject to the covenants, representations and warranties of Seller contained in this Agreement, effective as of Closing, Buyer on behalf of itself and its shareholders, members, investors or partners of each of them and any permitted assignees of Buyer hereunder and its successors and assigns (collectively, the "Buyer Affiliated Parties") waives its right to recover from, and forever releases and discharges, Seller and its affiliates, property manager, partners, trustees, beneficiaries, owners, members, managers, officers, employees and agents and representatives, and its respective heirs, successors, personal representatives and assigns from any and all Claims, whether direct or indirect, known or unknown, suspected or unsuspected, foreseen or unforeseen, that may arise on account of or in any way be connected with: (i) the physical condition of the Property, including, without limitation, all seismic elements; the condition, valuation, or utility of the Property; title and survey matters with respect to the Property; and the environmental condition of the Property and the presence of any Hazardous Substance on, under or about the Property; and (ii) any law or regulation applicable to the Property, including, without limitation, any Environmental Laws and any other federal, state or local law.

In this connection and to the extent permitted by law, Buyer hereby agrees, realizes and acknowledges that factual matters now unknown to Buyer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees that it waives (and by Closing this transaction will be deemed to have waived) any and all objections and complaints concerning the physical characteristics and any existing conditions of the Property, and that the waivers and releases herein have been negotiated and agreed upon in



light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. The releases set forth in this Section shall become effective upon the Closing. Buyer further hereby assumes the risk of changes in applicable laws, including any relevant Environmental Laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Substances or other contaminants, may not have been revealed by its investigation.

9.3 Waiver of Right to Receive Seller Disclosure Statement and Waiver of Right to Rescind. PURSUANT TO RCW CH. 64.06, AS AMENDED BY CHAPTER 64, LAWS OF 2010, WITH RESPECT TO THE REAL PROPERTY, BUYER HEREBY WAIVES ITS RIGHT TO RECEIVE THE SELLER DISCLOSURE STATEMENT REFERRED TO THEREIN. THIS WAIVER DOES NOT EXTEND TO THE SECTION OF THE DISCLOSURE STATEMENT ENTITLED "ENVIRONMENTAL". Buyer is hereby provided with the "Environmental" section of the Seller Disclosure Statement attached hereto as Exhibit E. Buyer further agrees that any information discovered by Buyer concerning the Real Property prior to Closing shall not obligate Seller to prepare and deliver to Buyer a revised or updated Seller Disclosure Statement. Buyer hereby waives any right to receive an updated or revised Seller Disclosure Statement, regardless of the source of any new information. Buyer further warrants that it is a sophisticated buyer who is familiar with the ownership of real estate similar to the Real Property and Buyer has or will have adequate opportunity to complete such independent inspections of the Property it deems necessary, and will acquire the Real Property solely on the basis of and in reliance upon such examinations and not on any information provided in any Seller Disclosure Statement or otherwise provided or to be provided by Seller (other than as expressly provided in this Agreement or in the Deed). BUYER HEREBY WAIVES, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE RIGHT TO RESCIND THIS AGREEMENT PURSUANT TO ANY PROVISION OF RCW 64.06, AS AMENDED BY CHAPTER 64, LAWS OF 2010. IT IS THE INTENT OF BUYER THAT ANY SELLER DISCLOSURE STATEMENT PROVIDED BY SELLER WILL NOT BE RELIED UPON BY BUYER, AND SHALL GIVE BUYER NO RIGHTS WITH RESPECT TO SELLER UNDER THIS AGREEMENT. THIS WAIVER OF THE RIGHT TO RESCIND APPLIES TO THE SELLER DISCLOSURE STATEMENT PROVIDED TO BUYER DURING THE REVIEW PERIOD AND APPLIES PROSPECTIVELY TO ANY UPDATED OR REVISED SELLER DISCLOSURE STATEMENTS THAT MAY BE PROVIDED BY SELLER TO BUYER.

10. Covenants.

10.1 Covenants of Seller.

(a) Normal Operations. Until the Closing Date, Seller shall (i) continue to operate the Property in substantially the same manner as in the past and will perform all necessary maintenance to the Property as its ordinary course of business dictates; and (ii) not modify or alter the Property without the prior written consent of Buyer. From and after the Effective Date, Seller shall not enter into any contracts or commitments relating to the Property without the prior written consent of Buyer (in Buyer's reasonable discretion) if any such contracts or commitments would extend beyond the Closing Date. From and after the Effective Date, Seller shall not encumber the Property with any liens, encumbrances or other instruments creating a cloud on title or securing a monetary obligation with the Property.

(b) Insurance. Until the Closing Date, Seller shall maintain substantially the same liability, casualty, and all other insurance on the Property as is in effect as of the Effective Date.

(c) Approval Conditions. Commencing on the Effective Date Seller shall use commercially reasonable efforts to satisfy the Approval Conditions prior to October 15, 2019 (the "Approval Conditions Deadline"), *provided*, however, that Seller's failure to satisfy the Approval Conditions shall not be considered a default of this Agreement. Buyer and Seller shall reasonably cooperate with each other and Buyer shall take all actions reasonably necessary to assist Seller in Seller's efforts to satisfy the Approval Conditions, including, without limitation, submitting such materials and executing such applications and any other documents that may be requested by the FAA. Seller shall provide prompt written notice to Buyer of the satisfaction of the Approval Conditions when received. If Seller fails to provide written evidence of satisfaction of the Approval Conditions prior to the Approval Conditions Deadline, Buyer shall have the right to extend the Approval Conditions Deadline until the Closing Date by delivering written notice of such election to Seller not later than five (5) Business Days following the Approval Conditions Deadline. If Seller is unable to satisfy the Approval Conditions at any time prior to the Approval Conditions Deadline (as same may have been extended), Buyer may terminate this Agreement by written notice to Seller, in which event the Earnest Money and all interest thereon shall be returned to Buyer, and thereafter all rights and obligations of the Parties hereunder (other than those obligations that expressly survive the termination of this Agreement) will cease.

10.2 Post Closing Construction Covenant of Buyer. Buyer acknowledges and agrees that as a condition to obtaining the FAA Disposal Approval, Buyer must adhere to the requirements of 14 CFR Part 77, submitting FAA Form 7460-1 and receiving FAA's positive determination, prior to constructing any facility or feature on the Property.

11. Condemnation. Risk of loss resulting from any condemnation or eminent domain proceeding that is commenced or has been threatened before the Closing, and risk of loss to the Property due to fire, flood, or any other cause before Closing, will remain with Seller. If before Closing the Property (or any portion thereof) is subjected to a threat of condemnation or becomes the subject of any proceedings, judicial, administrative, or otherwise, with respect to the taking by eminent domain or condemnation, then Seller shall promptly provide written notice thereof to Buyer and Buyer may terminate this Agreement by written notice to Seller sent within fifteen (15) days after Seller informs Buyer in writing that the Property has been taken, in which event the Earnest Money will be returned to Buyer, and neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement. If the Closing Date is within the fifteen (15) day period, then Closing will be extended to the next Business Day following the end of the fifteen (15) day period. If no such election is made by Buyer, (i) this Agreement will remain in full force and effect, (ii) the purchase of the Property, less any interest taken by eminent domain, will be effected with no further adjustment, and (iii) upon Closing, Seller shall assign to Buyer all of the right, title, and interest of Seller in and to any awards that have been or may thereafter be made for such taking.

12. Default by Buyer; Liquidated Damages. BUYER WILL BE IN DEFAULT UNDER THIS AGREEMENT IF (I) ANY OF BUYER'S REPRESENTATIONS OR WARRANTIES ARE FALSE, (II) BUYER FAILS TO PERFORM ALL OF ITS OBLIGATIONS UNDER SECTION 6.4(b) ON OR BEFORE THE CLOSING DATE, OR (III) BUYER FAILS TO PERFORM ANY OF ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF WRITTEN NOTICE FROM SELLER OF SUCH FAILURE. IN THE EVENT OF

ANY DEFAULT BY BUYER UNDER THIS AGREEMENT, SELLER WILL BE RELIEVED OF ANY OBLIGATION TO SELL THE PROPERTY TO BUYER, SELLER WILL NOT HAVE ANY RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT, AND, AS SELLER'S SOLE AND EXCLUSIVE REMEDY AT LAW OR IN EQUITY FOR SUCH DEFAULT, THE EARNST MONEY WILL BE RELEASED TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES THAT SELLER MIGHT SUFFER IN THE EVENT OF BUYER'S DEFAULT HEREUNDER. BUYER AND SELLER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION IS A FAIR AND REASONABLE ESTIMATE OF SUCH DAMAGES. THE FOREGOING PROVISION SHALL IN NO WAY LIMIT OR IMPAIR SELLER'S RIGHT OR ABILITY TO RECOVER FROM BUYER ATTORNEY'S FEES TO WHICH SELLER MAY OTHERWISE BE ENTITLED UNDER THIS AGREEMENT OR ANY SUMS WHICH MAY BECOME DUE TO SELLER BASED UPON ANY INDEMNITY PROVIDED BY SELLER PURSUANT TO THE TERMS OF THIS AGREEMENT.

Seller's Initials: LJK Buyer's Initials: \_\_\_\_\_

13. Default by Seller; Remedies. Seller will be in default under this Agreement if (i) Seller fails to perform all of its obligations under Section 6.4(a) on or before the Closing Date, or (ii) Seller fails to perform any of its obligations under this Agreement within three (3) Business Days after Buyer provides Seller with notice of such failure (a "Seller Default"). Upon a Seller Default, Buyer may, as its sole and exclusive remedy for such Seller Default, either: (i) terminate this Agreement in its entirety by delivery of notice of termination to Seller, whereupon the Earnest Money shall be immediately returned to Buyer and Seller shall reimburse Buyer for Buyer's actual and reasonable out of pocket documented expenses incurred exclusively with respect to this transaction in an amount not to exceed Fifty-Three Thousand Six Hundred Forty-Three and 84/100 Dollars (\$53,643.84) or (ii) continue this Agreement pending Buyer's action for specific performance hereunder provided appropriate proceedings are commenced by Buyer within forty-five (45) days following Seller's default and thereafter prosecuted with diligence. Buyer agrees that under no circumstances shall Buyer file a *lis pendens* action against the Property unless Buyer is seeking option (ii) above.

