

CITY OF SPOKANE



NOTICE

REGARDING CITY COUNCIL MEETINGS

Notice is hereby given that, pursuant to Governor Jay Inslee's **Revised** Proclamation **20-28.15**, dated **January 19, 2021**, all public meetings subject to the Open Public Meetings Act, Chapter 42.30 RCW, are to be held remotely and that the in-person attendance requirement in RCW 42.30.030 has been suspended until termination of the state of emergency pursuant to RCW 43.06.210, or until rescinded, whichever occurs first. Proclamations 20-28, et seq, were amended by the Washington State Legislature to recognize the extension of statutory waivers and suspensions therein until termination of the state of emergency pursuant to RCW 43.06.210 or until rescinded.

While all public meetings must continue to be held remotely, an option for an additional in-person meeting component is permitted in Phase 3 regions consistent with the business meetings requirements contained in the Miscellaneous Venues guidance incorporated into Proclamation 20-25, et seq. At this time, the City Council has decided to continue its meetings with remote access only and to not include an in-person attendance component.

Temporarily and until further notice, the public's ability to attend City Council meetings is by remote access only. In-person attendance is not permitted at this time. The public is encouraged to tune in to the meeting as noted below.

Public comment will be taken virtually on legislative items during the 6:00 p.m. Legislative Session on **September 20, 2021**.

The regularly scheduled Spokane City Council 3:30 p.m. Briefing Session and 6:00 p.m. Legislative Session will be held virtually and streamed live online and airing on City Cable 5. Some members of the City Council and City staff will be attending virtually. The public is encouraged to tune in to the meeting live on Channel 5, at <https://my.spokanecity.org/citycable5/live>, or by calling **1-408-418-9388** and entering the access code **146 396 3105** for the 3:30 p.m. Briefing Session or **146 511 1450** for the 6:00 p.m. Legislative Session when prompted; meeting password is **0320**.

**To participate in virtual public comment:**

Sign up to give testimony at <https://forms.gle/RtciKb2tju6322BB7>. You must sign up in order to be called on to testify. The form will be **open at 5:00 p.m. on Monday, September 20, 2021, and will close at 6:00 p.m.** At 6:00 p.m., you will call in to the meeting using the information above. When it is your turn to testify, Council President will call your name and direct you to hit \*3 on your phone to ask to be unmuted. The system will alert you when you have been unmuted and you can begin giving your testimony. When you are done, you will need to hit \*3 again.

**To participate in Open Forum:**

Open Forum will take place at the end of the City Council Legislative Session unless the meeting lasts past 9:30 p.m., which may be extended by motion. Each speaker is limited to no more than three minutes. In order to participate in Open Forum, you must sign up here: <https://forms.gle/WtfGZ3HqQuXCipcX9>. The form will **open at 5:00 p.m. on Monday, September 20, and will close at 6:00 p.m.** Instructions for participating are available on the form. The Open Forum is a limited public forum; all matters discussed in the open forum shall relate to the affairs of the City and items of interest not relating to 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.

**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!**

**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**

- A. At each meeting, after the conclusion of the legislative agenda, the Council shall hold an open public comment period until 9:30 pm, which may be extended by motion.
- B. At the beginning of the open forum session, staff will collect the sign-up sheet(s) and deliver them to the Chair. The order of the speakers and the appropriate time limits for the speakers will be determined at the discretion of the Chair. Each speaker shall be limited to no more than three minutes.
- C. No action, other than a statement of Councilmembers' intent to address the matter in the future, points of order, or points of information will be taken by Council members during an 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 and items not currently included on that week's current agenda or the next week's advance Council agendas. No person shall be permitted to speak in open forum 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.

**Rule 2.7      SERVICE ANIMALS AT CITY COUNCIL MEETINGS**

- A. For purposes of these Rules, only dogs that are individually trained to do work or perform tasks for a person with a disability are recognized as service animals. Dogs or other animals whose sole function is to provide comfort or emotional support do not qualify as service animals under these Rules. Service animals are permitted to accompany people with disabilities in City Council meetings, as well as all areas where members of the public are allowed to go.
- B. Service animals must, at all times while present in a City Council meeting, be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices, in which case, the individual must maintain control of the animal through voice, signal, or other effective controls.

**Rule 2.15      PARTICIPATION OF MEMBERS OF THE PUBLIC IN COUNCIL MEETINGS**

- A. Members of the public may address the Council regarding the following items on the Council's legislative agenda: first and final readings of regular and special budget ordinances, emergency ordinances, special consideration items, hearing items, and other items before the City Council requiring Council action, except those that are adjudicatory or solely administrative in nature. This rule shall not limit the public's right to speak during the open forum.
- B. No member of the public 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 and provide their city of residence as a condition of recognition. Council members must be recognized by the Chair for the purpose of obtaining the floor.
- C. Each person speaking in a public Council meeting shall verbally identify themselves by name, city of residence, and, if appropriate, representative capacity.
- D. Each speaker shall follow all written and verbal instructions so that verbal remarks are electronically recorded, and documents submitted for the record are identified and marked by the Clerk.
- E. In order that evidence and expressions of opinion be included in the record and that decorum befitting a deliberative process be maintained, no modes of expression not provided by these rules, including but not limited to demonstrations, banners, signs, applause, profanity, vulgar language, or personal insults will be permitted.
- F. A speaker asserting a statement of fact may be asked to document and identify the sources of the factual datum being asserted.

- G. When addressing the Council, members of the public shall direct all remarks to the Council President, shall refrain from remarks directed personally to any Council Member, and shall confine remarks to the matters that are specifically before the Council at that time.
- H. When any person, including members of the public, City staff, and others, are addressing the Council, Council members shall observe the same decorum and process, as the rules require among the members *inter se*. That is, a Council member shall not engage the person addressing the Council in colloquy but shall speak only when granted the floor by the Council President. All persons and/or Council members shall not interrupt one another. The duty of mutual respect set forth in Rule 1.2 and the rules governing debate set forth in *Robert's Rules of Order, newly revised*, shall extend to all speakers before the City Council. The City Council's Policy Director and/or City Attorney shall, with the assistance of Council staff, assist the Council President to ensure that all individuals desiring to speak shall be identified, appropriately recognized, and provided the opportunity to speak.

**Rule 2.16 PUBLIC TESTIMONY REGARDING LEGISLATIVE AGENDA ITEMS – TIME LIMITS**

- A. The City Council shall take public testimony on all matters included on its legislative agenda as described at Rule 2.16(A), with those exceptions stated in Rule 2.17(B). Public testimony shall be limited to the final Council action, except that public testimony shall be allowed at the first reading of ordinances. Public testimony shall be limited to three (3) minutes per speaker, unless, at their discretion, the Chair determines that, because of the number of speakers signed up to testify, less time will be needed for each speaker in order to accommodate all 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 items on the Council's consent agenda, amendments to legislative agenda items, or solely procedural, parliamentary, or administrative matters of the Council, including amendments to these Rules.
- C. For legislative or hearing items that may affect an identifiable individual, association, or group, the following procedure may be implemented at the discretion of the Council President:
  - 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 their presentation the testimony of expert witnesses, visual displays, and any other reasonable methods of presenting the case. Up to thirty (30) minutes may be granted for the proponent's presentation. If there be more than one designated representative, they shall allocate the allotted time between or among themselves.
    - c. Following the presentation of the proponents of the issue, three (3) minutes shall be granted for any other person not associated with the designated representative of the proponents 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 amount of time which was allotted to the proponents.
    - e. Following the presentation by the opponents of the issue, three (3) minutes shall be granted for any other person not associated with the designated representative of the opponents who wishes to speak on behalf of the opponents' position.
    - f. Up to ten (10) minutes of rebuttal time may 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 (3) minutes to present their 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.

# ADDENDUM



## ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, SEPTEMBER 20, 2021

### EMERGENCY ORDINANCES

(Require Five Affirmative, Recorded Roll Call Votes)

Request motion to suspend Council Rules and add the following Ordinance (ORD C36064) to the Agenda (Note: This item was inadvertently left off of the Agenda):

ORD C36064 Clarifying the requirements for the adaptive re-use of historic properties; amending sections 17C.335.010 and 17C.335.110 of the Spokane Municipal Code; declaring an emergency; and providing for an immediate effective date. (Deferred from August 16, 2021, Agenda) (Council Sponsor: Council Member Wilkerson)

**Brian McClatchey**

### RESOLUTIONS & FINAL READING ORDINANCES

(Require Four Affirmative, Recorded Roll Call Votes)

Request motion to suspend Council Rules and add the following item (RES 2021-0079) to the Agenda (Note: This item was inadvertently left off of the Agenda):

RES 2021-0079 Joint Resolution with Spokane County in the matter of authorizing the Spokane Airport Board to execute Purchase and Sale Agreement with the City of Spokane for property located on a portion of Spokane County Assessor Tax Parcel No. 25320.9004, comprising of approximately 2.895 acres of land at Spokane International Airport. (Relates to Consent Agenda Item No. 1) (Council Sponsor: Council President Beggs)

**Larry Krauter**

The following item (ORD C36103) was inadvertently added to the Agenda. The Final Reading of this item is being held on September 13, 2021:

~~ORD C36103 Relating to the executive and administrative organization of the City; amending section 1.01.040 of the Spokane Municipal Code. (Council Sponsor: Council Member Wilkerson)~~

~~**Terri Pfister**~~



**Request motion to suspend Council Rules and add the following item (ORD C36104) to the Agenda (Note: This item was inadvertently left off of the Agenda):**

**ORD C36104      Relating to the Municipal Court's Probation Department and services; amending sections 3.01A.710, 5A.05.020, 5A.11.005, 5A.11.030, 5A.11.030 and 10.07.038 of the Spokane Municipal Code. (Council Sponsor: Council Member Kinnear)**  
**Howard Delaney**

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

06/14/2021

<u>Date Rec'd</u>	6/2/2021
<u>Clerk's File #</u>	ORD C36064
<u>Renews #</u>	

<u>Submitting Dept</u>	CITY COUNCIL	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	BRIAN 625-6210 MCCLATCHEY	<u>Project #</u>	
<u>Contact E-Mail</u>	BMCCLATCHEY@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Emergency Ordinance	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0320 - CLARIFYING HISTORIC RE-USE REGULATIONS		

**Agenda Wording**

An ordinance clarifying the requirements for the adaptive re-use of historic properties; amending sections 17C.335.010 and 17C.335.110 of the Spokane Municipal Code; declaring an emergency; and providing for an immediate effective date.

**Summary (Background)**

This ordinance clarifies that the historic re-use regulations apply to the entire property, rather than just to the structure on the property. This ordinance also restricts historic re-use to properties on the Spokane Historic Register, and gives the Historic Landmarks Commission a greater role in the approval of historic re-use applications.

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

<u>Approvals</u>		<u>Council Notifications</u>	
<b><u>Dept Head</u></b>	ALLERS, HANNAHLEE	<b><u>Study Session\Other</u></b>	UD Comm., 5-10-2021
<b><u>Division Director</u></b>		<b><u>Council Sponsor</u></b>	CM Wilkerson
<b><u>Finance</u></b>	WALLACE, TONYA	<u>Distribution List</u>	
<b><u>Legal</u></b>	PICCOLO, MIKE		
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL		
<u>Additional Approvals</u>			
<b><u>Purchasing</u></b>			

## **ORDINANCE NO. C36064**

An ordinance clarifying the requirements for the adaptive re-use of historic properties; amending sections 17C.335.010 and 17C.335.110 of the Spokane Municipal Code; declaring an emergency; and providing for an immediate effective date.

**WHEREAS**, Spokane has an array of historic properties, many of which are underused, abandoned, or have the potential for blighted conditions, and which can be reused in ways that complement and help spur additional development in neighborhoods that very much need the development of new housing, office space, and retail uses; and

**WHEREAS**, currently, the Spokane Municipal Code allows for the re-use of historic properties in ways that complement, but may not exactly match the underlying zoning; and

**WHEREAS**, however, current chapter 17C.335 of the Spokane Municipal Code contains inherent, internal contradictions and conflicts, which the City Council intends to clarify immediately to help spur the responsible reuse and redevelopment of historic properties located near the city's core in our historic neighborhoods; and

**WHEREAS**, given the existing housing crisis and the dire need for development near or within the City's core, which is also the area within which we are likely to see historic properties in need of re-use, the City Council determines that this ordinance should become effective immediately to more rapidly get these unused historic properties back into productive use and therefore increase the taxable value and improve the economic, aesthetic, and social conditions in neighborhoods that desperately need it.

**NOW THEREFORE**, the City of Spokane does ordain:

**Section 1.** That section 17C.335.010 of the Spokane Municipal Code is amended to read as follows:

### **Section 17C.335.010 Purpose**

The purpose of this chapter is to establish clear and efficient standards and process for the use and re-use of historic structures and the properties on which they are located and to encourage the adaptive reuse of historic structures and properties to more effectively enable economic development, community revitalization, and aesthetic benefit.

**Section 2.** That section 17C.335.110 of the Spokane Municipal Code is amended to read as follows:

### **Section 17C.335.110 Development Standards**

A. Applicability.

The development standards of this section apply only to those structures ~~((or))~~ listed in the ~~((National))~~ Spokane Register of Historic Places and the property on which they are located. All such structures and properties ~~((listed in the National Register))~~ are subject to all of the use restrictions and development standards of the base zone as minimum standards unless otherwise specifically provided by this section or by an approved planned unit development.

#### B. Permits Required.

A change in the use of an historic structure and/or the property on which such structure is located to any use allowed in the base zoning district is permitted through the issuance of a certificate of occupancy so long as there are no significant exterior alterations made to the structure. A Certificate of Appropriateness for any new construction on the property must be applied for and received by the Spokane Historic Landmarks Commission before a building permit may be issued.

#### C. Change in Use.

A change to any use of an historic structure and/or the property on which it is located other than a use listed as permitted in the base zoning district may be allowed by Type III permit from the hearing examiner if the following criteria are met:

1. The structure is listed on the Spokane Register ~~((or National Register))~~ of Historic Places.
2. All proposed changes to the structure or the property on which it is located have been approved by the landmarks commission as being compatible with the historical designation of the structure or property, the form of approval being specified in the rules of procedure of the hearing examiner.
3. The change in use is demonstrated as necessary to ensure that the structure will be preserved, considering all uses allowed in the underlying zone.
4. The benefits to the public arising out of preserving the structure are greater than the harm to the public resulting from allowing the proposed use of the structure or property, considering such factors as public access to the structure or property provided by the proposed use, the distinctive character of the proposed use, the need for the proposed use in the neighborhood in which the ~~((building))~~property is located or in the City, the amount of traffic, noise and other off-site impacts anticipated to be caused by the use and the means available to mitigate any potential off-site impacts.
5. Any change of use of an historic structure which is permitted under this section shall also apply to the remainder of the property on which such historic structure is located.

**Section 3.** That the City Council declares that the need for the expedient redevelopment of historic properties in and near the city core presents an urgency and emergency such that this ordinance is needed to protect the public health, safety, and/or for the support of existing public institutions, and that because of such need, this ordinance shall be effective immediately, under Section 19 of the City Charter, upon the affirmative vote of one more than a majority of the City Council.

**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:**

09/13/2021

**Date Rec'd**

9/20/2021

**Clerk's File #**

RES 2021-0079

**Renews #****Cross Ref #****Project #****Bid #****Requisition #****Submitting Dept**

Spokane Airport Board

**Contact Name/Phone**Larry Krauter, CEO,  
455-6419**Contact E-Mail**

lkrauter@spokaneairports.net

**Agenda Item Type**

Resolutions

**Agenda Item Name**

Airports – Joint Resolution

**Agenda Wording**

Joint Resolution with Spokane County in the matter of authorizing the Spokane Airport Board to execute Purchase and Sale Agreement with the City of Spokane for property located on a portion of Spokane County Assessor Tax Parcel No. 25320.9004, comprising of approximately 2.895 acres of land at Spokane International Airport.

**Summary (Background)**

Pursuant to Paragraph 8(b) of the Spokane International Airport Joint Operation Agreement, Spokane County and the City of Spokane must by joint action approve the acquisition, sale, transfer or disposal of real property and right of first refusal.

Lease? No

Grant related? No

Public Works? No

**Fiscal Impact****Budget Account**

Expense \$

#

Select \$

#

Select \$

#

Select \$

#

**Approvals****Council Notifications****Dept Head****Study Session\Other**

PIES Comm., 4/26/2021

**Division Director****Council Sponsor**

CP Beggs

**Finance****Distribution List****Legal**

lkrauter@spokaneairports.net

**For the Mayor**

twoodard@spokaneairports.net

**Additional Approvals**

kfukai@spokaneairports.net

**Purchasing****MANAGEMENT &  
BUDGET**

## Briefing Paper

### PIES

<b>Division &amp; Department:</b>	Public Works, Engineering
<b>Subject:</b>	SIA Water Reservoir
<b>Date:</b>	4-26-21
<b>Contact (email &amp; phone):</b>	Dan Buller (dbuller@spokanecity.org 625-6391)
<b>City Council Sponsor:</b>	Breen Beggs
<b>Executive Sponsor:</b>	Marlene Feist
<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 Water System Plan
<b>Strategic Initiative:</b>	Innovative Infrastructure
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Approval of water reservoir site purchase

#### Background/History:

- The City's water system plan calls for a new water tank in the vicinity of the existing tanks at or near Spokane International Airport (SIA) to support growth in the West Plains PDA.
- The City has explored various sites including the SIA site and other nearby privately owned sites.
- The SIA site was the least cost alternative which met the various engineering site requirements.