Anything in this Agreement to the contrary notwithstanding, with respect to all matters affecting title to the Real Property, Buyer acknowledges and agrees that it is relying upon the Title Policy. If Buyer has a claim under the Title Policy and the subject matter of that claim also constitutes a breach of any warranty made by Seller in this Agreement or the Deed, Buyer agrees that it will look first to its Title Policy for recovery on such claim, and Buyer shall not assert any claim against Seller for a breach of a representation, warranty or covenant with respect to such claim unless and until Buyer has pursued its remedies against the Title Company to a final judgment and has not been made whole. The time period for bringing a claim against Seller for a breach of a representation or warranty relating to title to the Real Property will be tolled during the pendency of any action by Buyer against Title Company.

14. Brokerage. Seller and Buyer have not engaged a broker in connection with this Agreement. Seller and Buyer hereby agree to indemnify, defend and hold each other harmless from and against any and all Claims arising out of any claim for commissions, fees, or other similar compensation or charges relating to the transaction contemplated in this Agreement, or the consummation thereof, which may be made by any third party as the result of the acts of Seller or Buyer or their respective representatives. The obligations of the parties under this Section 14 will survive Closing.

15. Miscellaneous.

ANY DEFAULT BY BUYER UNDER THIS AGREEMENT, SELLER WILL BE RELIEVED OF ANY OBLIGATION TO SELL THE PROPERTY TO BUYER, SELLER WILL NOT HAVE ANY RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT, AND, AS SELLER'S SOLE AND EXCLUSIVE REMEDY AT LAW OR IN EQUITY FOR SUCH DEFAULT, THE EARNST MONEY WILL BE RELEASED TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES THAT SELLER MIGHT SUFFER IN THE EVENT OF BUYER'S DEFAULT HEREUNDER. BUYER AND SELLER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION IS A FAIR AND REASONABLE ESTIMATE OF SUCH DAMAGES. THE FOREGOING PROVISION SHALL IN NO WAY LIMIT OR IMPAIR SELLER'S RIGHT OR ABILITY TO RECOVER FROM BUYER ATTORNEY'S FEES TO WHICH SELLER MAY OTHERWISE BE ENTITLED UNDER THIS AGREEMENT OR ANY SUMS WHICH MAY BECOME DUE TO SELLER BASED UPON ANY INDEMNITY PROVIDED BY SELLER PURSUANT TO THE TERMS OF THIS AGREEMENT.

Seller's Initials: \_\_\_\_\_

Buyer's Initials: \_\_\_\_\_

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Anything in this Agreement to the contrary notwithstanding, with respect to all matters affecting title to the Real Property, Buyer acknowledges and agrees that it is relying upon the Title Policy. If Buyer has a claim under the Title Policy and the subject matter of that claim also constitutes a breach of any warranty made by Seller in this Agreement or the Deed, Buyer agrees that it will look first to its Title Policy for recovery on such claim, and Buyer shall not assert any claim against Seller for a breach of a representation, warranty or covenant with respect to such claim unless and until Buyer has pursued its remedies against the Title Company to a final judgment and has not been made whole. The time period for bringing a claim against Seller for a breach of a representation or warranty relating to title to the Real Property will be tolled during the pendency of any action by Buyer against Title Company.

14. Brokerage. Seller and Buyer have not engaged a broker in connection with this Agreement. Seller and Buyer hereby agree to indemnify, defend and hold each other harmless from and against any and all Claims arising out of any claim for commissions, fees, or other similar compensation or charges relating to the transaction contemplated in this Agreement, or the consummation thereof, which may be made by any third party as the result of the acts of Seller or Buyer or their respective representatives. The obligations of the parties under this Section 14 will survive Closing.

15. Miscellaneous.

15.1 Attorneys' Fees. Should any Party hereto bring any action against any other Party related in any way to this Agreement, the substantially prevailing Party shall be awarded its or their reasonable attorneys' fees and costs incurred for prosecution, defense, consultation, or advice in connection with such action.

15.2 Escrow Agent. The Escrow Agent hereby accepts its designation as the Escrow Agent under this Agreement and agrees to hold and disburse the Earnest Money as provided in this Agreement. The provisions of this Agreement will constitute joint instructions to the Escrow Agent to consummate the purchase in accordance with the terms and provisions of this Agreement; provided, however, that the Parties shall execute such additional escrow instructions, not inconsistent with the provisions of this Agreement, as may be deemed reasonably necessary to carry out the intentions of the Parties as expressed in this Agreement. The provisions of this Section 15.2 will survive the Closing or termination of this Agreement.

15.3 Notices. All notices required or permitted under this Agreement must be in writing and will be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt of an electronic confirmation thereof, (ii) upon delivery, if sent by electronic mail, provided that such notice is also promptly thereafter delivered in accordance with another permissible method of delivery, (iii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iv) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

**If to Seller:** Spokane International Airport  
c/o Airport Board  
Attn: Lawrence J. Krauter  
9000 West Airport Drive, Suite 204  
Spokane, WA 99224  
Email: lkrauter@spokaneairports.net  
Fax: (509) 624-6633

with a copy to: Lukins & Annis, P.S.  
717 W. Sprague, Suite 1600  
Spokane, WA 99201  
Attn: Tyler J. Black, Esq.  
Email: [tblack@lukins.com](mailto:tblack@lukins.com)  
Fax: (509) 363-2487

If to Buyer: AT Acquisitions, LLC  
c/o Leavitt Capital Companies  
717 W. Sprague Ave. Suite 802  
Spokane, WA 99201  
Attn: Aaron Lake and Timothy Wolff  
E-Mail: [aaron@leavittcap.com](mailto:aaron@leavittcap.com); [twolff@awolff.com](mailto:twolff@awolff.com)  
Fax: (509) 357-1761

with a copy to: Lukins & Annis, P.S.  
717 W. Sprague, Suite 1600  
Spokane, WA 99201  
Attn: Brady M. Peterson, Esq.  
Email: bpeterson@lukins.com  
Fax: (509) 363-5215

If to Escrow Agent: Stewart Title and Guaranty Company  
1420 Fifth Avenue, Suite 440  
Seattle, WA 98101  
Attn: Kim Belcher  
E-Mail: kim.belcher@stewart.com  
Fax: (509) 343-2793

15.4 Survival. Unless expressly provided otherwise in this Agreement, the representations and warranties of Seller contained in this Agreement will survive Closing for a period of nine (9) months (the "Survival Period"). Seller shall not be liable to Buyer by reason of a breach of any of Seller's representations or warranties unless the Buyer notifies the Seller of such breach (the "Warranty Notice") prior to the expiration of the Survival Period, and gives the Seller an opportunity to cure any such breach within a reasonable period of time after delivery of the Warranty Notice. Any proceeding with respect to Seller's alleged breach of any representation or warranty must be commenced within the Survival Period, and if not commenced within such time period, Buyer will be deemed to have waived its Claims for such breach or default. Seller's aggregate liability to Buyer by reason of a breach of one or more of Seller's representations or warranties shall not exceed Four Hundred Thousand Dollars (\$400,000). Seller's liability will be limited to actual damages and will not include consequential, special, punitive or incidental damages.

15.5 Governing Law/Venue. The laws of the State of Washington govern the enforcement, and interpretation of this Agreement. The venue for any action related to this Agreement will be in Spokane County, Washington.

15.6 Integration; Modification; Waiver. This Agreement, the recitals to this Agreement, exhibits, and closing documents pursuant to this Agreement are hereby incorporated into this Agreement and, together with the Agreement, constitute the complete and final expression of the agreement of the Parties relating to the Property. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) executed by the Party against whom enforcement of the modification or waiver is sought.

15.7 Counterpart Execution. This Agreement may be executed in several counterparts and transmitted via facsimile or other electronic transmission, each of which will be fully effective as an original and all of which together will constitute one and the same instrument.

15.8 Headings; Construction. The headings used throughout this Agreement have been inserted for convenience of reference only and do not constitute matters to be construed in interpreting this Agreement. Words of any gender used in this Agreement will be construed to include any other gender, and words in the singular number will be construed to include the

plural, and vice versa, unless the context requires otherwise. The words “herein,” “hereof,” “hereunder,” and other similar compounds of the word “here” when used in this Agreement refer to the entire Agreement and not to any particular provision or section. The terms “includes,” “including,” or “include” as used herein shall be interpreted as being non-exclusive and shall be read to mean, respectively, “includes without limitation,” “including, without limitation” and “include without limitation.”

15.9 Deadlines and Dates. Any deadline, unless otherwise set forth in this Agreement, will expire at 5:00 p.m., Pacific Time. Should any deadline or date in this Agreement fall on a day other than a Business Day, such deadline or date will be extended until 5:00 p.m., Pacific Time, on the next Business Day.

15.10 Severability. If for any reason any provision of this Agreement is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Agreement will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.

15.11 Time of the Essence. Time is of the essence of this Agreement and of the obligations of the Parties to purchase and sell the Property, it being acknowledged and agreed by and between the Parties that any delay in effecting a Closing pursuant to this Agreement may result in loss or damage to the Party in full compliance with its obligations hereunder.

15.12 Invalid Provisions. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, is held invalid or unenforceable, such provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision will not be affected thereby.

15.13 Binding Effect. This Agreement is binding upon and inures to the benefit of Seller and Buyer, and their respective successors and permitted assigns.

15.14 Further Acts. In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated in this Agreement.

15.15 Assignment. Buyer shall not assign this Agreement without Seller’s prior written consent, which consent may be withheld in Seller’s sole and absolute discretion; provided, however, that Buyer shall have the right to assign its rights under this Agreement without first obtaining Seller’s consent if such assignment is to a special purpose entity in which Buyer or its principals hold an ownership interest or control. No such assignment shall release Buyer from any of its obligations under this Agreement. Any assignment made in violation of this Section shall be void.

15.16 Other Parties. The relationship of the Parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the Parties hereto. Neither Party has any fiduciary relationship hereunder to the other. The provisions of this Agreement are not intended to benefit any third parties.