#### Executive Summary:

- Because SIA property was acquired as federal surplus military property, use of SIA property is subject to federal law. That is, for SIA to permit use of airport property for uses other than those directly related to the airport, SIA must surplus the property.
- Federal law controls the surplus process for SIA property. The key regulation is that SIA must sell property to be surplus at market rates.
- FAA, the agency that implements the federal law pertaining to surplus, maintains that the fact that the City is a half owner of the airport is irrelevant. The City must pay the market rate for the property just as any private developer would.
- Furthermore, FAA maintains that the City must also pay SIA for the property beneath the two existing water reservoirs.
- An appraisal has determined the value of the proposed and existing reservoir sites is \$345,000.
- This cost is lower than all other available alternative sites. Staff has begun the paperwork to effect this transaction.

#### Budget Impact:

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

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

If new, specify funding source:

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

#### 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 Resolution No: \_\_\_\_\_  
County Resolution No. \_\_\_\_\_

**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        )  
A PORTION OF SPOKANE COUNTY        )  
ASSESSOR PARCEL 25320.9004        )

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 October 7, 2019 (City of Spokane City Clerk File # RES 2019-0086, Spokane County Resolution No. 19-1338) to provide for the joint operation of Spokane International Airport, Felts Field Airport and Spokane International Airport Business Park ("Agreement"); 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 a portion of Spokane County Assessor Tax Parcel 25320.9004, comprised of approximately 2.895 acres of land near West Pilot Drive, near the intersection of West Pilot Drive and formerly Godfrey Boulevard, in the City ("Property"), as described in that certain Real Property Purchase and Sale Agreements and Escrow Instructions, dated as of September 8, 2021, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; 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 Exhibit A; 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 \_\_\_\_\_, 2021.

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

Approved as to form:

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

ADOPTED by the Board of County Commissioners of Spokane County, Washington this \_\_\_\_\_  
day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Josh Kerns, Chair

ATTEST:

\_\_\_\_\_  
Mary L. Kuney, Vice-Chair

\_\_\_\_\_  
Ginna Vasquez  
Clerk of the Board

\_\_\_\_\_  
Al French, Commissioner

**EXHIBIT A**

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS,  
DATED AS OF SEPTEMBER 8, 2021,  
BY AND BETWEEN SPOKANE AIRPORT AND CITY OF SPOKANE

## 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 8th day of September, 2021 (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 CITY OF SPOKANE, a municipal corporation of the State of Washington ("Buyer"). Seller and Buyer may be referred to collectively as the "Parties" and individually as a "Party" in this Agreement.

### RECITALS

A. Buyer is the operator of two (2) existing water tower improvements ("Water Towers") located on the Real Property (defined below). Buyer's operation and maintenance of the Water Towers is not subject to a ground lease or other formal arrangement between the Parties with respect to the Real Property. The FAA (defined below) requires Buyer to acquire, own, manage and maintain the Real Property in furtherance of its operation and maintenance of the Water Towers and its proposed development.

B. Seller is the owner of fee simple title to tax parcel 25320.9004 consisting of approximately 646.87 acres, all of which is located generally in Spokane ("City"), Spokane County ("County"), Washington ("State") as more particularly bounded and described on Exhibit A-1 attached hereto (the "Seller Property").

C. Buyer desires to acquire a portion of the Seller Property consisting of approximately: One Hundred Twenty Six Thousand One Hundred Six and 20/100 (126,106.20) square feet all of which is approximately 2.895 acres near West Pilot Drive, near the intersection of West Pilot Drive and formerly Godfrey Boulevard, in the City, County, State, as depicted on Exhibit A-2 attached hereto and as described with a proposed legal description on Exhibit A-3 (the "Real Property"), and all right, title and interest of Seller, if any, in and to the land lying within any street or roadway adjoining the Real Property or any vacated street or alley adjoining the Real Property, including rights and easements appurtenant to the Real Property, if any (together with the Real Property, collectively hereinafter referred to as the "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 the County are closed.

2. Escrow Agent: Title Company. The Parties shall open escrow with SPOKANE COUNTY TITLE, 1010 North Normandie, Suite 100, Spokane, WA 99201 (Attn: Keith Newell) ("Escrow Agent" or "Title Company"), within three (3) Business Days after the Effective Date. This Agreement shall serve as escrow instructions, and Buyer and Seller shall execute such additional instructions as Escrow Agent may reasonably require, *provided, however*, that in the event of a conflict between the escrow instructions and this Agreement, this Agreement shall prevail.

3. Purchase Price. The purchase price for the Property will be Three Hundred Forty Five Thousand Dollars (\$345,000) (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 by Buyer at Closing 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.

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, ninety (90) days thereafter subject to extension under Section 4.2(b) below; provided the Parties may mutually agree to extend the Review Period to the extent necessary to allow the Parties to satisfy the closing conditions set forth in Section 5 herein 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 thirty (30) 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) Business 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: (y) terminate this Agreement by delivery of written notice to Seller and Escrow Agent, or (z) 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 (y) or (z) above, Buyer will be deemed to have elected option (z).

(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 three (3) 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, 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 five (5) 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; 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.

(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. Seller shall have the right to be present at any or all inspections. Buyer shall promptly provide Seller copies of the Phase I, 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) No Liens or Interference. Buyer shall not permit, and 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 physical inspections, surveys, investigations, studies, and/or 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 (the "Termination Notice"). 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 fails to send a Termination Notice to Seller and Escrow Agent by the expiration of the Review Period, Buyer will be deemed to have elected to proceed to Closing in accordance with this Agreement. If this Agreement is terminated as provided in this Section 4.5, 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.

4.6 Property Segregation; Form 7460-1.

(a) Segregation Application. During the Review Period, Seller shall cause a preliminary site plan outlining the proposed boundaries for the Real Property to be prepared (the "Site Plan"). On or before the expiration of the Review Period, Buyer and Seller shall use commercially reasonable efforts to mutually agree upon the Site Plan ("Approved Site Plan"). Should the Parties fail to mutually agree upon an Approved Site Plan prior to the expiration of the Review Period, this Agreement shall terminate. Following the Parties mutual approval of the Approved Site Plan and after the expiration of the Review Period, Seller shall, at Buyer's sole cost and expense, prepare and submit to Buyer for Buyer's approval a complete application, including certificates of exemption (if applicable), or certificates of approval (if applicable), for a lot line adjustment, boundary line adjustment, short plat, binding site plan, or other subdivision mechanism reasonably approved by the Parties to create a new legally conveyable tax parcel and adjusting the existing boundaries of the Seller Property to coincide with those depicted in the Approved Site Plan, all of

which must be substantially similar to the approximate boundaries depicted on the attached Exhibit A-2 (the "Segregation Application"). Buyer shall have ten (10) Business Days after receipt of the Segregation Application in which to review and give Seller written notice of Buyer's approval of the Segregation Application or its requested changes thereto. Seller shall within five (5) Business Days modify the Segregation Application as reasonably requested by Buyer, and this approval process shall be repeated until the Segregation Application is approved by Buyer. Once approved by Buyer, the Segregation Application will constitute the "Approved Segregation Application".

(b) Submission of Approved Segregation Application; Form 7460-1. Following the Parties mutual approval of the Approved Segregation Application, Seller shall (i) take all actions necessary to cause the lot line adjustment, boundary line adjustment, short plat, binding site plan, or other subdivision mechanism of the Real Property to coincide with the boundaries set forth in the Approved Segregation Application via the applicable (a) processing of certificates of exemption with the Spokane County Department of Building and Planning, or (b) processing of certificates of approval with the City of Spokane Planning and Development Services Department, and the corresponding finalization of a parcel segregation to be filed or recorded in the official records of the County, or such other subdivision mechanism reasonably approved by the Parties ("Segregation Plan"), with no Unanticipated Approval Conditions other than those approved by Buyer in writing (the "Subdivision Contingency"), and (ii) working in concert with Buyer, submit for FAA approval Form 7460-1, Notice of Proposed Construction or Alteration. Buyer shall reasonably cooperate (at no cost to Seller) with Seller and take all actions reasonably necessary to assist Seller in Seller's efforts to (y) complete the Segregation Plan, including, without limitation, executing such applications and any other documents necessary or convenient with respect to the Segregation Plan, and (z) obtain a positive determination from the FAA, including airspace review clearance, with respect to Form 7460-1 and Buyer's proposed development described therein (the "FAA Project Approval Contingency"). Seller shall promptly provide to Buyer a copy of all written communications with any governmental authority concerning the Approved Segregation Application, Segregation Plan and Form 7460-1, and shall afford Buyer the opportunity to participate in any and all telephonic and in-person meetings and hearings relating thereto, if permissible and reasonably practical. If, as a condition to its approval of the Segregation Plan, any governmental authority requires any material modifications to the metes and bounds of the Real Property from those shown within the Approved Segregation Application or otherwise requires the Real Property to be subject to any material covenants, conditions, restrictions, exactions, off-site improvement obligations, fees in lieu, or impact fees that are not contemplated in the Approved Segregation Application or this Agreement (each, an "Unanticipated Approval Condition"), Seller shall promptly notify Buyer and afford Buyer the opportunity to discuss the same with Seller and such governmental authority. If Buyer, after discussing an Unanticipated Approval Condition with Seller and such governmental authority, determines, in its reasonable discretion, that (I) the applicable governmental authority is unwilling to approve the Segregation Plan without the Unanticipated Approval Condition and (II) such Unanticipated Approval Condition will have a material and adverse impact on Buyer's proposed development, Buyer may terminate this Agreement by delivering written notice to Seller and Escrow Agent and neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement.

(c) Segregation Plan Costs and Fees. Buyer shall be solely responsible for all costs, fees, and expenses associated with the preparation, submission, and administration of the Segregation Application and the satisfaction of the conditions to approval of the

Segregation Plan. In the event this Agreement is terminated and the sale of the Real Property fails to close for any reason neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement. This Section 4.6(c) shall survive Closing or the earlier termination of this Agreement.

(d) Property to Be Acquired at Closing. At Closing, Buyer must purchase the Property, in accordance with all the terms and conditions of this Agreement, including, without limitation, the Purchase Price set forth in Section 3 hereof.

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;

(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) Buyer has obtained all approvals required from the Review Committee (as defined in the CC&Rs) necessary for Buyer's intended use of the Property, provided, such approval remains subject to the satisfaction of the FAA Project Approval Contingency in accordance with Section 4.6(b);

(e) The Subdivision Contingency and FAA Project Approval Contingency shall have been satisfied in accordance with Section 4.6(b); and

(f) 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; *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) The Subdivision Contingency and FAA Project Approval Contingency shall have been satisfied in accordance with Section 4.6(b);

(d) 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

(e) 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), 5.2(b) or 5.2(c) 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. Seller shall use commercially reasonable efforts to cause the conditions set forth in Section 5.2(d) and 5.2(e) (the "Approval Conditions") to be satisfied (which Seller affirmatively cannot waive whether orally or in writing) on or before Closing, *provided*, that Seller's failure to satisfy the Approval Conditions shall not be considered a Seller Default hereunder.

## 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) ninety (90) days following the expiration of the Review Period ("Outside Closing Date"), or (ii) provided that (y) the Approval Conditions have been satisfied, and (z) the FAA Project Approval Contingency has been satisfied, on such earlier date as mutually agreed to by the Parties in writing. Notwithstanding anything herein to the contrary, if Closing has not occurred by the Outside Closing Date, then either Party may, in its sole discretion and at any time thereafter, elect to terminate this Agreement by delivering written notice to the other Party 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.

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, including all recording fees associated with

recording the CC&Rs (as defined below). Buyer shall be solely responsible for all recording fees associated with recording the Avigation Easement (as defined below), and 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 will 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. The cost of any survey of the Real Property obtained by Buyer will be borne by Buyer.

(c) Taxes and Fees. Real estate taxes accruing after Closing, if any, 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) Attorney Fees. Each Party shall pay its own attorney fees incurred with respect to this transaction.

(e) 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 6.3(f).

(f) 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.

(g) 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 duly executed and acknowledged declaration of protective covenants and agreements ("CC&Rs"), in the form attached to this Agreement as Exhibit D.

(4) 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.

(5) 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").

(6) Copies of all current property tax bills and tax notices pertaining to the Real Property, if any.

(7) 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, or cause to be executed and delivered 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 CC&Rs, the Deed, and the Avigation Easement (if applicable) 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 not survive Closing.

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 in Sections 5.2(d) and 5.2(e), 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 Seller 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 **Non-Foreign Person.** Seller is not a "foreign person" as defined in § 1445 of the Code and any related regulations.

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 not survive Closing.

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 **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, rulings, 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 (I) THE PRIOR USE OF THE PROPERTY AS A FORMER MILITARY DEFENSE SITE, (II) BUYER'S EXISTING USE AND OPERATION OF A PORTION OF THE PROPERTY FOR WATER TOWER IMPROVEMENTS AND SYSTEMS, AND (III) 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 (Y) BUYER'S PRIOR AND CURRENT USE AND INSPECTION OF THE PROPERTY AND (Z) BUYER'S OWN INSPECTION OF THE PROPERTY AS PROVIDED UNDER THIS AGREEMENT. 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, (D) 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, (E) THE FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, (F) THE MARKETABILITY OF THE PROPERTY OR THE ABILITY TO LEASE OR SELL THE PROPERTY, (G) THE STATUS OR CONDITION OF ENTITLEMENTS PERTAINING TO THE PROPERTY, (H) DEFICIENCY OF ANY DRAINAGE ON THE REAL PROPERTY, (I) THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE, (J) THE FACT THAT ALL OR A PORTION OF THE PROPERTY WAS FORMERLY USED AS A MILITARY DEFENSE SITE, AND THE CONDITIONS OF SUCH CAUSED BY THE SAME, AND (K) ANY MATTER REGARDING TERMITES OR WASTES, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., OR ANY HAZARDOUS SUBSTANCES. 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.

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.

10.2 Post-Closing Covenants.

(a) Of Buyer. Buyer acknowledges and agrees that 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.

(b) Of the Parties. Not later than twelve (12) months following the Closing, the Parties shall negotiate in good faith and use commercially reasonable efforts to agree upon all terms and conditions of a utility easement agreement ("Utility Easement"), which terms and conditions will include, but not be limited to, a permanent, non-exclusive easement for the construction, reconstruction, maintenance, protection, inspection, and operation of utilities, across, over, under and upon and through those portions of property, as more particularly described therein, for the benefit of the Buyer, and/or such utility providers that provide utility services to a user of the Property, and to burden any owner of any portion of the property on which such utility easement is located. Buyer shall be solely responsible for all recording fees associated with recording the Utility Easement.

(c) Survival. The provisions of this Section 10.2 shall survive Closing.

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, 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. 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 AND SELLER SHALL HAVE ALL RIGHTS AND REMEDIES AVAILABLE TO IT IN LAW AND EQUITY. 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: (y) terminate this Agreement in its entirety by delivery of notice of termination to Seller, or (z) 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 (z) 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. 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  
9000 West Airport Drive, Suite 204  
Spokane, WA 99224  
Attn: Lawrence J. Krauter  
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: City of Spokane  
Engineering Services  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201  
Attn: Dan Buller  
Email: dbuller@spokanecity.org  
Fax: \_\_\_\_\_

with a copy to: City Attorney's Office  
808 W Spokane Falls Blvd  
Spokane, WA 99201  
Attn: James Richman  
Email: jrichman@spokanecity.org  
Fax: 509-625-6277

If to Escrow Agent:                      Spokane County Title  
   1010 North Normandie, Suite 100  
   Spokane, WA 99201  
   Attn: Keith Newell  
   Email: [keith@spokanetitle.com](mailto:keith@spokanetitle.com)  
   Fax: (509) 324-1375

15.4 Survival. Unless expressly provided otherwise in this Agreement, the representations and warranties of Seller contained in this Agreement will not survive Closing.

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 the 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. 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 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.

15.18 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:

CITY OF SPOKANE,  
a municipal corporation of Washington State

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

Approved as to form and content:

  
Brian Werst, General Counsel

Attest:

Approved as to form:

\_\_\_\_\_  
Clerk

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

This Real Property Purchase and Sale Agreement and Escrow Instructions is hereby acknowledged and accepted and the escrow is opened as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021. 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.

SPOKANE COUNTY TITLE

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A-1

LEGAL DESCRIPTION OF SELLER PROPERTY\*

The following real property identified by the Spokane County Assessor as tax parcel number:

APNs: 25320.9004

*\*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 the new Exhibit A-1 to this Agreement.*

EXHIBIT A-2

DEPICTION OF REAL PROPERTY\*



*\*Real Property outlined in red lines.*

### EXHIBIT A-3

#### LEGAL DESCRIPTION OF REAL PROPERTY\*

Legal description of proposed new parcel within existing Spokane County Parcel No. 25320.9004

A parcel of land located within the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of Section 32, Township 25 North, Range 42 East, Willamette Meridian, Spokane County, Washington, as more particularly described as follows:

Commencing at the east quarter corner of said Section 32, monumented with a 5/8" rebar with no identification, from which the southeast corner of Section 32 bears S 03°14'35" East, 2657.64 feet, monumented with a pk nail with no identification.