15.17 1031 Exchange. Buyer may purchase the Property and Seller may sell the Property by completing one or more Code §1031 tax-deferred exchange(s). Each Party agrees to cooperate with the other in effecting such an exchange; *provided, however*, the cooperating Party will not incur any additional liability or financial obligations as a consequence of any such exchange.

15.18 Sole Discretion. If a Party is given the right to exercise its sole or absolute discretion, neither the other Party nor any third party (including, without limitation, an arbitrator) will have the right to challenge said exercise, whether reasonable or unreasonable, on any grounds whatsoever.

15.19 Confidentiality. Seller and Buyer agree that there will be no press or other publicity release or communication to any third party concerning the transaction contemplated in this Agreement without the prior written consent of the other. Notwithstanding the foregoing, prior to Closing, either Party shall have the right to disclose information with respect to the Property to its officers, directors, members, partners, employees, attorneys, accountants, environmental auditors, engineers, current and potential lenders, investors, insurers and permitted assignees under this Agreement and other consultants to the extent necessary to evaluate the transactions contemplated hereby and the Property provided that all such persons are told that such information is confidential and agree to keep such information confidential. If Buyer acquires the Property from Seller, either Party may disclose any information concerning the Property or the transactions contemplated hereby that the disclosing Party wishes to disclose; provided that any press release or other public disclosure by either Party regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved by the non-disclosing Party. The provisions of this Section shall survive the Closing or any termination of this Agreement.

15.20 Disclaimer—Preparation of Agreement. This Agreement has been negotiated by the Parties. Buyer and Seller agree that no presumption will apply in favor or against any Party in respect of the interpretation or enforcement of this Agreement. Each Party is advised to have this Agreement reviewed by independent legal and tax counsel prior to its execution. By executing this Agreement, each such Party represents: (i) that it has read and understands this Agreement, (ii) that it has had the opportunity to obtain independent legal and tax advice regarding this Agreement and (iii) that it has obtained such independent advice or has freely elected not to do so.

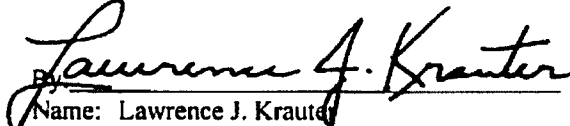
*[Signatures to appear on the following page]*



IN WITNESS WHEREOF, the Parties have executed and delivered the foregoing Agreement as of the Effective Date.

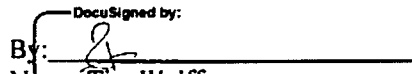
**SELLER:**

SPOKANE AIRPORT BOARD, a joint operation of the City of Spokane and County of Spokane, Washington

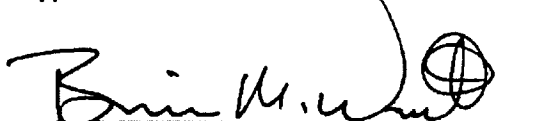
By:   
Name: Lawrence J. Krauter  
Its: Chief Executive Officer

**BUYER:**

AT ACQUISITIONS, LLC, a Washington limited liability company

DocuSigned by:  
By:   
Name: Brian Werst  
Title: Authorized Signator, manager

Approved as to form and content:

  
Brian Werst, General Counsel

This Real Property Purchase and Sale Agreement with Escrow Instructions, together with the earnest money deposit, is hereby acknowledged and accepted and the escrow is opened as of the \_\_\_\_ day of August, 2019. The Escrow Agent hereby agrees to act as “the person responsible for closing” the purchase and sale transaction contemplated in this Agreement within the meaning of Section 6045(e) of the Internal Revenue Code of 1986, as amended, and to file all forms and returns required thereby.

STEWART TITLE AND GUARANTY  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A  
REAL PROPERTY LEGAL DESCRIPTION\*

The following real property identified by the Spokane County Assessor as tax parcel numbers:

15362.0025

15362.0026

15362.0027

15362.0028

*\*Once the preliminary Title Report is provided to the Parties by the Title Company, the legal description contained therein shall be substituted by the Parties as a new Exhibit A to this Agreement.*

EXHIBIT B  
FORM OF BARGAIN AND SALE DEED

Filed for Record at Request of and  
copy returned to:

Lukins & Annis, P.S.  
Attn: Brady M. Peterson, Esq.  
717 W. Sprague Avenue, Suite 1600  
Spokane, WA 99201

---

BARGAIN AND SALE DEED

The grantor, SPOKANE AIRPORT, by and through its Airport Board, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington, for and in consideration of Ten Dollars (\$10.00) in hand paid, bargains, sells and conveys to \_\_\_\_\_, that real property situated in the county of Spokane, state of Washington and legally described on Schedule 1 attached hereto and incorporated herein by this reference (the "Property").

SUBJECT TO: (i) the lien securing non-delinquent taxes and assessments, both general and special, and (ii) all covenants, conditions, restrictions, reservations, rights, rights of way, easements, and title matters whether or not of record or visible from an inspection of the Property and all matters which an accurate survey of the Property would disclose.

DATED effective the \_\_\_\_ day of \_\_\_\_\_, 2019.

SPOKANE AIRPORT BOARD, a joint operation of the  
City of Spokane and County of Spokane, Washington

By: \_\_\_\_\_  
Name: Lawrence J. Krauter  
Its: Chief Executive Officer

STATE OF WASHINGTON    )  
  : ss  
County of Spokane        )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Lawrence J. Krauter, to me known to be the Chief Executive Officer of the SPOKANE AIRPORT BOARD, a joint operation of the City of Spokane and County of Spokane, Washington, the entity that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public   (Signature)

\_\_\_\_\_  
(Print Name)

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

(Seal or Stamp)

Schedule 1  
to  
Bargain and Sale Deed  
Legal Description

[insert]

EXHIBIT C  
FORM OF AVIGATION EASEMENT

Filed for Record at Request of and  
copy returned to:

Lukins & Annis, P.S.  
Attn: Tyler J. Black, Esq.  
717 W. Sprague Avenue, Suite 1600  
Spokane, WA 99201

DOCUMENT TITLE:	AVIGATION EASEMENT
REFERENCE NOS.:	
GRANTOR:	AT ACQUISITIONS, LLC
GRANTEE:	N/A
ABBREVIATED LEGAL DESCRIPTION:	_____
ASSESSOR'S PARCEL NO.:	_____

---

**AVIGATION EASEMENT**

THIS AVIGATION EASEMENT ("Easement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date"), by AT ACQUISITIONS, LLC, a Washington limited liability company ("Grantor") for the benefit of SPOKANE AIRPORT, by and through its Airport Board, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, a joint operation of the City of Spokane and County of Spokane, municipal corporations of the State of Washington, and the UNITED STATES OF AMERICA (collectively the "Grantees").

**RECITALS**

A. Grantor is the owner of fee simple title to real property consisting of approximately \_\_\_\_ ( ) acres located generally at the south side of West McFarlane Road between South Russell Street and South Hayden Street in the City of Spokane, Spokane County, Washington, and legally described on the attached Schedule 1 (the "Property"), which Property was acquired by Grantor from the City of Spokane and Spokane County, as tenants in common, for Spokane Airport, by and through its Airport Board (the "Seller").

B. In consideration of Seller agreeing to sell the Property to Grantor, Grantor desires to provide Grantees an easement over the Property for the unobstructed passage of all Aircraft, on the terms and conditions set forth in this Easement. For purposes of this Easement, "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of, or flight in, the air.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Grantor agrees as follows:

1. Recitals. The recitals set forth above are incorporated by reference in this Easement as though fully set forth herein.

2. Grant of Avigation Easement for Benefit of Grantees. Grantor hereby grants and conveys to Grantees, for themselves, their heirs, administrators, executors, successors and assigns an easement over and across the airspace above the surface of the Property for the unobstructed passage and avigation of all Aircraft by whomsoever owned and operated. Grantees' foregoing avigation easement shall include the right to (i) emit such noise, vibrations, fumes, dust, fuel particles and other incidents typically resulting from the operation of Aircraft, (ii) increase the noise impact to the Property by virtue of an increase in flight frequencies, altering flight paths, or changing types of Aircraft pursuant to the continued growth and expansion of Spokane International Airport and Felts Field Airport (the "Airports"), or (iii) prevent the use of the Property in a manner that constitutes an Aircraft hazard, including, without limitation, (a) interfering with the operations of radio or electronic facilities used by any Aircraft, (b) making it difficult for pilots to distinguish between airfield lights and other lights, or (c) implementing a use that (1) results in glare in the eyes of Aircraft pilots, (2) impairs visibility in the vicinity of any Aircraft flight path, (3) creates thermal plumes hazardous to Aircrafts, (4) endangers the landing, taking off, or maneuvering of any Aircraft, (5) creates a wildlife attractant that in Grantees' sole discretion and opinion, could create a bird or wildlife strike hazard or otherwise interfere with Aircraft operations, or (6) creates a potential hazard of a fire accelerant or secondary explosion resulting from an Aircraft crash on the Property.

It is further understood and acknowledged that it is reasonable to expect that ongoing expansion of the Airports and attendant improvements will cause Aircraft effects to change, potentially increasing flight frequencies, alteration of flight paths and changing of Aircraft types as the operations of the Airports grow and expand which may have a greater future deleterious impact to the Property of the nature described in this Section.

3. Negative Covenants. Grantor hereby specifically disclaims any intention to create any other easements on the Property by this Easement, except as otherwise specifically provided herein. Grantor shall not erect, construct, alter, maintain, or allow to grow, any vegetation, object, structure, wall, fence or barrier ("Obstruction") of any kind on or in the Property that would increase the Federal Aviation Administration ("FAA") landing, approach, or departure minimum height requirements for Aircraft, or prevent or unreasonably impair the free access of any Aircraft to travel through the airspace above the surface of the Property, unless such Obstruction is specifically consented to by all appropriate Grantees. If any Obstruction violates the height restrictions described herein this Section 3, then any of the Grantees shall have the right to enter the Property to remove such Obstruction at Grantor's sole cost and expense. Grantor shall not create or cause interference with or utilize the Property in any way contrary to (i) Spokane County Zoning Code, Chapters 14.700 and 17C.180 or (ii) any FAA requirements and regulations.