Thence South 46°24'17" West, 206.64 feet to the east corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444, and the Point of Beginning;  
Thence South 87°57'10" West 109.57 feet to a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence South 01°57'49" East, 233.41 feet to the southeast corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence South 87°57'10" West, 364.70 feet; to the southwest corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence North 01°57'49" West, 191.56 feet to the west corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;  
Thence North 88°03'38" East, 165.03 feet, to a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence North 01°57'49" West, 197.05 feet to the northwest corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence North 87°57'10" East, 309.25 feet to the northeast corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;  
Thence South 01°57'49" East 154.90 feet to the east corner of this parcel, and the Point of Beginning;

Containing: 2.895 Acres more or less

*\*A final legal description of the Real Property shall be determined by the Segregation Plan, once completed, and the Parties acknowledge and agree such legal description will be incorporated herein as the new Exhibit A-3.*

**EXHIBIT B  
FORM OF BARGAIN AND SALE DEED**

Filed for Record at Request of and  
copy returned to:

City of Spokane

Attn: \_\_\_\_\_

Spokane, WA 99201

DOCUMENT TITLE:	BARGAIN AND SALE DEED
GRANTOR:	SPOKANE AIRPORT BOARD
GRANTEE:	CITY OF SPOKANE
ABBREVIATED LEGAL DESCRIPTION:	[*]
ASSESSOR'S PARCEL NO.:	[*]

---

**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, hereby bargains, sells and conveys to CITY OF SPOKANE, a municipal corporation of Washington State, 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:** a restriction that the historical and present use of the Property for water tower improvements shall be the sole and only future use of the Property, as such, any appurtenances, improvements, fixtures or installations of any non-related water tower kind shall not be affixed to or installed on the Property without first obtaining the written consent of Grantor, which consent may be granted or withheld in Grantor's sole and absolute discretion ("Restrictive Covenant").

It being further acknowledged that in the event of any violation or threatened violation of the terms and provisions of the Restrictive Covenant, Grantor or any person claiming through or otherwise entitled to enforce the Restrictive Covenant shall, in addition to all remedies available at law or in equity, have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The specified remedies to which any person entitled to enforce the Restrictive Covenant may resort are cumulative and are not intended to be exclusive of any other remedies or means of redress to which any person entitled to enforce the Restrictive Covenant may be lawfully entitled in case of any breach or threatened breach of any provision hereof. Failure to insist upon, any one or more cases, the strict performance of any of the provisions of the Restrictive Covenant, or to exercise any remedy herein contained, will not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

DATED effective the \_\_\_\_ day of \_\_\_\_\_, 2021.

*[signature page and acknowledgment follows]*

SIGNATURE PAGE  
TO  
BARGAIN AND SALE DEED

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 \_\_\_\_\_, 2021, 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 of Property**

[To be inserted.]



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
GRANTOR:	CITY OF SPOKANE
GRANTEE:	SPOKANE AIRPORT BOARD
ABBREVIATED LEGAL	[*]
DESCRIPTION:	
ASSESSOR'S PARCEL NO.:	[*]

---

**AVIGATION EASEMENT**

THIS AVIGATION EASEMENT ("Easement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"), by CITY OF SPOKANE, a municipal corporation of Washington State ("Grantor") for the benefit of 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, 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: One Hundred Twenty Six Thousand One Hundred Six and 20/100 (126,106.20) square feet all of which is approximately 2.895 acres near West Pilot Drive, near the intersection of West Pilot Drive and formerly Godfrey Boulevard 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 (collectively, 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, 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 of 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 and acknowledgements follow]*

*[remainder of page left intentionally blank]*



Schedule 1  
to  
Avigation Easement

LEGAL DESCRIPTION OF PROPERTY

[To be inserted.]

**EXHIBIT D**  
**FORM OF CC&Rs**

**See attached.**

After Recording Return To:

Lukins & Annis, P.S.  
717 W. Sprague Ave., Ste. 1600  
Spokane, Washington 99201  
Attn: Tyler J. Black

---

### DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS

THIS DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by 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 ("Owner"), with reference to the following facts:

#### RECITALS

A. Owner is the owner of a portion of real property generally located in the city of Spokane, Spokane County, Washington and legally described on the attached Exhibit A (the "Property"), which Property is located in what is commonly referred to as the Spokane International Airport Business Park ("Business Park"). This Agreement imposes certain requirements on all property within the Business Park that the owners thereof will be required to adhere to in connection with the development of their properties. The Owner desires that the Business Park, including the Property, be developed consistent with the parameters and requirements contained in this Agreement.

B. Pursuant to that certain *Purchase and Sale Agreement*, dated \_\_\_\_\_, 202\_\_, ([*as amended*,] the "Purchase Agreement") by and between Owner and [\_\_\_\_\_, a [\_\_\_\_\_] ("Buyer"), the Owner agreed to sell the Property to Buyer, and the parties agreed that the Property would be sold subject to certain protective covenants and agreements regarding the use, development, construction, maintenance and operation of the Property as more particularly described herein.

C. In connection with Owner selling the Property to Buyer, Owner intends by this Agreement to impose upon the Property mutually beneficial restrictions under a general plan of ownership and operation of the Property for the benefit of Owner, Buyer, Buyer's successors-in-interest and assigns thereof.

D. Owner hereby declares that the Property is held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the establishment of the Business Park. All of the limitations, covenants, conditions and restrictions constitute covenants and encumbrances which run with the land and are perpetually binding upon

Owner and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property.

NOW, THEREFORE, in consideration of the foregoing, Owner declares as follows:

1. Incorporation of Recitals. The recitals above are hereby incorporated by reference in this Agreement as though fully set forth herein.

2. Development, Construction and Alteration Review Procedures.

2.1 Review Committee. The following development, construction and alteration standards, as contained herein, are to be used as guidelines for the Buyer, Buyer's builder(s), contractor(s), subcontractor(s), and others preparing plans and specifications for any proposed construction or improvement on the Property and for maintaining such improvements. These guidelines are used by Owner and Owner's designated representatives (hereinafter, "Review Committee"). The Review Committee reserves the right to grant variances or modify these standards as it deems appropriate.

Buyer may not develop the Property in any manner except with the prior written approval of the Review Committee as provided in Section 2.2. For the purposes of this paragraph the term "develop" shall mean filing any formal application with the City of Spokane and County of Spokane, or any other governmental or quasi-governmental entity with authority over the Property, any preliminary or final site plan, request to replat or rezone any portion of the Property, or commencing any material construction or physical alteration of the Property, including, but not limited to, earth movement or construction of material improvements thereon.

2.2 Plans and Approval. Buyer shall deliver or cause to be delivered an electronic copy of all preliminary plans (in .pdf format) to the Review Committee at the address specified in Section 12, or such other address as Owner may specify. The Review Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Agreement and perform such other duties as from time to time shall be deemed appropriate by the Review Committee, including the inspection of construction in progress to assure its conformance with plans approved by the Review Committee. Any application submitted to the Review Committee pursuant to this Section is estimated to take approximately ten (10) business days; however, said period shall not exceed thirty (30) days ("Review Period"). The Review Period is variable depending upon the scale of the project and the completeness of all required plans. Buyer's failure to obtain affirmative, written approval by the Review Committee ("Airport Approval") of such plans and specifications during the Review Period shall be deemed a failure of such plans and specifications to satisfy all requirements hereunder. All plans must be submitted at the same time.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations, or the size, lettering and general appearance of any sign, shall be submitted to the Review Committee for its affirmative, written approval as to the quality of workmanship and design, and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval will be required to rebuild in accordance with the original plans and



specifications, or to rebuild in accordance with plans and specifications previously approved by the Review Committee.

Anything in this Section 2.2 to the contrary notwithstanding, plans and specifications submitted to the Review Committee must include, but is not limited to, the following:

- (i) Site plan (minimum scale 1" = 50') as well as a color architectural rendering at a reasonable scale that shows front, rear and side elevations with accurate depiction of proposed exterior cladding and glazing;
- (ii) Property lines, road right of ways and easements;
- (iii) The location of buildings, parking areas, drainage areas, fuel storage tanks, etc.;
- (iv) Indicate setbacks, dimensions of Property lines and distances between buildings;
- (v) Proposed driveways and curb cuts with arrows indicating vehicular traffic patterns in and out of the site and to and from all loading berths and parking areas;
- (vi) Parking and loading area layout including designated parking areas (employee, tractor-trailer and/or visitor), on-grade and dock high loading and delivery areas, maneuvering areas, operational equipment storage, etc.;
- (vii) The location of sidewalks;
- (viii) Roof details sufficient to ensure that the design will not create standing or ponding water and that roof materials will not create glare. Solar panels will not be approved without a specific glare study subject to FAA review and approval;
- (ix) Areas to be landscaped with the description of the type (tree, groundcover, and/or shrub), height, and location of all landscaping materials. Also locate any berms, existing landscaping or site features to remain, screening, and signage incorporated into the landscaped areas;
- (x) The location of any perimeter fencing and vehicle and/or pedestrian gates as well as any outdoor fencing or screening walls internal to the site and description of physical characteristics such as height, material proposed to be used (i.e. wood, plastic, chain link, vinyl-coated chain-link, masonry, and the color of the material(s), etc.). The use of barbed wire, concertina wire or razor wire is prohibited, as is the use of energized fences. The Review Committee will consider any special circumstances that may warrant higher level physical security of the premises and the Review Committee will have the sole and final decision making authority with regard to fencing;
- (xi) The location and identification of existing and proposed utilities which cross public and Owner owned property to service the Property, building and the site,

including gas, electricity, telephone and/or fiber optic telecommunications, water, storm and sanitary sewer;

(xii) The location of all special appurtenances including utility boxes, satellite dishes, antennas, exhaust stacks, etc.;

(xiii) The location of exterior lighting fixtures;

(xiv) Site drainage features; and

(xv) Topography and preliminary grading information.

3. Approvals. Except as otherwise provided in Section 2.2, Buyer acknowledges and agrees that Buyer must obtain Airport Approval and FAA Approval (as defined below) prior to the commencement of any proposed construction or improvement on the Property and for maintaining such improvements. Buyer's receipt of Airport Approval and FAA Approval shall constitute Buyer's satisfaction of all such approvals required pursuant to this Agreement.

4. Buildings.

4.1 Designs. All buildings shall be designed by a registered architect or engineer licensed to practice in the State of Washington. Appropriate architectural design is strongly encouraged. Industrial site and building development utilizing minimum standards that may create monotonous and unimaginative design will be critically reviewed and may not be approved without mitigating conditions. Building locations should optimize roadway exposure and avoid a crowded appearance.

4.2 Heights. Buyer acknowledges that the typical maximum height of any structure shall be in conformance with any applicable zoning requirements in place at the time of development; *provided, however*, in all cases, all airspace and approach zone height limitations as defined by the Federal Aviation Administration ("FAA") shall be the final controlling factor in determining maximum structure height. Upon receipt of all relevant information provided by the Buyer, in connection with obtaining Airport Approval, the Review Committee shall guide and assist the Buyer with the required completion of FAA Form 7460-1 – "Notice of Proposed Construction or Alteration" for FAA approval ("FAA Approval"). Buyer is ultimately responsible for the completion of FAA Form 7460-1. Buyer must obtain FAA Approval prior to the commencement of construction.

5. Lighting. The objective of on-site lighting is to highlight landscaped areas, pedestrian circulation (walkways), buildings, identification signs, parking or approved storage for decorative or security reasons. Lighting shall be designed to avoid or minimize light diffusion to adjoining property where negative impacts may be created. The lighting should complement and not dominate the design character of the site. Indirect wall lighting or "wall washing", overhead down lighting, or interior illumination which spills outside is encouraged.

Architectural lighting should articulate and animate the particular building design as well as provide the required functional lighting for safety and clarity of pedestrian movement. Although exterior security and feature lighting is not required, it is strongly recommended for safety and enhancement.

Utility service for lighting shall be provided underground. All exterior lighting should be LED or other forms of modern energy-efficient lighting and shall be aimed downward with appropriate cutoff fixtures to eliminate any upward glare in order to not adversely impact aircraft operations at Spokane International Airport.

Wall mounted lighting should not project above the wall or building parapet. No lighting fixtures shall be attached or supported from the roof of any building.

The foregoing notwithstanding, Buyer shall, at its sole cost and expense, install, maintain, and repair in good workmanlike order sufficient exterior lighting to achieve one (1) foot candle of coverage across the entire Property using cutoff fixtures that will not project light upward as confirmed through a photometric plan/study.

6. Perimeter Fence. Following the Closing (as defined in the Purchase Agreement) Owner shall, at its sole cost and expense, construct and install in good workmanlike order an eight (8) foot high chain link perimeter fence on the Property ("Security Fencing"), the purpose of which is to: (i) enhance and improve security measures with respect to any current and future improvements, (ii) restrict access to authorized personnel of Buyer, Buyer's agents, invitees, licensees, and other representatives, and (iii) eliminate, to the extent possible: (x) trespass, (y) an attractive nuisance and (z) the improvements thereon becoming a harbor for vagrants, criminals or immoral persons. Following installation of the Security Fencing, Buyer shall, at its sole cost and expense, maintain and repair the Security Fencing in a good workmanlike order.

7. Paint Scheme. Any and all improvements located on the Property, including but not limited to, the current and future improvements of water tower installations shall be painted, marked, visually distinct and apparent using the recommended guidelines to make certain structures conspicuous to pilots during daylight hours. Buyer shall, at its sole cost and expense, use the most current U.S. Department of Transportation, Federal Aviation Administration, Advisory Circular, AC 70-7460-1M, "Obstruction Marking and Lighting" guidelines, as the same may be revised, amended or supplemented from time-to-time, for painting and maintaining such paint scheme on said improvements.

8. Landscaping. Planting within the Business Park will play a key role in creating overall character for the development as a park-like working environment. When adjacent properties have been developed, plant materials selected should be complementary, providing a sense of continuity to all sites. When adjacent properties have not been developed, plant materials selected should be complementary to the closest developed property and set a positive example for future development. All landscaping shall be limited to Airport-approved plant materials for use at and around the Spokane International Airport.

9. Site Drainage; Stormwater Runoff; Snow Removal. The Property must include adequate storm drainage to provide for the on-site disposal of all stormwater. Drainage into or onto adjacent property and/or roadways is not permitted. All stormwater runoff resulting from constructed impervious surfaces shall be properly removed within the Property. Grass and/or landscaped areas shall be designated to accommodate excessive stormwater runoff. Compliance with applicable federal, state and local regulations is required. Buyer shall use the most current Washington State Department of Transportation Aviation Stormwater Design Manual, as the same may be revised,

amended, restated or supplemented from time-to-time, for designing stormwater management facilities. As of the date of this Agreement first written above the Washington State Department of Transportation Aviation Stormwater Design Manual may be accessed with the following link <https://wsdot.wa.gov/aviation/AirportStormwaterGuidanceManual.htm>.

Buyer shall be responsible for snow removal on the Property, including driveways and all pedestrian walkways. Storage or piling of removed snow from the Property into or onto adjacent property and/or roadways is not permitted.

10. **Maintenance and Repair.** Buyer shall keep the Property and any improvements erected thereon in a good, clean, attractive, safe and sanitary condition, order and repair. Buyer shall comply promptly with all applicable laws pertaining to the use or occupancy of the Property, as such applicable laws now exist or may hereafter provide.

11. **Nuisance.** No noxious, illegal, or offensive activities may be carried on the Property, or in any part of the Property, nor may anything be done thereon that may be or may become an annoyance or a nuisance to, or that may in any way interfere with, the quiet enjoyment of adjacent property and by each of the respective property owners.

12. **Notices.** Except as otherwise provided in Section 2.2, all submissions or 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, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) 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 Owner:	Spokane International Airport c/o Review Committee 9000 West Airport Drive, Suite 204 Spokane, WA 99224 Attn: Manager of Properties and Contracts
--------------	---

13. **Enforcement.** The right to enforce the terms and covenants contained herein will belong to Owner and its successors and assigns. In the event of any violation or threatened violation of the terms and provisions of this Agreement, any person entitled to enforce this Agreement shall have, in addition to all remedies available at law or in equity, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The specified remedies to which any person entitled to enforce this Agreement may resort, under the terms of this Agreement, are cumulative and are not intended to be exclusive of any other remedies or means of redress to which any person entitled to enforce this Agreement may be lawfully entitled in case of any breach or threatened breach of any provision hereof. Failure to insist, in any one or more cases, upon the strict performance of any of the provisions of this Agreement, or to exercise any remedy herein contained, will not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

14. Limitation of Liability. Owner, the Review Committee, and any of the Review Committee's staff may grant, withhold or deny its consent, permission, or approval in any instance where its consent, permission, or approval is permitted or required at its sole discretion and without any liability of any nature or kind to Buyer or any other person for any reason whatsoever. Owner will not be held liable or responsible for any violation of this Agreement by any person other than itself.

15. Term; Modification. The term of this Agreement shall be perpetual. This Agreement and any provision or covenant herein may be terminated, extended, modified or amended only upon obtaining the written consent of Owner and its successors-in-interest and assigns and the then-owner of the Property; *provided, however*, that no termination, extension, modification or amendment of this Agreement will be effective unless a written instrument setting forth the terms thereof has been executed, acknowledged and recorded in the offices of the auditor of Spokane County, Washington.

16. Covenants Run With the Land. The covenant given pursuant to this Agreement shall be deemed to be a covenant running with the Property and shall be binding upon and benefit the heirs, successors in interest, assigns and devisees of the parties hereto.

17. Governing Law; Venue. This Agreement shall be governed by the laws of the state of Washington. Any action related to this Agreement shall be brought in Spokane County, Washington.

*[signature page and acknowledgement follows]*

IN WITNESS WHEREOF the Owner has executed and delivered this Agreement to be effective as of the Effective Date.

OWNER:

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 \_\_\_\_\_, 20\_\_\_\_, 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)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

[To be inserted.]

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

09/13/2021

**Date Rec'd**

8/25/2021

**Clerk's File #**

ORD C36104

**Renews #****Submitting Dept**

MUNICIPAL COURT

**Cross Ref #****Contact Name/Phone**

HOWARD DELANEY 625-4450

**Project #****Contact E-Mail**

HDELANEY@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

First Reading Ordinance

**Requisition #****Agenda Item Name**

PROBATION CHANGE TO COMMUNITY JUSTICE SERVICES

**Agenda Wording**

As part of the Court's ongoing criminal justice reform efforts, the Spokane Municipal Code will be amended to convert all references to the "Probation Department" to the Community Justice Services Department" and "probation" to "supervision".

**Summary (Background)**

The Probation Department has operated on a status quo basis for nearly 30 years, using traditional supervision approaches that have not kept pace with the evolution of evidence based supervision practices. As part of the Court's criminal justice reform initiatives, the Probation Department is completing a transition from a quasi-law enforcement supervision model to a more evidence based quasi-therapeutic/social work based model in advance of the launch of its supportive release pilot. Although the department will still operate under the authority of Rule 11 of the Administrative Rules for Courts of Limited Jurisdiction and SMC 03.01A.710, rebranding the department from "Probation" to "Community Justice Services" will better align the organization's title with its operational modality and assist in changing organizational and public opinions and perceptions associated with the name "Probation Department". Along with this change in the formal title of the organization, Civil Service is contemporaneously working on changing position titles within the organization from "Probation Officers" and Probation Specialist" to "Community Justice Counselors and Community Justice Specialists".

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact****Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

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

DELANEY, HOWARD

**Study Session\Other**

8/2 Public Safety

**Division Director**

ANTUSH, MATTHEW

**Council Sponsor**

CM Kinnear

**Finance**

BUSTOS, KIM

**Distribution List****Legal**

PICCOLO, MIKE

Howard Delaney

**For the Mayor**

ORMSBY, MICHAEL

Lori Kinnear

**Additional Approvals**

Michael Ormsby

**Purchasing**

Michael Diamond



## **ORDINANCE C36104**

An ordinance relating to the Municipal Court's Probation Department and services; amending sections 3.01A.710, 5A.05.020, 5A.11.005, 5A.11.030, 5A.11.030 and 10.07.038 of the Spokane Municipal Code.

Now, therefore, the City of Spokane does ordain:

Section 1. That Section 3.01A.710 of the Spokane Municipal Code is amended to read as follows:

### **3.01A.710 ((Probation)) Community Justice Services**

1. The ((probation)) community justice services department, which performs the function of a misdemeanor probation department under the authority provided in Rule 11 of the Administrative Rules for Courts of Limited Jurisdiction, supervises offenders placed on ((probation)) supervision by the municipal court to ensure compliance with court orders, supervises conditions of pre-trial release, refers offenders to various community agencies for programs, facilitates evidence based programs proven to reduce re-offense, conducts pre and post sentence investigations, conducts financial screening for public defense services, and works with law enforcement and community agencies to promote offender compliance and rehabilitation and promote victim and community safety.
2. The person responsible for the administrative oversight and day-to-day management of the ((probation)) community justice services department is appointed by presiding judge of the municipal court upon a majority vote of judges present at a regularly scheduled judges' meeting.

Section 2. That Section 5A.05.020 of the Spokane Municipal Code is amended to read as follows:

### **5A.05.020 Other Judicial Officers**

Judges Pro Tem.

1. Pursuant to RCW 3.50.090, the presiding municipal court judge may designate one or more persons as judges pro tem to serve in the absence or disability of the elected or duly appointed judges of the court, subsequent to the filing of an affidavit of prejudice, or in addition to the elected or duly appointed judges when the administration of justice and the accomplishment of the work of the court make it necessary.
2. The qualifications of a judge pro tempore shall be the same as for judges as provided under RCW 3.50.040, except that a judge pro tempore need not be a resident of the City or County of Spokane.

3. Judges pro tempore shall have all of the powers of the duly appointed or elected judges when serving as judges pro tempore of the court.
  4. Before entering his or her duties, each judge pro tempore shall take, subscribe, and file an oath as is taken by a duly appointed or elected judge.
  5. Judges pro tempore shall receive, and the City shall pay, compensation as fixed by ordinance. The compensation of a judge pro tem shall be one hundred twenty-five dollars per half-day of service.
  6. The City shall have authority to appoint a district judge as its municipal judge when the municipal judge is not required to serve full time. In the event of the appointment of a district judge, the City shall pay a pro rata share of the salary.
- B. Court Commissioners.
1. Pursuant to RCW 3.50.075, one or more court commissioners may be appointed by the presiding judge of the municipal court. Each commissioner holds office at the pleasure of the appointing judge.
  2. A commissioner authorized to hear or dispose of cases must be a lawyer who is admitted to practice law in the State of Washington or a nonlawyer who has passed, prior to January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.
  3. On or after July 1, 2010, when serving as a commissioner, the commissioner does not have authority to preside over trials in criminal matters or jury trials in civil matters unless agreed to on the record by all parties.
  4. A commissioner need not be a resident of the City or County of Spokane.
  5. Full-time commissioners shall receive compensation equivalent to between seventy-five percent (75%) and eighty percent (80%) of the salary set for a Spokane Municipal Court judge under the provisions of Section 05A.05.040(B) of the Spokane Municipal Code.

In the event the Presiding Judge, in consultation with the Associate Judges, elects to name a Court Commissioner as the Administrative Court Commissioner, with additional duties related to functions associated with unfilled positions for Court Administrator and ~~((Chief Probation Officer))~~ Director of Community Justice Services, the Administrative Court Commissioner shall receive compensation equivalent to between ninety percent (90%) and ninety-five percent (95%) of the salary set for a Spokane Municipal Court judge under the provisions of Section 05A.05.040(B) of the Spokane Municipal Code.

Newly appointed court commissioners or administrative court commissioners may be placed at any percentage of a Spokane Municipal Court judge's salary within the specified ranges, at the discretion of the Presiding Judge. Salary increases will not occur annually on an automatic basis, but will be approved or disapproved and established on an annual basis based upon an individual commissioner receiving a satisfactory rating on that commissioner's annual performance review. Performance reviews shall be conducted by the Presiding Judge, in consultation with the Associate Judges, on the annual anniversary date of each commissioner's appointment as a commissioner, or as soon thereafter as may be practical.

Section 3. That Section 5A.11.005 of the Spokane Municipal Code is amended to read as follows:

**5A.11.005 Sentencing Policy of the City of Spokane**

The City of Spokane Office of the City Attorney and the Municipal Court shall pursue sentences and dispositions that are most likely to protect crime victims and other community members from future recidivism of the person sentenced by the Municipal Court. This sentencing could include the criminogenic needs, responsivity and threat of the person sentenced. The sentencing and supervision through ~~((Probation))~~ the community justice services department could include the use of evidence based psychological instruments and data regarding disposition alternatives.

Section 4. That Section 5A.11.020 of the Spokane Municipal Code is amended to read as follows:

**5A.11.020 Suspension or Deferral of Sentences**

Unless otherwise provided by state law, the court shall have the following sentencing authority:

- A. Pursuant to RCW 3.50.320, after a conviction, the court may impose sentence by suspending all or a portion of the defendant's sentence or by deferring the sentence of the defendant and may place the defendant on ~~((probation))~~ post disposition supervision for a period of no longer than two years and prescribe the conditions thereof.
  - 1. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of ~~((probation))~~ post disposition supervision when ordered to do so by the court, shall have the term of ~~((probation))~~ post disposition supervision tolled until such time as the defendant makes his or her presence known to the court on the record.
  - 2. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty, permit the defendant to enter a plea of not guilty, and dismiss the charges.
- B. Pursuant to RCW 3.50.330, for a period not to exceed five years after imposition of sentence for a defendant sentenced under RCW 46.61.5055 and two years after imposition of sentence for all other offenses, the court shall have continuing jurisdiction and authority to suspend or defer the execution of all or any part of the sentence upon stated terms, including installment payment of fines.

1. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of ~~((probation))~~ post disposition supervision when ordered to do so by the court, shall have the term of ~~((probation))~~ post disposition supervision tolled until such time as the defendant makes his or her presence known to the court on the record.
  2. The jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720.
  3. Any time before entering an order terminating ~~((probation))~~ post disposition supervision, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence.
- C. Pursuant to RCW 3.50.340, deferral of sentence and suspension of execution of sentence may be revoked if the defendant violates or fails to carry out any of the conditions of the deferral or suspension.
1. Upon the revocation of the deferral or suspension, the court shall impose the sentence previously suspended or any unexecuted portion thereof. In no case shall the court impose a sentence greater than the original sentence, with credit given for time served and money paid on fine and costs.
  2. Any time before entering an order terminating ~~((probation))~~ post disposition supervision, the court may revoke or modify its order suspending the imposition or execution of the sentence.
  3. If the ends of justice will be served and when warranted by the reformation of the ~~((probationer))~~ supervisee, the court may terminate the period of ~~((probation))~~ post disposition supervision and discharge the person so held.

Section 5. That Section 5A.11.030 of the Spokane Municipal Code is amended to read as follows:

#### **5A.11.030 Offender Supervision by Another State**

- A. If a person placed on ~~((probation))~~ post disposition supervision for one year or more for a misdemeanor or gross misdemeanor by a municipal court requests permission to travel or transfer to another state, the assigned ~~((probation officer))~~ community justice services counselor shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the ~~((probation officer))~~ community justice services counselor shall:

1. notify the department of corrections of the ((probationer's)) supervisee's request;
  2. provide the department of corrections with the supporting documentation it requests for processing an application for transfer;
  3. notify the ((probationer)) supervisee of the fee due to the department of corrections for processing an application under the compact;
  4. cease supervision of the ((probationer)) supervisee while another state supervises the probationer pursuant to the compact;
  5. resume supervision if the ((probationer)) supervisee returns to this state before the term of ((probation)) supervision expires.
  - 6.
- B. The ((probationer)) supervisee shall receive credit for time served while being supervised by another state.
- C. Pursuant to RCW 3.50.355, if the ((probationer)) supervisee is returned to the state at the request of the receiving state under rules of the interstate compact for adult offender supervision, the department of corrections is responsible for the cost of returning the ((probationer)) supervisee.
- D. Pursuant to RCW 3.50.355, the City of Spokane and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence.

Section 6. That Section 10.07.038 of the Spokane Municipal Code is amended to read as follows:

### **10.07.038 Rendering Criminal Assistance in the Second Degree**

- A. A person is guilty of rendering criminal assistance in the second degree if he renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, ((probation)) post disposition supervision or community supervision.
- B. Rendering criminal assistance in the second degree is a:
1. misdemeanor if it is established by a preponderance of the evidence that the actor is a "relative" as defined in SMC 10.07.036 or RCW 9A.76.060;
  2. gross misdemeanor in all other cases.

PASSED by the City Council on \_\_\_\_\_.

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

Attest:

Approved as to form:

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

# THE CITY OF SPOKANE



## ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, SEPTEMBER 20, 2021

### **MISSION STATEMENT**

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

**MAYOR NADINE WOODWARD**

**COUNCIL PRESIDENT BREEAN BEGGS**

**COUNCIL MEMBER KATE BURKE**

**COUNCIL MEMBER LORI KINNEAR**

**COUNCIL MEMBER KAREN STRATTON**

**COUNCIL MEMBER MICHAEL CATHCART**

**COUNCIL MEMBER CANDACE MUMM**

**COUNCIL MEMBER BETSY WILKERSON**

**CITY COUNCIL CHAMBERS  
CITY HALL**

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

## **LAND ACKNOWLEDGEMENT**

We acknowledge that we are on the unceded land of the Spokane people. And that these lands were once the major trading center for the Spokanes as they shared this place and welcomed other area tribes through their relations, history, trade, and ceremony. We also want to acknowledge that the land holds the spirit of the place, through its knowledge, culture, and all the original peoples Since Time Immemorial.

As we take a moment to consider the impacts of colonization may we also acknowledge the strengths and resiliency of the Spokanes and their relatives. As we work together making decisions that benefit all, may we do so as one heart, one mind, and one spirit.

We are grateful to be on the shared lands of the Spokane people and ask for the support of their ancestors and all relations. We ask that you recognize these injustices that forever changed the lives of the Spokane people and all their relatives.

We agree to work together to stop all acts of continued injustices towards Native Americans and all our relatives. It is time for reconciliation. We must act upon the truths and take actions that will create restorative justice for all people.

Adopted by Spokane City Council on the 22nd day of March, 2021  
*via Resolution 2021-0019*



## 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 during the Open Forum at the beginning and the conclusion of the Legislative Agenda on any issue not relating to the Current or Advance Agendas, pending hearing items, or initiatives or referenda in a pending election.

### ADDRESSING THE COUNCIL

- No member of the public 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 and provide their city of residence as a condition of recognition.
- Each person speaking at the public microphone shall verbally identify themselves by name, city of residency 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, no modes of expression including but not limited to demonstrations, banners, signs, applause, profanity, vulgar language or personal insults will 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. Real Property Purchase and Sale Agreement by and between the Spokane Airport Board and the City of two existing water towers, parcel 25320.9004—\$345,000. (Council Sponsor: Council President Beggs)<br><b>Marlene Feist</b>  | Approve        | OPR 2021-0610 |
| 2. Purchase from Municipal Emergency Services (Vancouver, WA) of Self-Contained Breathing Apparatus equipment to meet current National Fire Protection Association standards—\$2,152,962 (incl. tax). (Council Sponsor: Council Member Kinnear)<br><b>Brian Schaeffer</b> | Approve        | OPR 2021-0611 |
| 3. Purchase of:   | Approve<br>All |               |
| a. 100 PepperBall less-lethal launching systems for compliance with police reform House Bills 1310 and 1054—\$67,931.53, and  |                | OPR 2021-0612 |
| b. 77 Ballistic shields and carrying bags utilizing NASPO contracts 164720/03720—\$145,867 (3.a. and 3.b. funded through legislation implementation funds). (Council Sponsor: Council Member Kinnear)<br><b>Maj. Mike McNab</b>   |                | OPR 2021-0613 |

- |  |                                    |               |
|--|------------------------------------|---------------|
| 4. Contract with Pomegranate Associates (Bellevue, WA) for facilitation and engagement training for City staff and Neighborhood Councils related to the Traffic Calming Program—not to exceed \$115,000 (plus tax) to come from the Traffic Calming Fund. (Council Sponsor: Council President Beggs)<br><b>Shauna Harshman</b>             | Approve                            | OPR 2021-0614 |
| 5. Acceptance of Spokane County Consolidated Homeless Grant and permission to sub-award funds to partner agencies—\$821,163. (Council Sponsor: Council Member Kinnear)<br><b>Cassi Brown</b>   | Approve                            | OPR 2021-0615 |
| 6. Interlocal Agreement among Spokane County, City of Spokane, and Spokane Area Workforce Development Council regarding the lease of space for the Resource Center of Spokane County (formerly Spokane EnVision Center) from June 1, 2021, through May 31, 2023—\$201,791. (Council Sponsor: Council Member Kinnear)<br><b>Dave Steele</b> | Approve                            | OPR 2021-0616 |
| 7. Report of the Mayor of pending claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2021, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____.   | Approve &<br>Authorize<br>Payments | CPR 2021-0002 |
| 8. City Council Meeting Minutes: _____, 2021.  | Approve<br>All                     | CPR 2021-0013 |

---

## EXECUTIVE SESSION

(Closed Session of Council)

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

---

## CITY COUNCIL SESSION

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

(Council Briefing Center)

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

---

# **LEGISLATIVE SESSION**

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

**ROLL CALL OF COUNCIL**

**ANNOUNCEMENTS**

(Announcements regarding Changes to the City Council Agenda)

**NO BOARDS AND COMMISSIONS APPOINTMENTS**

**ADMINISTRATIVE REPORT**

---

## **COUNCIL COMMITTEE REPORTS**

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

---

## **LEGISLATIVE AGENDA**

**NO SPECIAL BUDGET ORDINANCES**

**NO EMERGENCY ORDINANCES**

**RESOLUTIONS & FINAL READING ORDINANCES**

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2021-0077     Setting a hearing before City Council for October 25, 2021, for the Street Vacation of Adams Street from the South line of Third Avenue to the North line of I-90, together with the alley between Third Avenue and I-90 from the East line of Adams Street to the West line of Jefferson Street. As requested by Volunteers of America Hope House.  
**Eldon Brown**
- RES 2021-0078     Pre-approving the purchase of vehicles by the City of Spokane.  
**Michael Ormsby**
- ORD C36103        Relating to the executive and administrative organization of the City; amending section 1.01.040 of the Spokane Municipal Code. (Council Sponsor: Council Member Wilkerson)  
**Terri Pfister**

**NO FIRST READING ORDINANCES**

---

**NO SPECIAL CONSIDERATIONS**

## **HEARINGS**

---

### **Motion to Approve Advance Agenda for September 20, 2021 (per Council Rule 2.1.2)**

---

## **OPEN FORUM**

At each meeting after the conclusion of the legislative agenda, the Council shall hold an open public comment period until 9:30 p.m., which may be extended by motion. Each speaker is limited to no more than three minutes. In order to participate in Open Forum, you must sign up here: <https://forms.gle/WtfGZ3HqQuXCipcX9>. The form will open at 5:00 p.m. on Monday, September 20, and will close at 6:00 p.m. Instructions for participating are available on the form. The Open Forum is a limited public forum; all matters discussed in the open forum shall relate to the affairs of the City and items of interest not relating to 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.