4. Indemnification. Grantor shall indemnify, defend and hold harmless Grantees, their heirs, administrators, executors, successors and assigns from all claims, demands, or suits in law or equity arising from Grantor's intentional or negligent acts or breach of its obligations under this Easement.

5. Not a Public Dedication. The easements established by this Easement shall be for the benefit of and restricted solely to the use of Grantees, their heirs, administrators, executors, successors and assigns and shall be used only for the purposes described herein. Nothing contained in this Easement



shall be deemed to be a public dedication of any portion of the Property described herein in the general public or for the general public or for any public purposes whatsoever.

6. Covenants Run With the Land. This Easement shall remain in effect until said Easement Area, as existing, enlarged or relocated, is abandoned or ceases to be used for Aircraft travel and Airports purposes. The covenants given and the easements granted pursuant to this Easement shall be deemed to be covenants running with the Property and shall be binding upon and benefit the heirs, successors in interest, assigns and devisees of Grantor and Grantees. The Property is the servient estate.

7. Consent to Modification. This Easement and any provision, covenant, or easement contained herein may be terminated, extended, modified, or amended only with the written consent of the Grantor and all appropriate Grantees; provided, however, that no termination, extension, modification, or amendment of this Easement shall be effective unless a written instrument setting forth the terms thereof has been executed as herein provided, acknowledged, and recorded in the offices of the Spokane County Recorder.

8. Not a Partnership. By this Easement, the Grantor does not, and any successors or assigns of Grantor shall not, in any way or for any purpose become partners or joint venturers with any of the Grantees, or of any their respective successors or assigns.

9. Construction. Wherever used herein, unless the context shall otherwise provide, the singular form shall include the plural, the plural shall include the singular, and the use of any gender will include all genders. The section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Easement or any section or provision hereof.

10. Entire Easement; Interpretation. This Easement constitutes the entire Easement with respect to the subject matter hereof. It is expressly agreed that there are no verbal understandings or other easements that in any way change the terms, covenants and conditions herein set forth. References to Grantor and Grantees shall also be deemed to refer to their respective successors and assigns.

11. Miscellaneous. This Easement shall be governed by the laws of the state of Washington. Any action related to this Easement shall be brought in Superior Court in Spokane County, Washington.

*[signature page follows]*

[remainder of page left intentionally blank]



Schedule 1  
to  
Avigation Easement

LEGAL DESCRIPTION OF PROPERTY

[insert]

EXHIBIT E  
ENVIRONMENTAL SECTION OF SELLER DISCLOSURE STATEMENT

[see pages that follow]

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**NOTICE TO THE BUYER: AT ACQUISITIONS, LLC**

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY CONSISTING OF APPROXIMATELY TWENTY-NINE AND 28/100 (29.28) ACRES LOCATED GENERALLY AT THE SOUTH SIDE OF WEST MCFARLANE ROAD BETWEEN SOUTH RUSSELL STREET AND SOUTH HAYDEN STREET IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON (THE "PROPERTY") AS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT A. SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S CURRENT AND ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED ENVIRONMENTAL SELLER DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, ELECTRICIANS, OR ON-SITE WASTEWATER TREATMENT INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES. SELLER IS NOT OCCUPYING THE PROPERTY.

**SELLER'S DISCLOSURES - ENVIRONMENTAL**

**YES      NO      DON'T  
KNOW**

If the answer is "Yes" to a question with an (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet

- \*A. Have there been any flooding, standing water or drainage problems on the property that affect the property or access to the property?
- \*B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
- \*C. Are there any shorelines, wetlands, floodplains, or critical areas on the property?
- \*D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
- \*E. Is there any soil or groundwater contamination?
- \*F. Has the property been used as a legal or illegal dumping site?
- \*G. Has the property been used as an illegal drug manufacturing site?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**\*\* SEE ATTACHED FOR ADDITIONAL INFORMATION.**

**ADDITIONAL NOTICES TO BUYER:** INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**VERIFICATION**

The foregoing answers and attached explanations (if any) are complete and correct to Seller's knowledge (as that term is defined in the purchase and sale agreement between Buyer and Seller) and Seller has received a copy hereof. Seller authorizes real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the Property.

Seller: SPOKANE AIRPORT BOARD, a joint operation of the City of Spokane and County of Spokane, Washington

By: Lawrence J. Krauter  
Lawrence J. Krauter, its Chief Executive Officer

Date: 8/6/19

**BUYER'S ACKNOWLEDGEMENT**

Buyer hereby acknowledges that:

1. Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
2. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
3. Buyer acknowledges that, pursuant to RCW 64.06 050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
4. This information is for disclosure only and is not intended to be a part of the written agreement between Buyer and Seller.
5. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL AND CURRENT KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY

Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement under RCW 64.06, and hereby waives, to the extent permissible, any and all rights to receive a Seller Disclosure Statement. Buyer understands that this Environmental Seller Disclosure Statement is not the entire Seller Disclosure Statement, but is that portion that Seller may be required to deliver under RCW 64.06.010(7).

Buyer: AT ACQUISITIONS, LLC, a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**EXPLANATIONS FOR \*YES\* ANSWERS (IF ANY):**

**SPOKANE AIRPORT BOARD  
ENVIRONMENTAL SELLER DISCLOSURE STATEMENT**

**EXHIBIT A**  
**Legal Description**

The following real property identified by the Spokane County Assessor as tax parcel numbers:

15362.0025  
15362.0026  
15362.0027  
15362.0028



## AGENDA SHEET

**SUBMITTING DEPARTMENT:** *Spokane Airport Board*

**CONTACT PERSON:** *Lawrence J. Krauter, CEO*

**PHONE NUMBER:** *509.455.6419*

**CHECK TYPE OF MEETING ITEM BELOW:**

**9:00 AM CEO MEETING:** ☐

**2:00 PM CONSENT AGENDA:** ☐  
**BY LEAVE:** ☐

**5:30 PM LEGISLATIVE SESSION:** ☐  
**BY LEAVE:** ☐

**SPECIAL SESSION:** ☐

**BELOW FOR CLERK'S USE ONLY:**

Clerk's Resolution No. **19 - 1337**  
Approved: Majority/Unanimous \_\_\_\_\_  
Denied: Majority/Unanimous \_\_\_\_\_  
Renews/Amends No. \_\_\_\_\_  
Public Works No. \_\_\_\_\_  
Purchasing Dept. No. \_\_\_\_\_

**AGENDA TITLE:** *Purchase and Sales Agreement – Spokane International Airport*

**BACKGROUND:** *(Attach separate sheet(s) if necessary):*

Spokane County and the City of Spokane are joint owners and sponsors of Spokane Airport, which is managed and operated by the Spokane Airport Board pursuant to RCW 14.08.200 and the Amended Spokane County/City Airport Agreement, dated August 28, 1990 (City of Spokane City Clerk File # OPR 1986-0318, Spokane County Resolution No. 1990-1040), (the "Airport Agreement"). On July 31, 2019, the Airport Board approved recommendation of approval of a Real Property Purchase and Sale Agreement and Escrow Instructions between the Spokane Airport and AT Acquisitions, LLC, for the sale of a total of 29.28 acres of Airport real property. Pursuant to the Airport Agreement, both the City and County must approve the sale of Airport real property.

**FISCAL IMPACT:** *None to Spokane County*

**REQUESTED BOARD ACTION:** *Approve a Real Property Purchase and Sale Agreement and Escrow Instructions between the Spokane Airport and AT Acquisitions, LLC, for the sale of a total of 29.28 acres of Airport real property.*

**SIGNATURES:** *(Signatures must be completed before submitting to the Clerk of the Board).*

\_\_\_\_\_  
1) Legal Department

\_\_\_\_\_  
2) Auditor's Office

\_\_\_\_\_  
3) Budget Office

\_\_\_\_\_  
4) Department Head/Elected Official or  
Designated Authority (Requesting Agenda Item)

\_\_\_\_\_  
5) Central Services

\_\_\_\_\_  
Other

☐ *This item will need to be codified in the Spokane County Code.*

## AGENDA SHEET

**SUBMITTING DEPARTMENT:** *Spokane Airport Board*

**CONTACT PERSON:** *Lawrence J. Krauter, CEO*

**PHONE NUMBER:** *509.455.6419*

**CHECK TYPE OF MEETING ITEM BELOW:**

**9:00 AM CEO MEETING:** ☐

**2:00 PM CONSENT AGENDA:** ☐  
**BY LEAVE:** ☐

**5:30 PM LEGISLATIVE SESSION:** ☐  
**BY LEAVE:** ☐

**SPECIAL SESSION:** ☐

**BELOW FOR CLERK'S USE ONLY:**

Clerk's Resolution No. **19 - 1337**  
Approved: Majority/Unanimous \_\_\_\_\_  
Denied: Majority/Unanimous \_\_\_\_\_  
Renews/Amends No. \_\_\_\_\_  
Public Works No. \_\_\_\_\_  
Purchasing Dept. No. \_\_\_\_\_

**AGENDA TITLE:** *Purchase and Sales Agreement – Spokane International Airport*

**BACKGROUND:** *(Attach separate sheet(s) if necessary):*

Spokane County and the City of Spokane are joint owners and sponsors of Spokane Airport, which is managed and operated by the Spokane Airport Board pursuant to RCW 14.08.200 and the Amended Spokane County/City Airport Agreement, dated August 28, 1990 (City of Spokane City Clerk File # OPR 1986-0318, Spokane County Resolution No. 1990-1040), (the "Airport Agreement"). On July 31, 2019, the Airport Board approved recommendation of approval of a Real Property Purchase and Sale Agreement and Escrow Instructions between the Spokane Airport and AT Acquisitions, LLC, for the sale of a total of 29.28 acres of Airport real property. Pursuant to the Airport Agreement, both the City and County must approve the sale of Airport real property.

**FISCAL IMPACT:** *None to Spokane County*

**REQUESTED BOARD ACTION:** *Approve a Real Property Purchase and Sale Agreement and Escrow Instructions between the Spokane Airport and AT Acquisitions, LLC, for the sale of a total of 29.28 acres of Airport real property.*

**SIGNATURES:** *(Signatures must be completed before submitting to the Clerk of the Board).*

\_\_\_\_\_  
1) Legal Department

\_\_\_\_\_  
2) Auditor's Office

\_\_\_\_\_  
3) Budget Office

\_\_\_\_\_  
4) Department Head/Elected Official or  
Designated Authority (Requesting Agenda Item)

\_\_\_\_\_  
5) Central Services

\_\_\_\_\_  
Other

☐ *This item will need to be codified in the Spokane County Code.*

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

10/07/2019

Date Rec'd	9/24/2019
Clerk's File #	RES 2019-0086
Renews #	

Submitting Dept	AIRPORTS	Cross Ref #	
Contact	LARRY 455-6406	Project #	
Contact E-Mail	LKRAUTER@SPOKANEAIRPORTS.NET	Bid #	
Agenda Item Type	Resolutions	Requisition #	
Agenda Item Name	SIA - AIRPORT JOINT OPERATION AGREEMENT		

Agenda Wording

Joint Resolution in the matter of amending the Airport Joint Operation Agreement between Spokane County and the City of Spokane.

Summary (Background)

The Spokane Airport Board recommends that the Board of County Commissioners approve administrative changes to the 1990 Interlocal Agreement to modernize the agreement as contained in the attached draft document.

<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>	PFISTER, TERRI	<u>Study Session</u>
<u>Division Director</u>		<u>Other</u>
<u>Finance</u>	BUSTOS, KIM	Distribution List
<u>Legal</u>	PICCOLO, MIKE	lkrauter@spokaneairports.net
<u>For the Mayor</u>	ORMSBY, MICHAEL	twoodard@spokaneairports.net
Additional Approvals		bwerst@spokaneairports.net
<u>Purchasing</u>		thart@spokaneairports.net
		gvasquez@spokanecounty.org

City: OPR  
Resolution No. 19 - 1338

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON  
AND  
THE SPOKANE CITY COUNCIL OF SPOKANE, WASHINGTON

IN THE MATTER OF AMENDING THE )  
AIRPORT JOINT OPERATION )  
AGREEMENT BETWEEN SPOKANE )  
COUNTY AND THE CITY OF )  
SPOKANE )

**RESOLUTION**

**WHEREAS**, the County of Spokane and the City of Spokane, Washington ("Parties"), entered into an Airport Joint Operation Agreement ("Agreement") for the purpose of financing, construction, improving, and operation, through the agency of the Spokane Airport Board (herein referred to as "Board"), Spokane International Airport and Felts Field, as provided by Chapter 182, Laws of Washington, 1945, codified as RCW 14.08; and

**WHEREAS**, said airport facilities have been operated under that certain Airport Joint Operation Agreement dated July 30, 1962, as amended and supplemented by various joint resolutions, ordinances, agreements, and other actions from time to time; and

**WHEREAS**, the County of Spokane and the City of Spokane now desire to amend the Agreement and adopt a new Agreement.

**NOW, THEREFORE, BE IT HEREBY RESOLVED**, by the Board of County Commissioners of Spokane County, Washington, that the Spokane County Board of County Commissioners approves the amendments to the Agreement, as set forth in Attachment "A", attached hereto and incorporated by reference. Attachment "A" will identify by striking and underlying changes in the Agreement.

**BE IT FURTHER RESOLVED** by the Spokane County Board of County Commissioners, that but for the changes proved for and identified in Attachment "A", all other terms and provisions within the Agreement shall remain in full force and effect without any changes or modifications.

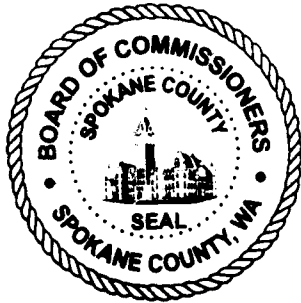
**ADOPTED** by the Spokane City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Terri L. Pfister, City Clerk

Approved as to form:

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

**PASSED AND ADOPTED** this 17th day of Sept., 2019.



ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

Mary L. Koney  
MARY L. KONEY, Chair

Al French  
AL FRENCH, Vice-Chair

Ginna Vasquez  
Ginna Vasquez, Clerk of the Board

Josh Kerns  
JOSH KERNS, Commissioner

## **AMENDED SPOKANE COUNTY/CITY AIRPORT AGREEMENT**

WHEREAS, the County of Spokane and the City of Spokane, Washington, on July 30, 1962, entered into an Airport Joint Operation Agreement for the purposes of financing, constructing, improving, and operating, through the agency of the Spokane Airport Board (herein referred to as "Board"), Spokane International Airport and Felts Field, as provided by Chapter 182, Laws of Washington, 1945, codified as RCW 14.08; and

WHEREAS, said airport facilities have been operated under that 1962 Agreement, as amended and supplemented by various joint resolutions, ordinances, agreements, and other actions from time to time; and

WHEREAS, the County of Spokane and the City of Spokane now desire to amend the Agreement and adopt a new Agreement;

NOW, THEREFORE, the County of Spokane, Washington (referred to herein as "County"), and the City of Spokane, in Spokane County, Washington (referred to herein as "City"), and hereafter collectively referred to as "Parties," agree as follows:

1. **PURPOSE.** It is the purpose of the Parties to continue their association under Chapter 14.08 RCW to provide for joint operation of Spokane International Airport, Felts Field Airport, and Spokane International Airport Business Park facilities (herein collectively referred to as "Airport"), by replacing that 1962 Agreement with a new Agreement.

1.1 The Parties intend to vest the Board, to the fullest extent permissible by State and Federal law, with complete authority for the management and operation of the Airport for aeronautical and industrial development purposes subject to the specific limitations herein contained.

1.2 All existing rules, regulations, contracts, offices, and other actions and circumstances previously adopted or approved by the Board or the Parties acting jointly and not in conflict with this Agreement are unaffected and shall remain in full force and effect until terminated or amended in accordance with this Agreement.

2. AIRPORT PROPERTY. The “Airport” consists of Spokane International Airport, Felts Field, and Spokane International Airport Business Park, and such other property as may hereafter be acquired.

2.1 It is recognized that the property of the Airport has been acquired at various times in various ways, including surplus property grant deeds from the United States of America, purchased through Federal Aviation Administration (FAA) or its predecessor, funds, and donations. Rather than maintain abstracts of title for each segment of the Airport, it is agreed that all real property and fixtures, except as provided hereinbelow, shall be held by the County and City in equal undivided shares as tenants in common, subject to any valid future interest reserved or excepted by deed.

2.2 Personal property (except City utility properties) shall be acquired, held, and disposed of in the name of the Board. Upon termination of this Agreement and dissolution of the Board, personal property shall be deemed owned by the City and County as tenants in common.

2.3 Notwithstanding Paragraph 2.1, City shall own and have the control, operation, and maintenance of all public utility sewer and water systems within the Airport, including, but not limited to, all present and future utility systems, tangible property, pipes and pumps, storage tanks, and fire hydrants, whether located underground or above ground, and intangible property such as franchises and easements.

3. FEDERAL RULES, REGULATIONS AND REQUIREMENTS. It is recognized that part of the land of the Spokane International Airport and Spokane International Airport Business Park was acquired from the United States of America by grant deed which contains reversion, restrictions, and obligations on the use of such properties for aeronautical and nonaeronautical purposes.

3.1 It is further recognized that the Airport has received grants from the federal government by or through its Federal Aviation Administration or its predecessors or other federal departments or agencies which have also imposed restrictions, conditions, and obligations on the use of Airport properties and further require that the revenues received be devoted to aeronautical purposes. The Parties hereby expressly ratify and confirm all previous grant agreements in existence at the time of execution of this Agreement and agree to be bound by any conditions or obligations imposed therein. Any future grant or other form of federal financial assistance for the Airport shall be subject to approval and acceptance by the Board, which is delegated authority to act on behalf of the City and County to enter into grant agreements on behalf of each the City and County.

3.2 In the event the Parties desire to terminate this Agreement, notice shall first be given to the Federal Aviation Administration of the intent to terminate this Agreement and of any change affecting ownership, control, operation, or performance of any conditions or obligations required by the grants or other federal financial assistance programs. It is also recognized that any termination or disposition of the properties of the Airport shall require prior FAA approval unless otherwise provided for by federal law or regulation.



4. AIRPORT FINANCES. It is intended that the expenses of operating Spokane International Airport, Felts Field, and Spokane International Airport Business Park shall be paid, to the maximum extent possible, from the operating revenues of each entity.

4.1 The Airport fiscal year shall be the calendar year.

4.2 The Board shall submit a proposed comprehensive balanced operating budget for the Spokane International Airport, Felts Field, and Spokane International Airport Business Park by the first Monday in the month of December for the ensuing fiscal year. Separate operating budgets and accounting records will be presented for each of the three cost centers described above and the comprehensive budget must be jointly approved by the Parties prior to the end of the current calendar year in which the proposed budget is submitted.

4.3 The Board shall have no independent authority to issue bonds or to incur other debts with a date of maturity of more than one year from the date of the obligation.

In the event there is a deficit in a principal or interest payment necessary to pay a bonded indebtedness, then the Parties shall each fund one-half of said deficit.

The Parties may, by joint resolution, authorize the issuance and sale of revenue bonds or other obligations payable from Airport revenues, the proceeds of which are to be used exclusively for Airport purposes. After the proper adoption of a joint resolution by both the City and the County, the revenue bonds or other revenue obligations shall be authorized by and issued in the name of Spokane County.

General obligation debt may also be issued for Airport purposes for projects authorized by law. If a general obligation debt is proposed to be issued, the Parties shall adopt a joint resolution evidencing the intent to incur said debt. The Parties then each shall

separately authorize its portion of the total debt in the manner required by law for each Party, respectively.

5. AIRPORT FUNDS. All Airport funds arising from the sale of bonds, proportionate contributions of the Parties, federal funds, all revenues from the operations of the Airport, and all other funds of whatever nature or source allocable to the Airport or its operations shall be deposited and maintained in appropriate accounts in the office of the Treasurer of Spokane County. All disbursements from said Airport funds shall be made by order of the Board, in accordance with the annual Airport budgets, this Agreement and such rules and regulations and for such purposes as the Parties acting jointly shall, from time to time, prescribe.