## **ADJOURNMENT**

The September 20, 2021, Regular Legislative Session of the City Council is adjourned to September 27, 2021.

---

## **NOTES**

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

09/20/2021

**Date Rec'd**

9/8/2021

**Clerk's File #**

OPR 2021-0610

**Renews #****Cross Ref #****Submitting Dept**

ENGINEERING SERVICES

**Contact Name/Phone**

DAN BULLER 625-6391

**Project #**

2018050

**Contact E-Mail**

DBULLER@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

Purchase w/o Contract

**Requisition #****Agenda Item Name**

0370-SPOKANE INTERNATIONAL AIRPORT WATER RESERVOIR

**Agenda Wording**

Property purchase from Spokane Airport Board for the SIA Water Reservoir site.

**Summary (Background)**

A property purchase agreement between Spokane Airport Board and the City; Parcel 25320.9004.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact****Budget Account**

Expense \$ 345,000.00

# 4250-98818-94340-56501-15775.

Select \$

#

Select \$

#

Select \$

#

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

BULLER, DAN

**Study Session\Other**

PIES 4-26-21

**Division Director**

FEIST, MARLENE

**Council Sponsor**

Beggs

**Finance**

WALLACE, TONYA

**Distribution List****Legal**

ODLE, MARI

eraea@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

publicworksaccounting@spokanecity.org

**Additional Approvals**

kgoodman@spokanecity.org

**Purchasing**

dbuller@spokanecity.org

aduffey@spokanecity.org

lkrauter@spokaneairports.net

jrichman@spokanecity.org

## Briefing Paper

### PIES

<b>Division &amp; Department:</b>	Public Works, Engineering
<b>Subject:</b>	SIA Water Reservoir
<b>Date:</b>	4-26-21
<b>Contact (email &amp; phone):</b>	Dan Buller (dbuller@spokanecity.org 625-6391)
<b>City Council Sponsor:</b>	Breen Beggs
<b>Executive Sponsor:</b>	Marlene Feist
<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 Water System Plan
<b>Strategic Initiative:</b>	Innovative Infrastructure
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Approval of water reservoir site purchase

#### Background/History:

- The City's water system plan calls for a new water tank in the vicinity of the existing tanks at or near Spokane International Airport (SIA) to support growth in the West Plains PDA.
- The City has explored various sites including the SIA site and other nearby privately owned sites.
- The SIA site was the least cost alternative which met the various engineering site requirements.

#### Executive Summary:

- Because SIA property was acquired as federal surplus military property, use of SIA property is subject to federal law. That is, for SIA to permit use of airport property for uses other than those directly related to the airport, SIA must surplus the property.
- Federal law controls the surplus process for SIA property. The key regulation is that SIA must sell property to be surplus at market rates.
- FAA, the agency that implements the federal law pertaining to surplus, maintains that the fact that the City is a half owner of the airport is irrelevant. The City must pay the market rate for the property just as any private developer would.
- Furthermore, FAA maintains that the City must also pay SIA for the property beneath the two existing water reservoirs.
- An appraisal has determined the value of the proposed and existing reservoir sites is \$345,000.
- This cost is lower than all other available alternative sites. Staff has begun the paperwork to effect this transaction.

#### Budget Impact:

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

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

If new, specify funding source:

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

#### 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:







## **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 8th day of September, 2021 (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 CITY OF SPOKANE, a municipal corporation of the State of Washington ("Buyer"). Seller and Buyer may be referred to collectively as the "Parties" and individually as a "Party" in this Agreement.

### RECITALS

A. Buyer is the operator of two (2) existing water tower improvements ("Water Towers") located on the Real Property (defined below). Buyer's operation and maintenance of the Water Towers is not subject to a ground lease or other formal arrangement between the Parties with respect to the Real Property. The FAA (defined below) requires Buyer to acquire, own, manage and maintain the Real Property in furtherance of its operation and maintenance of the Water Towers and its proposed development.

B. Seller is the owner of fee simple title to tax parcel 25320.9004 consisting of approximately 646.87 acres, all of which is located generally in Spokane ("City"), Spokane County ("County"), Washington ("State") as more particularly bounded and described on Exhibit A-1 attached hereto (the "Seller Property").

C. Buyer desires to acquire a portion of the Seller Property consisting of approximately: One Hundred Twenty Six Thousand One Hundred Six and 20/100 (126,106.20) square feet all of which is approximately 2.895 acres near West Pilot Drive, near the intersection of West Pilot Drive and formerly Godfrey Boulevard, in the City, County, State, as depicted on Exhibit A-2 attached hereto and as described with a proposed legal description on Exhibit A-3 (the "Real Property"), and all right, title and interest of Seller, if any, in and to the land lying within any street or roadway adjoining the Real Property or any vacated street or alley adjoining the Real Property, including rights and easements appurtenant to the Real Property, if any (together with the Real Property, collectively hereinafter referred to as the "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 the County are closed.

2. Escrow Agent; Title Company. The Parties shall open escrow with SPOKANE COUNTY TITLE, 1010 North Normandie, Suite 100, Spokane, WA 99201 (Attn: Keith Newell) ("Escrow Agent" or "Title Company"), within three (3) Business Days after the Effective Date. This Agreement shall serve as escrow instructions, and Buyer and Seller shall execute such additional instructions as Escrow Agent may reasonably require, *provided, however*, that in the event of a conflict between the escrow instructions and this Agreement, this Agreement shall prevail.

3. Purchase Price. The purchase price for the Property will be Three Hundred Forty Five Thousand Dollars (\$345,000) (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 by Buyer at Closing 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.

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, ninety (90) days thereafter subject to extension under Section 4.2(b) below; provided the Parties may mutually agree to extend the Review Period to the extent necessary to allow the Parties to satisfy the closing conditions set forth in Section 5 herein 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 thirty (30) 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) Business 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: (y) terminate this Agreement by delivery of written notice to Seller and Escrow Agent, or (z) 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 (y) or (z) above, Buyer will be deemed to have elected option (z).

(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 three (3) 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, 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 five (5) 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; 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.

(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. Seller shall have the right to be present at any or all inspections. Buyer shall promptly provide Seller copies of the Phase I, 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) No Liens or Interference. Buyer shall not permit, and 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 physical inspections, surveys, investigations, studies, and/or 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 (the “Termination Notice”). 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 fails to send a Termination Notice to Seller and Escrow Agent by the expiration of the Review Period, Buyer will be deemed to have elected to proceed to Closing in accordance with this Agreement. If this Agreement is terminated as provided in this Section 4.5, 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.

4.6 Property Segregation; Form 7460-1.

(a) Segregation Application. During the Review Period, Seller shall cause a preliminary site plan outlining the proposed boundaries for the Real Property to be prepared (the “Site Plan”). On or before the expiration of the Review Period, Buyer and Seller shall use commercially reasonable efforts to mutually agree upon the Site Plan (“Approved Site Plan”). Should the Parties fail to mutually agree upon an Approved Site Plan prior to the expiration of the Review Period, this Agreement shall terminate. Following the Parties mutual approval of the Approved Site Plan and after the expiration of the Review Period, Seller shall, at Buyer’s sole cost and expense, prepare and submit to Buyer for Buyer’s approval a complete application, including certificates of exemption (if applicable), or certificates of approval (if applicable), for a lot line adjustment, boundary line adjustment, short plat, binding site plan, or other subdivision mechanism reasonably approved by the Parties to create a new legally conveyable tax parcel and adjusting the existing boundaries of the Seller Property to coincide with those depicted in the Approved Site Plan, all of

which must be substantially similar to the approximate boundaries depicted on the attached Exhibit A-2 (the “Segregation Application”). Buyer shall have ten (10) Business Days after receipt of the Segregation Application in which to review and give Seller written notice of Buyer’s approval of the Segregation Application or its requested changes thereto. Seller shall within five (5) Business Days modify the Segregation Application as reasonably requested by Buyer, and this approval process shall be repeated until the Segregation Application is approved by Buyer. Once approved by Buyer, the Segregation Application will constitute the “Approved Segregation Application”.

(b) Submission of Approved Segregation Application; Form 7460-1. Following the Parties mutual approval of the Approved Segregation Application, Seller shall (i) take all actions necessary to cause the lot line adjustment, boundary line adjustment, short plat, binding site plan, or other subdivision mechanism of the Real Property to coincide with the boundaries set forth in the Approved Segregation Application via the applicable (a) processing of certificates of exemption with the Spokane County Department of Building and Planning, or (b) processing of certificates of approval with the City of Spokane Planning and Development Services Department, and the corresponding finalization of a parcel segregation to be filed or recorded in the official records of the County, or such other subdivision mechanism reasonably approved by the Parties (“Segregation Plan”), with no Unanticipated Approval Conditions other than those approved by Buyer in writing (the “Subdivision Contingency”), and (ii) working in concert with Buyer, submit for FAA approval Form 7460-1, Notice of Proposed Construction or Alteration. Buyer shall reasonably cooperate (at no cost to Seller) with Seller and take all actions reasonably necessary to assist Seller in Seller’s efforts to (y) complete the Segregation Plan, including, without limitation, executing such applications and any other documents necessary or convenient with respect to the Segregation Plan, and (z) obtain a positive determination from the FAA, including airspace review clearance, with respect to Form 7460-1 and Buyer’s proposed development described therein (the “FAA Project Approval Contingency”). Seller shall promptly provide to Buyer a copy of all written communications with any governmental authority concerning the Approved Segregation Application, Segregation Plan and Form 7460-1, and shall afford Buyer the opportunity to participate in any and all telephonic and in-person meetings and hearings relating thereto, if permissible and reasonably practical. If, as a condition to its approval of the Segregation Plan, any governmental authority requires any material modifications to the metes and bounds of the Real Property from those shown within the Approved Segregation Application or otherwise requires the Real Property to be subject to any material covenants, conditions, restrictions, exactions, off-site improvement obligations, fees in lieu, or impact fees that are not contemplated in the Approved Segregation Application or this Agreement (each, an “Unanticipated Approval Condition”), Seller shall promptly notify Buyer and afford Buyer the opportunity to discuss the same with Seller and such governmental authority. If Buyer, after discussing an Unanticipated Approval Condition with Seller and such governmental authority, determines, in its reasonable discretion, that (I) the applicable governmental authority is unwilling to approve the Segregation Plan without the Unanticipated Approval Condition and (II) such Unanticipated Approval Condition will have a material and adverse impact on Buyer’s proposed development, Buyer may terminate this Agreement by delivering written notice to Seller and Escrow Agent and neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement.

(c) Segregation Plan Costs and Fees. Buyer shall be solely responsible for all costs, fees, and expenses associated with the preparation, submission, and administration of the Segregation Application and the satisfaction of the conditions to approval of the

Segregation Plan. In the event this Agreement is terminated and the sale of the Real Property fails to close for any reason neither Party will have any further obligation to the other, except those obligations that expressly survive the termination of this Agreement. This Section 4.6(c) shall survive Closing or the earlier termination of this Agreement.

(d) Property to Be Acquired at Closing. At Closing, Buyer must purchase the Property, in accordance with all the terms and conditions of this Agreement, including, without limitation, the Purchase Price set forth in Section 3 hereof.

## 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;

(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) Buyer has obtained all approvals required from the Review Committee (as defined in the CC&Rs) necessary for Buyer's intended use of the Property, provided, such approval remains subject to the satisfaction of the FAA Project Approval Contingency in accordance with Section 4.6(b);

(e) The Subdivision Contingency and FAA Project Approval Contingency shall have been satisfied in accordance with Section 4.6(b); and

(f) 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; *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) The Subdivision Contingency and FAA Project Approval Contingency shall have been satisfied in accordance with Section 4.6(b);

(d) 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

(e) 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), 5.2(b) or 5.2(c) 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. Seller shall use commercially reasonable efforts to cause the conditions set forth in Section 5.2(d) and 5.2(e) (the "Approval Conditions") to be satisfied (which Seller affirmatively cannot waive whether orally or in writing) on or before Closing, *provided*, that Seller's failure to satisfy the Approval Conditions shall not be considered a Seller Default hereunder.

## 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) ninety (90) days following the expiration of the Review Period ("Outside Closing Date"), or (ii) provided that (y) the Approval Conditions have been satisfied, and (z) the FAA Project Approval Contingency has been satisfied, on such earlier date as mutually agreed to by the Parties in writing. Notwithstanding anything herein to the contrary, if Closing has not occurred by the Outside Closing Date, then either Party may, in its sole discretion and at any time thereafter, elect to terminate this Agreement by delivering written notice to the other Party 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.

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, including all recording fees associated with

recording the CC&Rs (as defined below). Buyer shall be solely responsible for all recording fees associated with recording the Avigation Easement (as defined below), and 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 will 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. The cost of any survey of the Real Property obtained by Buyer will be borne by Buyer.

(c) Taxes and Fees. Real estate taxes accruing after Closing, if any, 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) Attorney Fees. Each Party shall pay its own attorney fees incurred with respect to this transaction.

(e) 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 6.3(f).

(f) 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.

(g) 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 duly executed and acknowledged declaration of protective covenants and agreements (“CC&Rs”), in the form attached to this Agreement as Exhibit D.

(4) 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.

(5) 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”).

(6) Copies of all current property tax bills and tax notices pertaining to the Real Property, if any.

(7) 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, or cause to be executed and delivered 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 CC&Rs, the Deed, and the Avigation Easement (if applicable) 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 not survive Closing.

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 in Sections 5.2(d) and 5.2(e), 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 Seller 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 Non-Foreign Person. Seller is not a "foreign person" as defined in § 1445 of the Code and any related regulations.

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 not survive Closing.

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 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, rulings, 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 (I) THE PRIOR USE OF THE PROPERTY AS A FORMER MILITARY DEFENSE SITE, (II) BUYER’S EXISTING USE AND OPERATION OF A PORTION OF THE PROPERTY FOR WATER TOWER IMPROVEMENTS AND SYSTEMS, AND (III) 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 (Y) BUYER’S PRIOR AND CURRENT USE AND INSPECTION OF THE PROPERTY AND (Z) BUYER’S OWN INSPECTION OF THE PROPERTY AS PROVIDED UNDER THIS AGREEMENT. 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, (D) 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, (E) THE FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, (F) THE MARKETABILITY OF THE PROPERTY OR THE ABILITY TO LEASE OR SELL THE PROPERTY, (G) THE STATUS OR CONDITION OF ENTITLEMENTS PERTAINING TO THE PROPERTY, (H) DEFICIENCY OF ANY DRAINAGE ON THE REAL PROPERTY, (I) THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE, (J) THE FACT THAT ALL OR A PORTION OF THE PROPERTY WAS FORMERLY USED AS A MILITARY DEFENSE SITE, AND THE CONDITIONS OF SUCH CAUSED BY THE SAME, AND (K) ANY MATTER REGARDING TERMITES OR WASTES, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., OR ANY HAZARDOUS SUBSTANCES. 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: \_\_\_\_\_

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.

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.

10.2 Post-Closing Covenants.

(a) Of Buyer. Buyer acknowledges and agrees that 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.

(b) Of the Parties. Not later than twelve (12) months following the Closing, the Parties shall negotiate in good faith and use commercially reasonable efforts to agree upon all terms and conditions of a utility easement agreement ("Utility Easement"), which terms and conditions will include, but not be limited to, a permanent, non-exclusive easement for the construction, reconstruction, maintenance, protection, inspection, and operation of utilities, across, over, under and upon and through those portions of property, as more particularly described therein, for the benefit of the Buyer, and/or such utility providers that provide utility services to a user of the Property, and to burden any owner of any portion of the property on which such utility easement is located. Buyer shall be solely responsible for all recording fees associated with recording the Utility Easement.

(c) Survival. The provisions of this Section 10.2 shall survive Closing.

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, 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. 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 AND SELLER SHALL HAVE ALL RIGHTS AND REMEDIES AVAILABLE TO IT IN LAW AND EQUITY. 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: \_\_\_\_\_

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: (y) terminate this Agreement in its entirety by delivery of notice of termination to Seller, or (z) 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 (z) 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.

15.3 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:

with a copy to: City Attorney's Office  
808 W Spokane Falls Blvd  
Spokane, WA 99201  
Attn:James Richman  
Email:jrichman@spokanecity.org  
Fax:509-625-6277

If to Escrow Agent:                      Spokane County Title  
   1010 North Normandie, Suite 100  
   Spokane, WA 99201  
   Attn: Keith Newell  
   Email: [keith@spokanetitle.com](mailto:keith@spokanetitle.com)  
   Fax: (509) 324-1375

15.4 Survival. Unless expressly provided otherwise in this Agreement, the representations and warranties of Seller contained in this Agreement will not survive Closing.

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 the 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. 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 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.

15.18 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

BUYER:

CITY OF SPOKANE,  
a municipal corporation of Washington State

By: \_\_\_\_\_  
Name: Lawrence J. Krauter  
Its: Chief Executive Officer

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

Approved as to form and content:

\_\_\_\_\_  
Brian Werst, General Counsel

Attest:

Approved as to form:

\_\_\_\_\_  
Clerk

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

This Real Property Purchase and Sale Agreement and Escrow Instructions is hereby acknowledged and accepted and the escrow is opened as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021. 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.