5.1 Airport funds shall be administered and accounted for in accordance with the rules, regulations, and principles established and approved by the Auditor of the State of Washington, subject only to contrary federal audit requirements.

5.2 Idle funds may be invested by the County Treasurer under direction of the Board in accordance with the laws governing investment of County funds. Earnings from investment of Airport funds, less statutory administrative costs, shall be credited to the Airport funds.

6. ALLOCATION OF FUNDS. The primary purpose of this Agreement is to provide for the continued joint operation, maintenance, and control of airport facilities for air navigation purposes. The management of associated facilities for industrial development, foreign trade zones, and other commercial purposes are secondary to the primary purpose described above.

6.1 As specified in the annual budget, revenues shall be applied to the following purposes, in the order listed:

- (a) Maintenance and operation expenses, including salaries and other personnel costs;
- (b) Principal and interest and any required reserve deposits on outstanding bonds and any other bonds having a parity of lien;
- (c) Principal and interest on the revenue bonds having a junior lien to any outstanding bonds;
- (d) Any outstanding revenue or interest bearing warrants;
- (e) Accumulation of reserve funds;
- (f) Early redemption of revenue bonds or other Airport indebtedness;
- (g) Other proper purposes consistent with operating budget approvals.

7. AIRPORT BOARD. The Board shall consist of seven members, serving at the pleasure of their appointive party, and shall be appointed to a three-year term except as provided below. The City shall appoint three members; the County shall appoint three members; and the City and County, acting jointly, shall appoint one member. One of the three members appointed by the City to the Airport Board shall be a member of the City Council, and one of the three members appointed by the County to the Airport Board shall be a member of the Board of County Commissioners; these appointments shall immediately terminate if the appointee is no longer a member of the Council or Board of County Commissioners.

7.1 City and County each shall endeavor to ensure that its appointees are qualified by reason of education or experience in matters pertaining to aviation and industrial development.

7.2 In case of vacancy, a person shall be appointed by the appropriate appointing authority to the unexpired term in the same manner as the member whose position is vacant.

7.3 Members of the Board shall serve without compensation. Board members may receive from Airport funds reimbursement for expenses incurred in the course of official business, or when travel is necessary, a travel advance or per diem allowance consistent with procedures approved by the State Auditor.

7.4 The Board may purchase liability insurance with such limits as it deems reasonable for the purpose of protecting the Board and Airport employees against liability for personal or bodily injuries and property damages arising from its acts or omissions while performing or in good faith purporting to perform its official duties.

In the event that the Board may not purchase insurance at reasonable rates, the Board may adopt resolutions providing for the indemnification, including reasonable costs and attorney's fees, against liability for personal or bodily injuries and property damages arising from its acts or omissions while performing or in good faith purporting to perform its official duties.

8. POWERS OF THE AIRPORT BOARD. The Board shall have the authority to exercise all of the powers granted to municipalities pursuant to the provisions of RCW 14.08 et seq. in the management, operation, and control of the Airport for aviation and business park purposes, subject to final approval of the annual comprehensive budget except that:

- (a) Eminent domain power must be exercised jointly by the Parties;
- (b) The acquisition, sale, transfer, or disposal of real property, except the grant of a lease, must be by joint action of the Parties;

(c) Policy regulations governing conduct and use of the Airport to be enforced through a judicial proceeding, if not adopted by the joint action of the Parties, must be adopted pursuant to the requirements of City or County ordinances and resolutions. The Airport Board may adopt reasonable rules and regulations for the control and management of the Airport not requiring judicial enforcement, including, but not limited to, minimum standards for aeronautical and nonaeronautical activities;

(d) Contracts for public works and procurements of goods and services must satisfy the legal and procedural requirements of the City;

(e) The employment and termination of the Airport Chief Executive Officer must be jointly approved by the City and County;

(f) Capital improvements of Airport property, for aeronautical, commercial, and industrial purposes, shall be in general accordance with an Airport Layout Plan jointly adopted by the Board, City, and County, and approved by the FAA; and

(g) All aviation capital improvements and land uses conforming with said Airport Layout Plan shall not be subject to City of County zoning regulations.

9. UTILITIES.

9.1 City has assumed responsibility for the maintenance and operation of the Spokane International Airport water and sanitary sewage disposal system, excluding any septic tanks, cesspools, or similar onsite sewage disposal systems in existence on Airport property.

9.2 Ownership of lines, wells, pumping stations, and other component parts of the water and sanitary sewage disposal systems within the boundaries of the property owned jointly by the City and the County for Airport operations, excluding on-site sewage

disposal systems, as noted above, have vested in the City in the same manner and subject to the same regulations and procedures as if those facilities were located within the City limits.

9.3 The City shall be responsible for maintenance and operation of all utility lines and component parts. The cost of new water meters, installation costs, the upgrading of existing meters, and any other costs usually related to meter installation will be borne by the user.

9.4 All decisions relating to operation of existing or future lines including the active nature of substandard or high maintenance lines will be made by the City.

9.5 All future expansion and upgrading of such systems will be done in accordance with City policy in effect at the time and will become the property of the City; provided that, the City may authorize, upon the recommendation of the Airport Board, the construction and installation of sewer lines, water lines, pumping stations, wells and other component parts of the water and sanitary sewage disposal systems within the Airport boundaries by private contract.

9.6 Utility service shall be provided to users located on SIA property at in-City rates. All rules and regulations which apply to in-City users will apply to said SIA users. Any user who had a service agreement with the Airport shall enter into a new agreement with the City.

9.7 A Utilities Plan shall be maintained by the City which will depict all utility lines and facilities and the appropriate City departments shall be given the necessary easement for access to those existing lines and facilities for service and maintenance. The City will coordinate its utility planning and development with the Airport Board and in

compliance with United States Federal Aviation Administration (hereinafter “FAA”) rules and regulations in order to minimize any interference with Airport operations and all construction and expansion of the water and sewer systems shall then be added to the Utility Plan with the necessary access extended as with the existing system. Easements for the Airport utilities system, as well as real property site requirements, shall be provided at no cost to the City.

9.8 If it becomes necessary, in the expansion of the Airport utilities system, to form a local improvement district to provide for said expansion, then the City and the County agree, as co-owners of the Airport property, to jointly sign petitions as authorized and required by law for the formation of said local improvement district. If utility service is expanded by the formation of a local improvement district, or other similar method, then the City and County agree that assessments may be placed against any Airport property not being used for Airport purposes in the proportion that said property specially benefits from the construction, improvement, and/or expansion of the utility service.

10. PERSONNEL. The Board shall employ, subject to City and County approval A Chief Executive Officer who shall direct the administration of all matters pertaining to Spokane International Airport, Felts Field, and Airport Business Park, all as in accordance with the FAA approved Airport Layout Plan.

10.1 The Chief Executive Officer may employ or contract for personnel to operate the Airport. Any employees shall be employees of the Airport and shall not be considered employees of either Party. The Board, however, may contract with either Party or other recognized service providers for payroll, withholding, unemployment, worker’s

compensation, and fringe benefits, and accounting and administrative services as the Board, from time to time, shall prescribe.

10.2 The Board may employ, or contract with a private body or political subdivision of the state to furnish, law enforcement and firefighting services and personnel in accordance with RCW 14.08.120(2) and FAA rules and regulations.

10.3 The Board shall retain legal counsel other than from the offices of the Prosecuting Attorney and City Attorney.

11. AMENDMENT. This Agreement may be amended at any time by mutual agreement of the Parties.

This Agreement is intended to set forth the basic agreement between the Parties. Nothing herein prevents City, County, and Board from agreeing to any specific matter consistent with this Agreement.

12. TERMINATION. Either Party may terminate this Agreement effective at the end of any calendar year, by serving written notice on the other before the 1st day of October of the previous year. The terminating Party shall also give notice to the Board, the FAA and to other agencies with jurisdiction over or a financial interest in the Airport.

12.1 After notice of termination has been given, if the Parties do not, by the 31st day of December of what will be the last year of joint operation under this Agreement, reach an agreement regarding the takeover by either Party, or other operation of the Airport, or the abandonment and liquidation of the Airport, then the terminating Party will acquire the assets and assume the liabilities of the Airport, except that the City Utilities facilities remain the property of the City. Should it become necessary to engage independent appraisal or arbitration services to determine the amount and nature of payments between



the Parties to compensate for any difference in the value of assets and liabilities, the Parties agree to share the costs equally.

IN WITNESS WHEREOF, this Agreement has been signed and sealed in duplicate in Spokane, Washington, by:

CITY OF SPOKANE

\_\_\_\_\_  
Terri L. Pfister, City Clerk

Approved as to form:

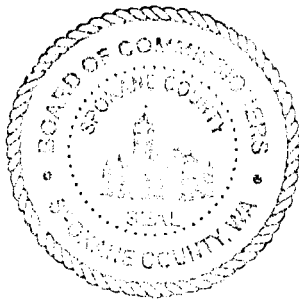
\_\_\_\_\_  
City Attorney

SPOKANE COUNTY

\_\_\_\_\_  
Commissioner Mary L. Kuney, Chair

\_\_\_\_\_  
Commissioner Al French, Vice-Chair

\_\_\_\_\_  
Commissioner Josh Kerns, Vice-Chair



ATTEST:

\_\_\_\_\_  
Ginna Vasquez, Clerk of the Board

Submit to Clerk of the Board with accompanying paperwork (Resolution, Agreements, etc.)

## AGENDA SHEET

**SUBMITTING DEPARTMENT:** Spokane Airport Board

**CONTACT PERSON:** Lawrence J. Krauter, CEO

**PHONE NUMBER:** 509.455.6419

**CHECK TYPE OF MEETING ITEM BELOW:**

**9:00 AM CEO MEETING:** ☒

**2:00 PM CONSENT AGENDA:** ☐  
**BY LEAVE:** ☐

**5:30 PM LEGISLATIVE SESSION:** ☐  
**BY LEAVE:** ☐

**SPECIAL SESSION:** ☐

**BELOW FOR CLERK'S USE ONLY:**

Clerk's Resolution No. **19 - 1338**  
Approved: Majority/Unanimous \_\_\_\_\_  
Denied: Majority/Unanimous \_\_\_\_\_  
Renews/Amends No. \_\_\_\_\_  
Public Works No. \_\_\_\_\_  
Purchasing Dept. No. \_\_\_\_\_

**AGENDA TITLE:** Proposed Administrative Amendments to the 1990 Interlocal Agreement between the City and County of Spokane Related to the Spokane Airport Board

**BACKGROUND:** (Attach separate sheet(s) if necessary):

The Spokane Airport Board recommends that the Board of County Commissioners approve administrative changes to the 1990 Interlocal Agreement to modernize the agreement as contained in the attached draft document.

**FISCAL IMPACT:** None

**REQUESTED BOARD ACTION:** Approve

**SIGNATURES:** (Signatures must be completed before submitting to the Clerk of the Board).

\_\_\_\_\_  
1) Legal Department

\_\_\_\_\_  
2) Auditor's Office

\_\_\_\_\_  
3) Budget Office

\_\_\_\_\_  
4) Department Head/Elected Official or  
Designated Authority (Requesting Agenda Item)

\_\_\_\_\_  
5) Central Services

\_\_\_\_\_  
Other

**Submit to Clerk of the Board with accompanying paperwork (Resolution, Agreements, etc.)**

☐ ***This item will need to be codified in the Spokane County Code.***

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

09/30/2019

<u>Date Rec'd</u>	9/25/2019
<u>Clerk's File #</u>	RES 2019-0087
<u>Renews #</u>	

<u>Submitting Dept</u>	CITY COUNCIL	<u>Cross Ref #</u>	
<u>Contact</u>	BEN 6256269	<u>Project #</u>	
<u>Contact E-Mail</u>	AMCDANIEL@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Resolutions	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0320 RESOLUTION SUPPORTING THE USE OF CONTINGENCY RESERVES		

Agenda Wording

A resolution supporting the use of contingency reserves to substantially reduce Spokane individuals who are unhoused by supporting basic needs services:

Summary (Background)

This resolution supports the use of contingency reserves to support the prompt purchase or lease of more safe and accessible 24/7 low-barrier emergency shelter(s) and warming centers that provide laundry facilities, showers, and storage for personal belongings and host diverse best-practice programs to help residents achieve self-sufficiency by overcoming their root cause of homelessness.

<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>	9/26/19
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>	HUGHES, MICHELLE	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE		
<u>For the Mayor</u>	ORMSBY, MICHAEL		

<u>Additional Approvals</u>		
<u>Purchasing</u>		



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

including 24/7 low-barrier emergency shelters, warming centers, social workers who can refer individuals to mental health and substance abuse treatment and best-practice programs for Spokane residents facing homelessness.

Summary (Background)

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List


## RESOLUTION NO. 2019-0087

A resolution supporting the use of contingency reserves to substantially reduce Spokane individuals who are unhoused by supporting basic needs services: including 24/7 low-barrier emergency shelters, warming centers, social workers who can refer individuals to mental health and substance abuse treatment and best-practice programs for Spokane residents facing homelessness.

**WHEREAS**, the City of Spokane finds homelessness is a public health, public safety, housing, and economic issue requiring a measured, systematic approach which includes providing safe community shelters hosting diverse best-practice programs that help Spokane residents achieve self-sufficiency by overcoming the root causes of homelessness; and

**WHEREAS**, the City of Spokane supports the purchase or lease of safe and accessible 24/7 low-barrier emergency shelter(s) that host critical community programs such as housing assistance, chemical dependency treatment, and job skills training that help our residents return to self-sufficiency; and

**WHEREAS**, the City of Spokane finds access to laundry facilities, showers, and storage for personal belongings for residents facing homelessness reduces the spread of infectious diseases such as Hepatitis A and allows families to keep critical paperwork and belongings secure; and

**WHEREAS**, the City of Spokane supports shelter and warming center operations that minimize impacts to surrounding neighborhoods and businesses through operational design, facility upgrades, and adequate on-site security; and

**WHEREAS**, the City of Spokane's Community, Housing, and Human Services Department is working diligently to identify and secure shelter and warming center locations and establish long-term partnerships with multiple service providers that help our community rise to the challenge of homelessness; and

**WHEREAS**, Spokane Municipal Code 07.08.010 states the Spokane City Council may utilize Contingency Reserves for "[emergencies] threatening the health and safety of the citizens"; and

**WHEREAS**, the lack of 24/7 emergency shelter(s) and warming centers create public safety impacts due to freezing temperatures, isolation, and illegal camping; and

**WHEREAS**, the lack of 24/7 emergency shelter(s) and warming centers create public health impacts because our homeless residents lack access to basic sanitation facilities that prevent the spread of infectious disease; and

**WHEREAS**, Spokane Municipal Code 07.08.010 also provides that the Spokane City Council may appropriate contingency reserves to achieve “significant operating efficiencies”; and

**WHEREAS**, providing safe community shelters and warming centers hosting diverse best-practice programs that help individuals and families achieve self-sufficiency is more efficient and effective than criminalization and further isolation;

**NOW, THEREFORE, BE IT RESOLVED BY THE SPOKANE CITY COUNCIL**, that the Spokane City Council supports the use of contingency reserves to support the prompt purchase or lease of more safe and accessible 24/7 low-barrier emergency shelter(s) and warming centers that provide laundry facilities, showers, and storage for personal belongings and host diverse best-practice programs to help residents achieve self-sufficiency by overcoming their root cause of homelessness.

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

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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



**Agenda Sheet for City Council Meeting of:**  
10/07/2019

<u>Date Rec'd</u>	9/26/2019
<u>Clerk's File #</u>	ORD C35818
<u>Renews #</u>	
<u>Cross Ref #</u>	RES 2019-0070
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER
<u>Contact Name/Phone</u>	ELDON BROWN 6305
<u>Contact E-Mail</u>	EBROWN@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Hearings
<u>Agenda Item Name</u>	4700- VACATION OF CEDAR

Agenda Wording

Vacation of portions of un-used right-of-ways southeast of the intersection of Cedar Rd. and Cheney-Spokane Rd, as requested by Molly Kingston.

Summary (Background)

At its legislative session held on September 9, 2019, the City Council set a hearing on the above vacation for October 7, 2019. Staff has solicited responses from all concerned parties.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Neutral \$		#
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>	<u>Council Notifications</u>	
<u>Dept Head</u>	DUVALL, MEGAN	<u>Study Session</u>
		Urban Experience 8/12/19
<u>Division Director</u>	CORTRIGHT, CARLY	<u>Other</u>
<u>Finance</u>	ORLOB, KIMBERLY	<u>Distribution List</u>
<u>Legal</u>	RICHMAN, JAMES	ebrown@spokanecity.org
<u>For the Mayor</u>	ORMSBY, MICHAEL	edjohnson@spokanecity.org
<u>Additional Approvals</u>		kbecker@spokanecity.org
<u>Purchasing</u>		mduvall@spokanecity.org
		ccortright@spokanecity.org
		dnorman@spokanecity.org



**P1903285VACA**



**Right-of-way Description:**  
Those portions of un-named  
right-of-ways as shown. (Full legal description will  
be included in vacation ordinance)

**Legend**

 vacation

THIS IS NOT A LEGAL DOCUMENT.  
The information shown on this map is compiled  
from various sources and is subject to constant  
revision. Information shown on this map should  
not be used to determine the location of facilities  
in relationship to property lines, section lines,  
streets, etc.







**CITY OF SPOKANE  
DEVELOPMENT SERVICES**

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

**STREET VACATION REPORT**  
August 14, 2019

**LOCATION:** Portions of unused RW SE of the intersection of Cedar and Cheney-Spokane.

**PROPONENT:** Holly Kingston

**PURPOSE:** To expand property lines and because her house currently sits partially in the RW.

**HEARING:** October 7, 2019

**REPORTS:**

**AVISTA UTILITIES** – I've reviewed the requested vacation and Avista has no concerns or further comment.

**COMCAST** – We have no objection to the vacation.

**INLAND POWER & LIGHT** – Inland Power & Light does not have any facilities within the proposed vacation area.

**CENTURYLINK** – CenturyLink has no objections to this City Vacation.

**ZAYO** – Thanks for the review – Zayo has no comment or objection to the vacation.

**ASSET MANAGEMENT - CAPITAL PROGRAMS** – No comments

**FIRE DEPARTMENT** – Fire does not support vacating this street. The right of way is about 35', so it could be used for fire access to the rear of the properties. There is also no water in S. Cedar Road.

**NEIGHBORHOOD SERVICES** - No comments

**PARKS DEPARTMENT** - No comments

**PLANNING & DEVELOPMENT – TRAFFIC DESIGN** – No comments

**PLANNING & DEVELOPMENT – PLANNING** – No concern

**POLICE DEPARTMENT** - No comments

**SOLID WASTE MANAGEMENT** - No comments

**STREET DEPARTMENT** – Street Department has no concerns.

**WASTEWATER MANAGEMENT** – Wastewater Mgmt. has no assets in the area. We have no objections to the vacation provided on site runoff is maintained and treated onsite.

**WATER DEPARTMENT** - No comments

**BICYCLE ADVISORY BOARD** - No comments

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

1. A previous version of a non-user statute (Laws of 1889, Chapter 19, Section 32, p. 603, adopted by the legislature in 1889) provided:

Any county road, or part thereof, which has heretofore been or may hereafter be authorized, which remains unopened for public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same barred by lapse of time.

This statute was in place until amended in 1909 that it no longer applied to platted streets and alleys.

These right-of-ways were dedicated in 1892 as part of the plat of Cascade Park Addition to Spokane, Washington, which the plat was located in the unincorporated Spokane County.


To the best of the City's knowledge and understanding, these right-of-ways have never been improved as public streets and opened for public use between 1892 and 1897.

These right-of-ways and the areas surrounding it were annexed into the City of Spokane in 1981.

Based on this, the City Staff's recommendation is as follows:

That no compensation, for the assessed value of the right-of-ways vacated, be required by virtue of the previous version of the non-user statute (RCW 36.87.090) which vacated these right-of-ways by operation of law many years ago.