SPOKANE COUNTY TITLE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A-1

LEGAL DESCRIPTION OF SELLER PROPERTY\*

The following real property identified by the Spokane County Assessor as tax parcel number:

APNs: 25320.9004

*\*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 the new Exhibit A-1 to this Agreement.*

EXHIBIT A-2

DEPICTION OF REAL PROPERTY\*



*\*Real Property outlined in red lines.*

EXHIBIT A-3

LEGAL DESCRIPTION OF REAL PROPERTY\*

Legal description of proposed new parcel within existing Spokane County Parcel No. 25320.9004

A parcel of land located within the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of Section 32, Township 25 North, Range 42 East, Willamette Meridian, Spokane County, Washington, as more particularly described as follows:

Commencing at the east quarter corner of said Section 32, monumented with a 5/8" rebar with no identification, from which the southeast corner of Section 32 bears S 03°14'35" East, 2657.64 feet, monumented with a pk nail with no identification.

Thence South 46°24'17" West, 206.64 feet to the east corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444, and the Point of Beginning;

Thence South 87°57'10" West 109.57 feet to a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence South 01°57'49" East, 233.41 feet to the southeast corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence South 87°57'10" West, 364.70 feet; to the southwest corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence North 01°57'49" West, 191.56 feet to the west corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence North 88°03'38" East, 165.03 feet, to a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence North 01°57'49" West, 197.05 feet to the northwest corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence North 87°57'10" East, 309.25 feet to the northeast corner of this parcel, monumented with a 5/8" rebar and yellow plastic cap marked T.O. Engineers PLS 57444;

Thence South 01°57'49" East 154.90 feet to the east corner of this parcel, and the Point of Beginning;

Containing: 2.895 Acres more or less

*\*A final legal description of the Real Property shall be determined by the Segregation Plan, once completed, and the Parties acknowledge and agree such legal description will be incorporated herein as the new Exhibit A-3.*

EXHIBIT B  
FORM OF BARGAIN AND SALE DEED

Filed for Record at Request of and  
copy returned to:

City of Spokane

Attn: \_\_\_\_\_

Spokane, WA 99201

DOCUMENT TITLE:	BARGAIN AND SALE DEED
GRANTOR:	SPOKANE AIRPORT BOARD
GRANTEE:	CITY OF SPOKANE
ABBREVIATED LEGAL	[*]
DESCRIPTION:	
ASSESSOR'S PARCEL NO.:	[*]

---

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, hereby bargains, sells and conveys to CITY OF SPOKANE, a municipal corporation of Washington State, 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: a restriction that the historical and present use of the Property for water tower improvements shall be the sole and only future use of the Property, as such, any appurtenances, improvements, fixtures or installations of any non-related water tower kind shall not be affixed to or installed on the Property without first obtaining the written consent of Grantor, which consent may be granted or withheld in Grantor's sole and absolute discretion ("Restrictive Covenant").

It being further acknowledged that in the event of any violation or threatened violation of the terms and provisions of the Restrictive Covenant, Grantor or any person claiming through or otherwise entitled to enforce the Restrictive Covenant shall, in addition to all remedies available at law or in equity, have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The specified remedies to which any person entitled to enforce the Restrictive Covenant may resort are cumulative and are not intended to be exclusive of any other remedies or means of redress to which any person entitled to enforce the Restrictive Covenant may be lawfully entitled in case of any breach or threatened breach of any provision hereof. Failure to insist upon, any one or more cases, the strict performance of any of the provisions of the Restrictive Covenant, or to exercise any remedy herein contained, will not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

DATED effective the \_\_\_\_ day of \_\_\_\_\_, 2021.

*[signature page and acknowledgment follows]*

SIGNATURE PAGE  
TO  
BARGAIN AND SALE DEED

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 \_\_\_\_\_, 2021, 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 of Property

[To be inserted.]

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
GRANTOR:	CITY OF SPOKANE
GRANTEE:	SPOKANE AIRPORT BOARD
ABBREVIATED LEGAL DESCRIPTION:	[*]
ASSESSOR'S PARCEL NO.:	[*]

---

**AVIGATION EASEMENT**

THIS AVIGATION EASEMENT ("Easement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"), by CITY OF SPOKANE, a municipal corporation of Washington State ("Grantor") for the benefit of 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, 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: One Hundred Twenty Six Thousand One Hundred Six and 20/100 (126,106.20) square feet all of which is approximately 2.895 acres near West Pilot Drive, near the intersection of West Pilot Drive and formerly Godfrey Boulevard 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 (collectively, 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, 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 of 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 and acknowledgements follow]*

[remainder of page left intentionally blank]



Schedule 1  
to  
Avigation Easement

LEGAL DESCRIPTION OF PROPERTY

[To be inserted.]

EXHIBIT D  
FORM OF CC&Rs

See attached.

After Recording Return To:

Lukins & Annis, P.S.  
717 W. Sprague Ave., Ste. 1600  
Spokane, Washington 99201  
Attn: Tyler J. Black

---

## DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS

THIS DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by 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 ("Owner"), with reference to the following facts:

### RECITALS

A. Owner is the owner of a portion of real property generally located in the city of Spokane, Spokane County, Washington and legally described on the attached Exhibit A (the "Property"), which Property is located in what is commonly referred to as the Spokane International Airport Business Park ("Business Park"). This Agreement imposes certain requirements on all property within the Business Park that the owners thereof will be required to adhere to in connection with the development of their properties. The Owner desires that the Business Park, including the Property, be developed consistent with the parameters and requirements contained in this Agreement.

B. Pursuant to that certain *Purchase and Sale Agreement*, dated \_\_\_\_\_, 202\_\_, ([*as amended*],) the "Purchase Agreement") by and between Owner and [\_\_\_\_\_, a [\_\_\_\_\_] ("Buyer"), the Owner agreed to sell the Property to Buyer, and the parties agreed that the Property would be sold subject to certain protective covenants and agreements regarding the use, development, construction, maintenance and operation of the Property as more particularly described herein.

C. In connection with Owner selling the Property to Buyer, Owner intends by this Agreement to impose upon the Property mutually beneficial restrictions under a general plan of ownership and operation of the Property for the benefit of Owner, Buyer, Buyer's successors-in-interest and assigns thereof.

D. Owner hereby declares that the Property is held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the establishment of the Business Park. All of the limitations, covenants, conditions and restrictions constitute covenants and encumbrances which run with the land and are perpetually binding upon



Owner and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property.

NOW, THEREFORE, in consideration of the foregoing, Owner declares as follows:

1. Incorporation of Recitals. The recitals above are hereby incorporated by reference in this Agreement as though fully set forth herein.

2. Development, Construction and Alteration Review Procedures.

2.1 Review Committee. The following development, construction and alteration standards, as contained herein, are to be used as guidelines for the Buyer, Buyer's builder(s), contractor(s), subcontractor(s), and others preparing plans and specifications for any proposed construction or improvement on the Property and for maintaining such improvements. These guidelines are used by Owner and Owner's designated representatives (hereinafter, "Review Committee"). The Review Committee reserves the right to grant variances or modify these standards as it deems appropriate.

Buyer may not develop the Property in any manner except with the prior written approval of the Review Committee as provided in Section 2.2. For the purposes of this paragraph the term "develop" shall mean filing any formal application with the City of Spokane and County of Spokane, or any other governmental or quasi-governmental entity with authority over the Property, any preliminary or final site plan, request to replat or rezone any portion of the Property, or commencing any material construction or physical alteration of the Property, including, but not limited to, earth movement or construction of material improvements thereon.

2.2 Plans and Approval. Buyer shall deliver or cause to be delivered an electronic copy of all preliminary plans (in .pdf format) to the Review Committee at the address specified in Section 12, or such other address as Owner may specify. The Review Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Agreement and perform such other duties as from time to time shall be deemed appropriate by the Review Committee, including the inspection of construction in progress to assure its conformance with plans approved by the Review Committee. Any application submitted to the Review Committee pursuant to this Section is estimated to take approximately ten (10) business days; however, said period shall not exceed thirty (30) days ("Review Period"). The Review Period is variable depending upon the scale of the project and the completeness of all required plans. Buyer's failure to obtain affirmative, written approval by the Review Committee ("Airport Approval") of such plans and specifications during the Review Period shall be deemed a failure of such plans and specifications to satisfy all requirements hereunder. All plans must be submitted at the same time.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations, or the size, lettering and general appearance of any sign, shall be submitted to the Review Committee for its affirmative, written approval as to the quality of workmanship and design, and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval will be required to rebuild in accordance with the original plans and

specifications, or to rebuild in accordance with plans and specifications previously approved by the Review Committee.

Anything in this Section 2.2 to the contrary notwithstanding, plans and specifications submitted to the Review Committee must include, but is not limited to, the following:

- (i) Site plan (minimum scale 1" = 50') as well as a color architectural rendering at a reasonable scale that shows front, rear and side elevations with accurate depiction of proposed exterior cladding and glazing;
- (ii) Property lines, road right of ways and easements;
- (iii) The location of buildings, parking areas, drainage areas, fuel storage tanks, etc.;
- (iv) Indicate setbacks, dimensions of Property lines and distances between buildings;
- (v) Proposed driveways and curb cuts with arrows indicating vehicular traffic patterns in and out of the site and to and from all loading berths and parking areas;
- (vi) Parking and loading area layout including designated parking areas (employee, tractor-trailer and/or visitor), on-grade and dock high loading and delivery areas, maneuvering areas, operational equipment storage, etc.;
- (vii) The location of sidewalks;
- (viii) Roof details sufficient to ensure that the design will not create standing or ponding water and that roof materials will not create glare. Solar panels will not be approved without a specific glare study subject to FAA review and approval;
- (ix) Areas to be landscaped with the description of the type (tree, groundcover, and/or shrub), height, and location of all landscaping materials. Also locate any berms, existing landscaping or site features to remain, screening, and signage incorporated into the landscaped areas;
- (x) The location of any perimeter fencing and vehicle and/or pedestrian gates as well as any outdoor fencing or screening walls internal to the site and description of physical characteristics such as height, material proposed to be used (i.e. wood, plastic, chain link, vinyl-coated chain-link, masonry, and the color of the material(s), etc.). The use of barbed wire, concertina wire or razor wire is prohibited, as is the use of energized fences. The Review Committee will consider any special circumstances that may warrant higher level physical security of the premises and the Review Committee will have the sole and final decision making authority with regard to fencing;
- (xi) The location and identification of existing and proposed utilities which cross public and Owner owned property to service the Property, building and the site,

including gas, electricity, telephone and/or fiber optic telecommunications, water, storm and sanitary sewer;

(xii) The location of all special appurtenances including utility boxes, satellite dishes, antennas, exhaust stacks, etc.;

(xiii) The location of exterior lighting fixtures;

(xiv) Site drainage features; and

(xv) Topography and preliminary grading information.

3. Approvals. Except as otherwise provided in Section 2.2, Buyer acknowledges and agrees that Buyer must obtain Airport Approval and FAA Approval (as defined below) prior to the commencement of any proposed construction or improvement on the Property and for maintaining such improvements. Buyer's receipt of Airport Approval and FAA Approval shall constitute Buyer's satisfaction of all such approvals required pursuant to this Agreement.

4. Buildings.

4.1 Designs. All buildings shall be designed by a registered architect or engineer licensed to practice in the State of Washington. Appropriate architectural design is strongly encouraged. Industrial site and building development utilizing minimum standards that may create monotonous and unimaginative design will be critically reviewed and may not be approved without mitigating conditions. Building locations should optimize roadway exposure and avoid a crowded appearance.

4.2 Heights. Buyer acknowledges that the typical maximum height of any structure shall be in conformance with any applicable zoning requirements in place at the time of development; *provided, however*, in all cases, all airspace and approach zone height limitations as defined by the Federal Aviation Administration ("FAA") shall be the final controlling factor in determining maximum structure height. Upon receipt of all relevant information provided by the Buyer, in connection with obtaining Airport Approval, the Review Committee shall guide and assist the Buyer with the required completion of FAA Form 7460-1 – "Notice of Proposed Construction or Alteration" for FAA approval ("FAA Approval"). Buyer is ultimately responsible for the completion of FAA Form 7460-1. Buyer must obtain FAA Approval prior to the commencement of construction.

5. Lighting. The objective of on-site lighting is to highlight landscaped areas, pedestrian circulation (walkways), buildings, identification signs, parking or approved storage for decorative or security reasons. Lighting shall be designed to avoid or minimize light diffusion to adjoining property where negative impacts may be created. The lighting should complement and not dominate the design character of the site. Indirect wall lighting or "wall washing", overhead down lighting, or interior illumination which spills outside is encouraged.

Architectural lighting should articulate and animate the particular building design as well as provide the required functional lighting for safety and clarity of pedestrian movement. Although exterior security and feature lighting is not required, it is strongly recommended for safety and enhancement.

Utility service for lighting shall be provided underground. All exterior lighting should be LED or other forms of modern energy-efficient lighting and shall be aimed downward with appropriate cutoff fixtures to eliminate any upward glare in order to not adversely impact aircraft operations at Spokane International Airport.

Wall mounted lighting should not project above the wall or building parapet. No lighting fixtures shall be attached or supported from the roof of any building.

The foregoing notwithstanding, Buyer shall, at its sole cost and expense, install, maintain, and repair in good workmanlike order sufficient exterior lighting to achieve one (1) foot candle of coverage across the entire Property using cutoff fixtures that will not project light upward as confirmed through a photometric plan/study.

6. Perimeter Fence. Following the Closing (as defined in the Purchase Agreement) Owner shall, at its sole cost and expense, construct and install in good workmanlike order an eight (8) foot high chain link perimeter fence on the Property ("Security Fencing"), the purpose of which is to: (i) enhance and improve security measures with respect to any current and future improvements, (ii) restrict access to authorized personnel of Buyer, Buyer's agents, invitees, licensees, and other representatives, and (iii) eliminate, to the extent possible: (x) trespass, (y) an attractive nuisance and (z) the improvements thereon becoming a harbor for vagrants, criminals or immoral persons. Following installation of the Security Fencing, Buyer shall, at its sole cost and expense, maintain and repair the Security Fencing in a good workmanlike order.

7. Paint Scheme. Any and all improvements located on the Property, including but not limited to, the current and future improvements of water tower installations shall be painted, marked, visually distinct and apparent using the recommended guidelines to make certain structures conspicuous to pilots during daylight hours. Buyer shall, at its sole cost and expense, use the most current U.S. Department of Transportation, Federal Aviation Administration, Advisory Circular, AC 70-7460-1M, "Obstruction Marking and Lighting" guidelines, as the same may be revised, amended or supplemented from time-to-time, for painting and maintaining such paint scheme on said improvements.

8. Landscaping. Planting within the Business Park will play a key role in creating overall character for the development as a park-like working environment. When adjacent properties have been developed, plant materials selected should be complementary, providing a sense of continuity to all sites. When adjacent properties have not been developed, plant materials selected should be complementary to the closest developed property and set a positive example for future development. All landscaping shall be limited to Airport-approved plant materials for use at and around the Spokane International Airport.

9. Site Drainage; Stormwater Runoff; Snow Removal. The Property must include adequate storm drainage to provide for the on-site disposal of all stormwater. Drainage into or onto adjacent property and/or roadways is not permitted. All stormwater runoff resulting from constructed impervious surfaces shall be properly removed within the Property. Grass and/or landscaped areas shall be designated to accommodate excessive stormwater runoff. Compliance with applicable federal, state and local regulations is required. Buyer shall use the most current Washington State Department of Transportation Aviation Stormwater Design Manual, as the same may be revised,

amended, restated or supplemented from time-to-time, for designing stormwater management facilities. As of the date of this Agreement first written above the Washington State Department of Transportation Aviation Stormwater Design Manual may be accessed with the following link <https://wsdot.wa.gov/aviation/AirportStormwaterGuidanceManual.htm>.

Buyer shall be responsible for snow removal on the Property, including driveways and all pedestrian walkways. Storage or piling of removed snow from the Property into or onto adjacent property and/or roadways is not permitted.

10. Maintenance and Repair. Buyer shall keep the Property and any improvements erected thereon in a good, clean, attractive, safe and sanitary condition, order and repair. Buyer shall comply promptly with all applicable laws pertaining to the use or occupancy of the Property, as such applicable laws now exist or may hereafter provide.

11. Nuisance. No noxious, illegal, or offensive activities may be carried on the Property, or in any part of the Property, nor may anything be done thereon that may be or may become an annoyance or a nuisance to, or that may in any way interfere with, the quiet enjoyment of adjacent property and by each of the respective property owners.

12. Notices. Except as otherwise provided in Section 2.2, all submissions or 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, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) 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 Owner:	Spokane International Airport c/o Review Committee 9000 West Airport Drive, Suite 204 Spokane, WA 99224 Attn: Manager of Properties and Contracts
--------------	---

13. Enforcement. The right to enforce the terms and covenants contained herein will belong to Owner and its successors and assigns. In the event of any violation or threatened violation of the terms and provisions of this Agreement, any person entitled to enforce this Agreement shall have, in addition to all remedies available at law or in equity, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The specified remedies to which any person entitled to enforce this Agreement may resort, under the terms of this Agreement, are cumulative and are not intended to be exclusive of any other remedies or means of redress to which any person entitled to enforce this Agreement may be lawfully entitled in case of any breach or threatened breach of any provision hereof. Failure to insist, in any one or more cases, upon the strict performance of any of the provisions of this Agreement, or to exercise any remedy herein contained, will not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

14. Limitation of Liability. Owner, the Review Committee, and any of the Review Committee's staff may grant, withhold or deny its consent, permission, or approval in any instance where its consent, permission, or approval is permitted or required at its sole discretion and without any liability of any nature or kind to Buyer or any other person for any reason whatsoever. Owner will not be held liable or responsible for any violation of this Agreement by any person other than itself.