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

A handwritten signature in black ink, reading "Eldon W. Brown". The signature is written in a cursive, flowing style. The first name "Eldon" is written with a large, stylized 'E' and 'l'. The middle initial "W." is written with a large 'W' and a period. The last name "Brown" is written with a large 'B' and a stylized 'n'.

City of Spokane  
Planning & Development Services  
808 West Spokane Falls Blvd.  
Spokane, WA 99201-3343  
(509) 625-6700

## ORDINANCE NO. C35818

An ordinance vacating portions of unused right-of-ways southeast of the intersection of Cedar Road and Cheney-Spokane Road,

WHEREAS, a petition for the vacation of portions of unused right-of-ways southeast of the intersection of Cedar Road and Cheney-Spokane Road has been filed with the City Clerk representing 100% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, the City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That portions of unused right-of-ways southeast of the intersection of Cedar Road and Cheney-Spokane Road and further described below is hereby vacated. Parcel number not assigned.

That portion of Alameda Avenue lying east of Cedar Road south of Block 17 and extending east to the easterly line of Cedar Street, Cascade Park Addition to Spokane, according to the plat recorded in Volume "D" of plats, Page 19 in the City of Spokane, Spokane County, State of Washington.

And together with that portion of Cedar Street lying east of said Block 17 and the vacated alley contained therein, extending north to the centerline of vacated Columbia Avenue as vacated by Ordinance No. C35433

Passed the City Council \_\_\_\_\_

\_\_\_\_\_  
Council President

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

Approved as to Form:

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

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

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



**Agenda Sheet for City Council Meeting of:**  
10/07/2019

<u>Date Rec'd</u>	9/26/2019
<u>Clerk's File #</u>	ORD C35819
<u>Renews #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER	<u>Cross Ref #</u>	RES 2019-0071
<u>Contact Name/Phone</u>	ELDON BROWN 6305	<u>Project #</u>	
<u>Contact E-Mail</u>	EBROWN@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Hearings	<u>Requisition #</u>	
<u>Agenda Item Name</u>	4700- VACATION OF ALAMEDA CT		

Agenda Wording

Vacation of Alameda Ct., EXCEPT the west 100' as requested by Community Frameworks.

Summary (Background)

At its legislative session held on September 9, 2019, the City Council set a hearing on the above vacation for Alameda Ct., EXCEPT the west 100'. Staff has solicited responses from all concerned parties.

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

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	DUVALL, MEGAN	<u>Study Session</u>	Urban Experience 8/12/19
<u>Division Director</u>	CORTRIGHT, CARLY	<u>Other</u>	
<u>Finance</u>	ORLOB, KIMBERLY	<u>Distribution List</u>	
<u>Legal</u>	RICHMAN, JAMES	ebrown@spokanecity.org	
<u>For the Mayor</u>	ORMSBY, MICHAEL	edjohnson@spokanecity.org	
<u>Additional Approvals</u>		kbecker@spokanecity.org	
<u>Purchasing</u>		mduvall@spokanecity.org	
		ccortright@spokanecity.org	
		dnorman@spokanecity.org	





**P1904191VACA**

**Right-of-way Description:  
Alameda Court, east of Center  
Court, EXCEPT the west 100'**

**Legend**

 vacation

THIS IS NOT A LEGAL DOCUMENT.  
The information shown on this map is compiled  
from various sources and is subject to constant  
revision. Information shown on this map should  
not be used to determine the location of facilities  
in relationship to property lines, section lines,  
streets, etc.







**CITY OF SPOKANE  
DEVELOPMENT SERVICES**

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

**STREET VACATION REPORT**  
August 13, 2019

**LOCATION:** Alameda Ct. east of Center Ct. except the west 100'

**PROPONENT:** Community Frameworks

**PURPOSE:** To accommodate an affordable housing project

**HEARING:** October 7, 2019

**REPORTS:**

**AVISTA UTILITIES** – Avista does have electric facilities in the portion of the street to be vacated and therefore requests an easement to be reserved for those facilities.

**COMCAST** – We have no objections to the vacation as long as we can maintain an easement to allow for our existing aerial path.

**ZAYO COMMUNICATIONS** – Zayo has no objection and or comment to the vacation of Alameda Ct.

**CENTURYLINK** – CenturyLink has cable facilities in the right-of-way and would like to retain utility easement rights. These rights should provide for maintenance, construction and reconstruction as needed.

**ASSET MANAGEMENT - CAPITAL PROGRAMS** – No comments

**INLAND POWER & LIGHT** – Inland Power & Light has no facilities within the proposed vacation area.

**FIRE DEPARTMENT** - No comments

**NEIGHBORHOOD SERVICES** - No comments

**PARKS DEPARTMENT** - No comments

**PLANNING & DEVELOPMENT – DEVELOPER SERVICES** - No comments

**PLANNING & DEVELOPMENT – TRAFFIC DESIGN** – No comments

**PLANNING & DEVELOPMENT – PLANNING** – No issues

**POLICE DEPARTMENT** - No comments

**SOLID WASTE MANAGEMENT** - No comments

**STREET DEPARTMENT** – The Street Department has no objection to the vacation.

**WASTEWATER MANAGEMENT** - There is a sewer line in the proposed vacation area. I have attached a map showing the approximate location of that sewer line. Access to that line for our inspection and service trucks is already extremely limited. The line is also an older vitrified clay line. We discourage approving this vacation.

That said, in order to approve this vacation we would require at a minimum that the city retain a 30' no build easement centered on the line in the vacation area. Such an easement would need to provide 24/7 access for both our inspection and service trucks to all manholes and the main as well as construction equipment in the event we need to dig up the line for repair or replacement. Any damage to that line during construction in the area would need to be repaired at the expense of the new property owners.

As usual any on site runoff would need to be maintained and treated on site.

**WATER DEPARTMENT** - No comments

**BICYCLE ADVISORY BOARD** - No comments

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

1. An easement as requested by Century Link, Avista Utilities, Comcast and the City of Spokane shall be retained to protect existing and future utilities.
2. Adequate emergency vehicle access shall be maintained to existing and future buildings.
3. Access must be maintained to the City of Spokane Sewer main that is in the alley. If vacated, access to maintain this sewer must be at least equivalent to the access prior to the vacation.

4. The proponent shall pay to the City of Spokane the assessed valuation for the vacated land as defined by the latest information from the County Assessor's Office. This is calculated to be \$26,349.79 and is to be deposited to Budget Account #3200 49199 99999 39510.
5. That the final reading of the vacation be held in abeyance until all of the above conditions are met and that the above conditions are met by December 1, 2020.

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

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

City of Spokane  
Planning & Development Services  
808 West Spokane Falls Blvd.  
Spokane, WA 99201-3343  
(509) 625-6700

## ORDINANCE NO. C35819

An ordinance vacating Alameda Ct. in the plat of Crowder's Addition EXCEPT the west 100 feet

WHEREAS, a petition for the vacation of Alameda Ct. in the plat of Crowder's Addition EXCEPT the west 100 feet has been filed with the City Clerk representing 68.75% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, the City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That Alameda Ct., EXCEPT the west 100 feet, as platted by the plat of Crowder's Addition as recorded with the Spokane County Auditor in Bk D, PG 65 under recording Number 3100166, is hereby vacated. Parcel number not assigned.

Section 2. An easement is reserved and retained over and through the entire vacated area for the utility services of Avista Utilities, CenturyLink, and the City of Spokane to protect existing and future utilities.

Passed the City Council \_\_\_\_\_

\_\_\_\_\_  
Council President

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


Approved as to Form:

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

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

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

 <b>Agenda Sheet for City Council Meeting of*</b> 10/07/2019 <input type="text"/>		① Date Rec'd (Clerk use only) 9/26/2019
Briefing date: 09/30/2019 ② Status: <b>SUBMITTER EDITING</b>		③ Clerk's File # ORD C35820
Submitting Dept*: DEVELOPER SERVICES CENTER <input type="text"/>		④ Renewals #
Contact Name & Phone*: ELDON BROWN 6305		⑤ Cross Ref # RES 2019-0072
⑥ Contact E-Mail* EBROWN@SPOKANECITY.ORG		⑦ Project #
⑧ Add'l Docs Attached? <input type="checkbox"/> Hearings <input type="text"/>		⑨ Bid #
⑩ Requisition #		
⑪ Agenda Item Name: Begin with Dept # 4700- VACATION OF CATALDO AVE		
⑫ Agenda Wording*: (119 character max) <input type="checkbox"/> Additional attached? Vacation of Cataldo Ave and a portion of Dean Ave between Washington and Howard, as requested by Spokane Public Facilities District		
⑬ Summary (Background)*: (315 character max.) <input type="checkbox"/> Additional attached? At its legislative session held on September 9, 2019 the City Council set a hearing on the above vacation for October 7, 2019. Staff has solicited responses from all concerned parties.		
⑭ Fiscal Impact Grant related? Yes <input type="radio"/> No <input checked="" type="radio"/> Public Works? Yes <input type="radio"/> No <input checked="" type="radio"/>		
⑮ Budget Account <input type="checkbox"/> Additional attached?		
Neutral <input type="text"/>	\$ <input type="text"/>	# <input type="text"/>
Select <input type="text"/>	\$ <input type="text"/>	# <input type="text"/>
Select <input type="text"/>	\$ <input type="text"/>	# <input type="text"/>
Select <input type="text"/>	\$ <input type="text"/>	# <input type="text"/>
⑯ Approvals		⑰ Council Notifications (Date) <input type="checkbox"/> None
Dept Head	DUVALL, MEGAN	Study Session Urban Experience 8/26/19
Division Director	CORTRIGHT, CARLY	Other
Finance	ORLOB, KIMBERLY	⑱ Distribution List (Emails preferred) <input type="checkbox"/> Additional?
Legal		ebrown@spokanecity.org
For the Mayor		edjohnson@spokanecity.org
⑲ Additional Approvals		kbecker@spokanecity.org
Purchasing		mduvall@spokanecity.org
Select Dept 1 <input type="text"/>		ccortright@spokanecity.org
Select Dept 2 <input type="text"/>		dnorman@spokanecity.org
Select Dept 3 <input type="text"/>		
Save Cancel View Related Documents		

**Support documents not available  
at time of Packet creation.**