15. Term; Modification. The term of this Agreement shall be perpetual. This Agreement and any provision or covenant herein may be terminated, extended, modified or amended only upon obtaining the written consent of Owner and its successors-in-interest and assigns and the then-owner of the Property; *provided, however*, that no termination, extension, modification or amendment of this Agreement will be effective unless a written instrument setting forth the terms thereof has been executed, acknowledged and recorded in the offices of the auditor of Spokane County, Washington.

16. Covenants Run With the Land. The covenant given pursuant to this Agreement shall be deemed to be a covenant running with the Property and shall be binding upon and benefit the heirs, successors in interest, assigns and devisees of the parties hereto.

17. Governing Law; Venue. This Agreement shall be governed by the laws of the state of Washington. Any action related to this Agreement shall be brought in Spokane County, Washington.

*[signature page and acknowledgement follows]*

IN WITNESS WHEREOF the Owner has executed and delivered this Agreement to be effective as of the Effective Date.

OWNER:

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 \_\_\_\_\_, 20\_\_\_\_, 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)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

[To be inserted.]



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

09/20/2021

**Date Rec'd**

9/8/2021

**Clerk's File #**

OPR 2021-0611

**Renews #****Submitting Dept**

FIRE

**Cross Ref #****Contact Name/Phone**

BRIAN SCHAEFFER X7001

**Project #****Contact E-Mail**

BSCHAEFFER@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

Purchase w/o Contract

**Requisition #**

BT

**Agenda Item Name**

1970-PURCHASE OF FIRE SCBA EQUIPMENT FROM MES

**Agenda Wording**

The Fire Department currently has outdated Self-Contained Breathing Apparatus (SCBA) equipment and wishes to replace it with new equipment. This new equipment will meet current NFPA standards. Total cost is \$2,152,962.00, including tax.

**Summary (Background)**

The City of Spokane Fire Department purchased their current SCBA equipment back in 2009 and are currently at the end of their service life. As this equipment ages, the out of pocket warranty and repair costs continue to increase. The need for replacement is reaching a critical phase for both fireground safety of SFD personnel and public safety in general.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact****Budget Account**

Expense \$ 2,152,962.00

# 5903-79125-22200-53502-99999

Select \$

#

Select \$

#

Select \$

#

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

SCHAEFFER, BRIAN

**Study Session\Other**

PSHC 8/30/21

**Division Director**

SCHAEFFER, BRIAN

**Council Sponsor**

CM Kinnear

**Finance**

SCHMITT, KEVIN

**Distribution List****Legal**

ODLE, MARI

fireaccounting@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

dstockdill@spokanecity.org

**Additional Approvals**

bschaeffer@spokanecity.org

**Purchasing**

## Briefing Paper

### Public Safety and Community Health

<b>Division &amp; Department:</b>	Fire
<b>Subject:</b>	Scott/3M Self-Contained Breathing Apparatus (SCBA) purchase
<b>Date:</b>	8/17/2021
<b>Contact (email &amp; phone):</b>	David Stockdill, 509-435-7080
<b>City Council Sponsor:</b>	CM Kinnear
<b>Executive Sponsor:</b>	Brian Schaeffer, Fire Chief
<b>Committee(s) Impacted:</b>	Public Safety and Community Health 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)	Capital Improvement Plan, FD Strategic Plan Goal #7 <i>Provide a high state of readiness of apparatus and equipment to ensure response to the needs of our customers in a safe and efficient manner</i>
<b>Strategic Initiative:</b>	Public Safety and Community Health
<b>Deadline:</b>	Vendor price quote expires on 09/30/2021
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Replacement of Spokane Fire Department (SFD) Self-Contained Breathing Apparatus (SCBA) and associated equipment.
<u>Background/History:</u> <p>Current Fire Department SCBA units are at the end of their service life. Additionally, these legacy, Scott/3M SCBA units are out of warranty and repair costs continue to increase as the equipment ages. These units were purchased via an FEMA, Assistance to Firefighters (AFG) grant in 2009. The need for replacement is reaching a critical phase for both fireground safety of SFD personnel and public safety in general. New equipment will meet current National Fire Protection Association (NFPA) standards. SFD submitted AFG grant applications in 2018 and 2019 for replacement funding but was not awarded a grant. For these reasons, it is incumbent on the City to self-fund this purchase. The vendor is Municipal Emergency Services (MES). MES corporate headquarters are located in Warren, OH with a regional office in Vancouver, WA. SFD is able to utilize an existing, competitive contract between MES and Marysville Fire District of Marysville, WA.</p>	
<u>Executive Summary:</u> <ul style="list-style-type: none"> <li><b>Cost</b> – Quoted price is \$2,152,962, including sales tax. Purchase includes 199 Airpack/Facepiece/Regulator kits, 154 additional facepieces and regulators, 574 air cylinders, and some additional, related equipment.</li> <li><b>Fair and Competitive</b> – SFD is utilizing a pre-negotiated contract.</li> <li><b>Enhanced Health and Safety</b> – New Scott/3M SCBA's will meet current NFPA standards. Quantity purchased will allow SFD personnel to have individually assigned regulators in addition to the current practice of individually assigned facepieces – both efforts will help reduce disease transmission.</li> <li><b>Compatibility/Familiarity</b> – Similarities with current Scott/3M SCBA's provides increased efficiencies in training, operations, maintenance, and safety.</li> </ul>	
<u>Budget Impact:</u> Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
<u>Operations Impact:</u> Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Specify changes required: Known challenges/barriers: None.	



3801 Fruit Valley Rd.  
Suite C  
Vancouver, WA 98660

# Quote

Page 1 of 2

**Date** 08/18/2021  
**Quote #** QT1499356  
**Expires** 09/17/2021  
**Sales Rep** Varner, Joshua W  
**PO #**  
**Shipping Method** FedEx Ground

## Bill To

ACCOUNTS PAYABLE  
SPOKANE FIRE DEPARTMENT  
44 W RIVERSIDE AVE  
SPOKANE WA 99201-0114  
United States

## Ship To

Amanda Winchell  
SPOKANE FIRE DEPARTMENT  
1618 North Rebecca ST  
Spokane WA 99217-7200  
United States

Item	Alt. Item #	Units	Description	QTY	Unit Sales Pri...	Amount
X8915026305304			AirPak X3 Pro SCBA (2018 Edition) with Snap-Change Cylinder Connection, ., Standard Harness w/ Parachute Buckles, Standard Belt with No Escape Rope, E Flo C Regulator with Quick Connect Host (Rectus fittings) Universal EBSS Accessory Hose, No Airline Connection, No Spare Harness Kit, Pak-Tracker, No Case, Packaged 2 SCBA per Box (black)	187	6,000.00	1,122,000.00
Scott X3	X8915026305...		X8915026305H04 Scott X3 AirPak X3 Pro SCBA (2018 Edition) with Snap-Change Cylinder Connection, ., Standard Harness w/ Parachute Buckles, Standard Belt with No Escape Rope, E Flo C Regulator with Quick Connect Host (Rectus fittings) Universal EBSS Accessory Hose, No Airline, Hazmat Pak	12	6,100.00	73,200.00
FP1SK0000000000			Vision C5 Facepiece (NIOSH/NFPA Approved) Small Face Seal, Kevlar Headnet, No Spare Headnet	15	301.00	4,515.00
FP1MK0000000000			Vision C5 Facepiece (NIOSH/NFPA Approved) Medium Face Seal, Kevlar Headnet, No Spare Headnet	208	301.00	62,608.00
FP1LK0000000000			Vision C5 Facepiece (NIOSH/NFPA Approved) Large Face Seal, Kevlar Headnet, No Spare Headnet	118	301.00	35,518.00
200967-01			CYL&VALV,QD,CARB,30/5500 ASSY	8	1,047.20	8,377.60
200970-01			CYL&VALV,QD,CARB,45/5500 ASSY	259	1,242.50	321,807.50
200970-01			CYL&VALV,QD,CARB,45/5500 ASSY	259	0.00	0.00
200973-01			CYL&VALV,QD,CARB,60/5500 ASSY	12	1,379.00	16,548.00
200973-01			CYL&VALV,QD,CARB,60/5500 ASSY	12	0.00	0.00
201650-05			E-Z Flo C5, Quick Connect Hose, Rectus	154	1,500.00	231,000.00
201564-02			RIT-PAK FAST ATTACK, 5.5, MEDIUM	24	2,190.00	52,560.00
201568-01			Cylinder & Valve assembly, 45/5500, 90 degree	24	1,242.50	29,820.00
200388-01			TOOL ADAPTER	12	545.00	6,540.00
200372-52FC5			Spectacle Kit, 52mm, Frame Only Pricing provided per the Marysville SCBA Contract 2021SCBA	100	107.00	10,700.00



QT1499356

<b>Subtotal</b>	1,975,194.10
<b>Shipping Cost (FedEx Ground)</b>	0.00
<b>Tax Total</b>	177,767.47
<b>Total</b>	<b>\$2,152,961.57</b>



QT1499356



# City of Spokane

## Minor Contract Summary

Clerk File #  
OPR 2021-0567

Destruct Date  
01/01/2030

Cross Ref

Alt File #

Department Name \*  
FIRE

Department Project #

CR #  
N/A

Submitter  
KHAUGEN

Primary Contact  
DAVID STOCKDILL

Primary Contact Email  
DSTOCKDILL@SPOKANECITY.ORG

Starting Date

### Contractor/Consultant

Name\Contractor\Firm \*  
MARYSVILLE FIRE DISTRICT

Contact Name  
MARTIN MCFALLS

Contact Email  
MMCFALLS@MARYSVILLEWA.GOV

Address  
1094 CEDAR AVE

Remittance Address

City, State, Zip  
MARYSVILLE, WA 98270

Remittance City, State, Zip

### Summary of Services

Description \*  
INTERLOCAL PROCUREMENT AGREEMENT BETWEEN THE CITY OF SPOKANE FIRE DEPARTMENT AND THE MARYSVILLE FIRE DISTRICT.

Special Instructions for Clerks Office

### Contract Cost

Total Amount \*  
\$0.00

Effective Date \*  
08/17/2021

Expiration Date \*  
08/16/2023

Contract Type \*  
NEW CONTRACT

If new vendor, W-9 and ACH form has been submitted to Accounting \*  
NO

Quotes (per Purchasing Policy to be kept on file in Dept.) \*  
NO

Insurance Certificate (attach to the contract) \*  
NO

City Business Registration (attach verification that a current business license number exists) \*  
NO

If Public Works Contract, Contractor has been notified of State Law requirements. \*  
NO

Grant Related (If the contract is grant related, the Grants Management Department must approve) \*  
NO

Electronic Approvals

Accountant for Review \*  
KLAMOREAUX

Additional Review (Optional)

Accountant  
LAMOREAUX, KENNETH  
Date  
08/17/2021

Department Head  
SCHAEFFER, BRIAN  
Date  
08/17/2021

Division Head  
Date

Grants (If applicable)  
Date

Distribution List

Contractor Email  
mmcfalls@marysvillewa.gov

Dept Contact Email  
fireaccounting@spokanecity.org

Additional Email  
dstockdill@spokanecity.org

Additional Email  
tprince@spokanecity.org

Additional Email

Contract Accounting Email  
ddaniels@spokanecity.org

Taxes and Licenses Email  
tax&licenses@spokanecity.org

Additional Email

Additional Email

Additional Email

Save

## INTERLOCAL PROCUREMENT AGREEMENT

THIS AGREEMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, and MARYSVILLE FIRE DISTRICT, a Washington State municipal corporation, whose business address is 1094 Cedar Avenue, Marysville, WA 98270.

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in chapter 39.34 of the Revised Code of Washington provides for interlocal cooperation between governmental agencies; and

WHEREAS, chapter 39.33 of the Revised Code of Washington provides for the intergovernmental disposition of property; and

WHEREAS, the parties desire to utilize each other's procurement agreements when it is in their mutual interest; -- Now, Therefore,

The parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to acknowledge the parties' mutual interest to jointly bid the acquisition of goods and services and/or jointly dispose of property where such mutual effort can be planned in advance, jointly acquire goods and services, and to purchase or acquire goods and services under contracts where a price is extended by either party's bidder to other governmental agencies.
2. ADMINISTRATION. No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
3. SCOPE. This Agreement shall allow the following activities:
  - A. Purchase or acquisition of goods and services by each party acting as agent for either or both parties when agreed to in advance, in writing; and
  - B. Purchase or acquisition of goods and services by each party where provision has been provided in contracts for other governmental agencies to avail themselves of goods and services offered under the contract and/or where either party's bidder is willing to extend prices to other governmental agencies.
  - C. Disposal of goods by each party acting as agent for the other, or both parties when agreed to in advance, in writing.
4. DURATION AGREEMENT - TERMINATION. This Agreement shall remain in force until terminated by either party in writing. Either party may terminate this Agreement for any cause upon thirty (30) days advance written notice. Termination shall not alter the obligations of the parties regarding payment and/or disbursement of property in a joint purchase that was undertaken prior to termination.

5. RIGHT TO CONTRACT INDEPENDENT ACTION PRESERVED. Each party reserves the right to contract independently for the acquisition of goods or services or disposal of any property without notice to the other party and shall not bind or otherwise obligate the other party to participate in the activity.
6. COMPLIANCE WITH LEGAL REQUIREMENTS. Each party accepts responsibility for compliance with federal, state or local laws and regulations including, in particular, bidding requirements applicable to its acquisition of goods and services or disposal of property.
7. FINANCING. The method of financing of payment shall be through budgeted funds or other available funds of the party for whose use the property is actually acquired or disposed. Each party accepts no responsibility for the payment of the acquisition price of any goods or services intended for use by the other party.
8. FILING. Executed copies of this Agreement shall be filed as required by Section 39.34.040 of the Revised Code of Washington or alternatively listed on the parties' web sites or other electronically retrievable public source, prior to this Agreement becoming effective.
9. INTERLOCAL COOPERATION DISCLOSURE. Each party may insert in its solicitations for goods and services a provision disclosing that other authorized governmental agencies may also wish to procure the goods being offered to the party and allowing the bidder the option of extending its bid to other agencies at the same bid price, terms and conditions.
10. NON-DELEGATION/NON-ASSIGNMENT. Neither party may delegate the performance of any contractual obligation, to a third party, unless mutually agreed in writing. Neither party may assign this Agreement without the written consent of the other party.
11. HOLD-HARMLESS. Each party shall be liable and responsible for the consequence of any negligent or wrongful act or failure to act on the part of itself and its employees. Neither party assumes responsibility to the other party for the consequences of any act or omission of any person, firm or corporation not a party to this Agreement.
12. SEVERABILITY. Any provision of this Agreement, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions or affecting the validity or enforcement of such provisions.



MARYSVILLE FIRE DISTRICT

DocuSigned by:  
By: Martin Mcfalls  
4A9862E85F7F4E1...

Title: Fire Chief

Dated: 8/17/2021

CITY OF SPOKANE

DocuSigned by:  
By: Johnnie Perkins  
96A908C563754B1...

Title: City Administrator

Dated: 8/17/2021

Attest:

DocuSigned by:  
Jeri Hoffman  
2C6B1A4F2CC84D6...  
City Clerk

Approved as to form:

DocuSigned by:  
Timothy Szambelan  
4A9862E85F7F4E1...  
Assistant City Attorney

DS





**Agenda Sheet for City Council Meeting of:**  
09/20/2021

<b>Date Rec'd</b>	9/8/2021
<b>Clerk's File #</b>	OPR 2021-0612
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	SBO

<b>Submitting Dept</b>	POLICE
<b>Contact Name/Phone</b>	MAJ. MIKE MCNAB 835-4514
<b>Contact E-Mail</b>	MMCNAB@SPOKANEPOLICE.ORG
<b>Agenda Item Type</b>	Purchase w/o Contract
<b>Agenda Item Name</b>	0680 PURCHASE OF PEPPERBALL SYSTEMS

**Agenda Wording**

Approval to use legislation implementation funds to purchase 100 PepperBall less-lethal launching systems. Acquiring these devices would provide SPD with more alternatives to deadly force in compliance with police reform House Bills 1310 and 1054.

**Summary (Background)**

The City of Spokane was awarded \$890,000 to assist with one-time costs related to law enforcement and criminal justice legislation enacted between January 1, 2020, and June 30, 2021. SPD would like to purchase 100 PepperBall less-lethal launching systems. This purchase would make this less lethal tool reasonably available to all officers working in a patrol capacity. The necessity and availability of this device is essential for SPD's compliance with police reform House Bills 1310 and 1054.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Expense	\$ 67,931.53	<b><u>Budget Account</u></b>	# 1620-99138-21250-53502-99999
Select	\$		#
Select	\$		#
Select	\$		#

**Approvals**

<b><u>Dept Head</u></b>	LUNDGREN, JUSTIN
<b><u>Division Director</u></b>	MEIDL, CRAIG
<b><u>Finance</u></b>	SCHMITT, KEVIN
<b><u>Legal</u></b>	ODLE, MARI
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL

**Council Notifications**

<b><u>Study Session\Other</u></b>	8/30 Public Safety
<b><u>Council Sponsor</u></b>	CM Kinnear

**Distribution List**

spdfinance@spokanepolice.org

**Additional Approvals**

**Purchasing**


## Briefing Paper

### Public Safety & Community Health Committee

<b>Division &amp; Department:</b>	Spokane Police Department
<b>Subject:</b>	Purchase of PepperBall Systems
<b>Date:</b>	08/19/2021
<b>Contact (email &amp; phone):</b>	Mike McNab– <a href="mailto:mmcnab@spokanepolice.org">mmcnab@spokanepolice.org</a> 509-835-4514
<b>City Council Sponsor:</b>	Councilmember Kinnear
<b>Executive Sponsor:</b>	Asst. Chief Lundgren
<b>Committee(s) Impacted:</b>	Public Safety Community Health Committee
<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)	
<b>Strategic Initiative:</b>	
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Approval for the purchase of 100 PepperBall launching systems, PepperBall ammunition, and accessories.
<b>Background/History:</b> The City of Spokane was awarded \$890,000 to assist with one-time costs related to law enforcement and criminal justice legislation enacted between January 1, 2020, and June 30, 2021. SPD would like to use \$67,931.53 of this funding to purchase 100 PepperBall less-lethal launching systems. This purchase would make this less lethal tool reasonably available to all officers working in a patrol capacity. The necessity and availability of this device is essential for SPD's compliance with police reform House Bills 1310 and 1054.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>• Approval to use legislation implementation funds to purchase 100 PepperBall less-lethal launching systems for \$67,931.53.</li> <li>• Acquiring these devices would provide SPD with more alternatives to deadly force in compliance with police reform House Bills 1310 and 1054.</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: Federal Funding – Department of Justice 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:	

	Launchers	100 QTY	Electronic Hoppers	100 QTY	Live-X OC 375 per pkg	3000 rds	Inert OC 375 per pkg	1500 rds	Glass Breakers 100 per pkg	400 rd	Maintenance Kit	10 QTY	Soft case	100 QTY	SUBTOTAL	TAX	shipping	TOTAL	Delivery time
Gall's	\$ 394.45	\$ 39,445.00	\$ 94.45	\$ 9,445.00	907.50/375 ct	\$ 7,260.00	240.00/375ct	\$ 960.00	\$ 181.88	\$ 727.50	\$ 55.00	\$ 550.00	\$ 39.35	\$ 3,935.00	\$ 62,322.50	\$ 5,609.03		\$ 67,931.53	7-60 days
Hurricane Butterfly	\$ 499.00	\$ 49,900.00	\$ 119.00	\$ 11,900.00	\$ 1,157.00	\$ 9,256.00	\$ 300.00	\$ 1,200.00	\$ 245.00	\$ 980.00	\$ 69.95	\$ 966.50	\$ 49.99	\$ 4,999.00	\$ 78,934.50	\$ 5,939.16	\$ 475.00	\$ 71,929.79	60 days
Kiesler Police Supply	\$ 376.30	\$ 37,630.00	\$ 90.10	\$ 9,010.00	\$ 864.96	\$ 6,919.68	\$ 227.90	\$ 911.60	\$ 184.44	\$ 737.76	\$ 52.47	\$ 524.70	\$ 37.52	\$ 3,752.00	\$ 59,485.74	\$ 5,353.72		\$ 64,839.46	90-240 days
Less Lethal LLC	\$ 441.75	\$ 44,175.00	\$ 104.25	\$ 10,425.00	\$ 1,020.00	\$ 8,160.00	\$ 266.25	\$ 1,065.00	\$ 217.50	\$ 870.00	\$ 62.00	\$ 620.00	\$ 45.50	\$ 4,550.00	\$ 69,865.00	\$ 6,287.85		\$ 76,152.85	30 days
Municipal Emerg. Svs	\$ 390.11	\$ 39,011.00	\$ 93.41	\$ 9,341.00	\$ 896.70	\$ 7,173.60	\$ 236.26	\$ 945.04	\$ 191.21	\$ 764.84	\$ 54.40	\$ 544.00	\$ 38.90	\$ 3,890.00	\$ 61,669.48	\$ 5,550.25		\$ 67,219.73	45 days
The following companies offered bids on products OTHER THAN PepperBall																			
ProForce -FN North America	\$ 949.00	\$ 94,900.00	\$ -	\$ -	593.00/150ct	\$ 11,860.00	486.00/150ct	\$ 4,860.00	\$ -	\$ -	\$ 22.00	\$ 220.00	\$ 210.00	\$ 21,000.00	\$ 132,840.00	\$ 11,955.60		\$ 144,795.60	120-150 days
The Bunker -Byrna	\$ 531.00	\$ 53,100.00			\$ 1,019.99	\$ 8,159.92	\$ 99.99	\$ 399.96	\$ 127.49	\$ 127.49	\$ 14.99	\$ 149.90	\$ 42.00	\$ 4,200.00	\$ 66,137.27	\$ 5,952.35		\$ 72,089.62	90 days

\*\*pricing includes discount



**Agenda Sheet for City Council Meeting of:**  
09/20/2021

<b>Date Rec'd</b>	9/8/2021
<b>Clerk's File #</b>	OPR 2021-0613
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	SBO

<b>Submitting Dept</b>	POLICE
<b>Contact Name/Phone</b>	MIKE MCNAB 835-4514
<b>Contact E-Mail</b>	MMCNAB@SPOKANEPOLICE.ORG
<b>Agenda Item Type</b>	Purchase w/o Contract
<b>Agenda Item Name</b>	0680 PURCHASE OF BALLISTIC SHIELDS

**Agenda Wording**

Approval to use legislation implementation funds to purchase 77 Ballistic shields along with carrying bags for \$145,867.20 utilizing NASPO contracts 164720/03720.

**Summary (Background)**

The City of Spokane was awarded \$890,000 to assist with one-time costs related to law enforcement and criminal justice legislation enacted between January 1, 2020, and June 30, 2021. SPD would like to use approximately \$145,867.20 of this funding to purchase 77 Ballistic shields and carrying bags.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Expense	\$ 126,058.50	# 1620-99138-21250-53528-99999
Expense	\$ 19,808.70	# 1620-99138-94000-56401-99999
Select	\$	#
Select	\$	#

**Budget Account**

**Approvals**

<b><u>Dept Head</u></b>	LUNDGREN, JUSTIN
<b><u>Division Director</u></b>	LUNDGREN, JUSTIN
<b><u>Finance</u></b>	SCHMITT, KEVIN
<b><u>Legal</u></b>	ODLE, MARI
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL

**Council Notifications**

<b><u>Study Session\Other</u></b>	PSCHC 08/30/2021
<b><u>Council Sponsor</u></b>	CM Kinnear

**Distribution List**

spdfinance@spokanepolice.org  
mmcnab@spokanepolice.org  
eolsen@spokanepolice.org

**Additional Approvals**

**Purchasing**


## Briefing Paper

### Public Safety & Community Health Committee

<b>Division &amp; Department:</b>	Spokane Police Department
<b>Subject:</b>	Purchase of Ballistic Shields
<b>Date:</b>	08/30/2021
<b>Contact (email &amp; phone):</b>	Mike McNab– mmcnab@spokanepolice.org 509-835-4514
<b>City Council Sponsor:</b>	Councilmember Kinnear
<b>Executive Sponsor:</b>	Asst. Chief Lundgren
<b>Committee(s) Impacted:</b>	Public Safety Community Health Committee
<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)	
<b>Strategic Initiative:</b>	
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Approval for the purchase of 77 Ballistic shields and carrying bags.
<b>Background/History:</b> The City of Spokane was awarded \$890,000 to assist with one-time costs related to law enforcement and criminal justice legislation enacted between January 1, 2020, and June 30, 2021. SPD would like to use approximately \$145,867 of this funding to purchase 77 Ballistic shields and carrying bags.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>Approval to use legislation implementation funds to purchase 77 Ballistic shields along with carrying bags for \$145,867 utilizing NASPO contracts 164720/03720.</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: 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:	

Ph: 253-566-2686  
Fax: 253-236-2972  
[kent@curtisblueline.com](mailto:kent@curtisblueline.com)  
DUNS#: 00-922-4163



CBL Kent  
6507 South 208th Street  
Kent, WA 98032  
[www.CurtisBlueLine.com](http://www.CurtisBlueLine.com)  
Quotation No. 198667

## Quotation

**CUSTOMER:**

Spokane City Police  
Department  
1100 West Mallon Avenue  
Spokane WA 99260

**SHIP TO:**

Spokane City Police Department  
Jeremy Mcvay  
1100 W. Mallon Ave.  
Spokane WA 99260

QUOTATION NO.	ISSUED DATE	EXPIRATION DATE
198667	08/12/2021	09/11/2021

SALESPERSON	CUSTOMER SERVICE REP
Levi Mallory <a href="mailto:lmallory@curtisblueline.com">lmallory@curtisblueline.com</a> 208-377-5418	Chris Putman <a href="mailto:cputman@curtisblueline.com">cputman@curtisblueline.com</a> 253-566-2686

REQUISITION NO.	REQUESTING PARTY	CUSTOMER NO.	TERMS	OFFER CLASS
Ballistic Shields	Michelle Loucks 509-808-1480	C36950	Net 30	NASPO-LE

F.O.B.	SHIP VIA	DELIVERY REQ. BY
DEST	Standard Shipping	

**SPECIAL INSTRUCTIONS**

NASPO

**NOTES & DISCLAIMERS**

Thank you for this opportunity to quote. We are pleased to offer requested items below. If you have any questions, need additional information, or would like to place an order, please contact your Customer Service Rep as noted above.

Transportation is included in below pricing.

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	75	EA	SAFARILAND CUSTOM	As Below:  Factory Item  1301038 Entry I FR X 24X36 Horizontal Handle  NASPO: 1560.00	\$1,460.00	\$109,500.00
2	75	EA	SAFARILAND CUSTOM	As Below:  Factory Item  1002758 Shield Carry Bag Large 29X48  NASPO: 87.00	\$82.00	\$6,150.00

Ph: 253-566-2686  
Fax: 253-236-2972  
[kent@curtisblueline.com](mailto:kent@curtisblueline.com)  
DUNS#: 00-922-4163



CBL Kent  
6507 South 208th Street  
Kent, WA 98032  
[www.CurtisBlueLine.com](http://www.CurtisBlueLine.com)  
Quotation No. 198667

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL PRICE
----	-----	------	-------------	-------------	------------	-------------

Small Business  
CAGE Code: 5E720  
DUNS Number: 009224163  
SIC Code: 5099  
Federal Tax ID: 94-1214350

This pricing remains firm until 09/11/2021. Contact us for updated pricing after this date.

Due to market volatility and supply shortages, we recommend contacting your local L.N. Curtis and sons office prior to placing your order to confirm pricing and availability. This excludes our GSA Contract and other Fixed Price Contracts which are governed by contract-specific prices, terms, and conditions.

<b>Subtotal</b>	\$115,650.00
<b>Tax Total</b>	\$10,408.50
<b>Transportation</b>	\$0.00

<b>Total</b>	<b>\$126,058.50</b>
--------------	---------------------

[View Terms of Sale and Return Policy](#)





## Quote

Customer: (1001093869) SPOKANE POLICE DEPT.-CITY O  
Date: 09/01/2021  
Sales Rep: MICHELLE TAYLOR

Page 1 of 1  
Quote Number: 19027109  
Quote Expiration: 11/30/2021

Sold To:  
SPOKANE POLICE DEPARTMENT  
ACCOUNTS PAYABLE  
1100 W MALLON AVE  
SPOKANE, WA 99260-2043  
MICHELLE LOUCKS

Ship To:  
SPOKANE POLICE DEPT  
1100 W MALLON AVE  
SPOKANE, WA 99260  
MICHELLE LOUCKS

Line	Item	Description	Qty	Retail	Your Price	Ext Total
1	BP1537	ASPIS X GEN II LVL III 20X30 W/ VIEWPOINT AND LIGHT	2		9,086.56	18,173.12

Quote is valid for 90 days

Galls is required to collect sales tax on shipments to certain states. Sales tax will be added where applicable. For tax exempt customers, state laws require us to have signed tax exemption or resale certificates on file at our office. If you are tax exempt, please email or fax this information, (including your Galls account number) to Tax@galls.com or fax 859-268-5946.

SUBTOTAL: 18,173.12  
SHIPPING:  
TAX..... 1,635.58  
TOTAL... 19,808.70

Export Restrictions - This may contain commodities restricted in the United States International Trade Regulations.

1340 Russell Cave Rd  
Lexington, KY 40505  
Tel: 800-876-4242 Fax: 877-914-2557

## Galls, LLC Invoice Credit Terms and Conditions of Sale

Payment - Invoices for items delivered pursuant to any sales order are payable only in United States currency. You, your business, and/or your agency (the "Buyer") understand that Galls, LLC (the "Seller") may impose and charge a finance charge that is the greater of 1.5% per month or the highest rate allowed by law on any amount which becomes past due and delinquent. Returned checks may be assessed a \$25.00 service fee. Additionally, Buyer shall be responsible for all collection costs, court costs, and reasonable attorney's fees in connection with the recovery of delinquent amounts.

All sales are made pursuant to these Credit Terms and Conditions of Sale, and Seller objects to any different or additional terms or conditions contained in Buyer's purchase order or any other document submitted by Seller. Payments may be applied against open balances at the sole discretion of Seller and may be applied across accounts if Buyer has more than one account with Seller. Credit memos are non-refundable and may be applied to open invoices at Seller's sole discretion.

Credit Terms - Any extension of credit is based upon all amounts payable on or before the due date on any written, quoted, or agreed terms, and shall be paid in accordance with such terms. If not paid on or before such date, accounts shall be considered delinquent and subject to the additional finance charges as set forth herein.

Buyer agrees to provide Seller, upon request, with an updated credit application as a condition to the continued extension of credit. Buyer acknowledges and agrees that Seller may utilize outside credit reporting services and financial institutions to obtain information on the Buyer as a condition precedent to or for continued extension of credit. Seller may terminate any credit availability within its sole discretion and without prior notice. Buyer's continued solvency is a precondition to any sale made by Seller.

Delays - Where a specific shipping date is not designated on the face hereof or in a subsequent writing signed by the Seller, the Seller shall not be responsible for any delays, nor shall Seller be liable for any loss or damages resulting from such delays. Seller shall not be liable for any delays in filling this order caused by accidents to machinery, differences with employees, strikes, labor shortage, fire, floods, priorities requested or required by an instrumentality of the United States Government or the government of any state, delays in transportation, restrictions imposed by any federal, state or municipal law or regulation, whether valid or invalid, or causes beyond the control of the Seller.

Warranty - Seller shall pass through to Buyer all manufacturer warranties and return policies applicable to Buyer's order. Seller shall take all reasonable actions to ensure that Buyer receives the benefit of such pass through warranties and return policies. Buyer's sole remedies for any goods sold hereunder shall be as provided in such warranties and return policies and shall be solely against the applicable manufacturer. SELLER, ON BEHALF OF ITSELF, DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO SUCH GOODS.

Restocking - If a cancellation of an order or a return by Buyer is accepted or initiated by Seller and/or the manufacturer, it may be subject to a restocking charge at the discretion of Seller.

Delivery and Transportation - Products sold herein are sold FOB at the place indicated on the face of this sales order unless otherwise agreed to in writing by Seller and Buyer. The method and agency of transportation and the routing will be designated by the Seller. In the event the Buyer requests alternative shipment or routing, all extra packing, shipping and transportation charges thereby resulting will be for the Buyer's account.

Waiver - No provision herein shall be deemed a waiver by reason of any previous waiver, and no breach of any provision shall be deemed a waiver by reason of any previous breach.

Governing Law - The sole jurisdiction and venue shall be the courts of the Commonwealth of Kentucky.

Export Restrictions - This transaction may contain commodities restricted in the United States International Trade Regulations. If at a later date the Buyer decides these commodities will be exported from the United States please reference the United States Department of Commerce Bureau of Industry and Security Export Administration Regulations (15 CFR 730-774), the United States Department of State International Traffic in Arms Regulations (22 CFR 120-130) as well as any other applicable laws. These laws apply to private, commercial, and government agency export transactions. As an exporter, the Buyer will be responsible for compliance with all U.S. laws relating to the export of these items.

\*Designates this item is on the Galls GSA Contract (GS-07F-0157M) all other items are OPEN MARKET.



**PARTICIPATING ADDENDUM  
NASPO VALUEPOINT**

**BODY ARMOR AND BALLISTIC RESISTANT PRODUCTS**

Administered by the State of Colorado (hereinafter "Lead State")

**MASTER AGREEMENT**

**Master Agreement No: 164719**

**Point Blank Enterprises, Inc.**  
(hereinafter "Contractor")

and

**State of Washington**  
(hereinafter "Participating State")

**WASHINGTON MASTER CONTRACT No.: 03720**

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Point Blank Enterprises, Inc., a Florida Corporation ("Contractor") and is dated and effective as of March 15, 2021.

**RECITALS**

- A. Pursuant to Legislative authorization codified in RCW 39.26.060, Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements to develop master agreements to procure goods and/or services and to make such competitively solicited and awarded contracts available to Washington state agencies and designated eligible purchasers consistent with terms and conditions set forth by Enterprise Services.
- B. Enterprise Services timely provided public notice of the competitive solicitation process conducted by the above-referenced lead state through Washington's Electronic Business Solutions (WEBS) system.
- C. The above-referenced Lead State, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded a Master Agreement to Contractor.
- D. Enterprise Services has determined that participating in this Master Agreement is in the best interest of the State of Washington.
- E. The purpose of this Participating Addendum is to enable eligible purchasers, as defined herein, to utilize the Master Agreement as conditioned by this Participating Addendum.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **SCOPE:** This Participating Addendum covers the competitive procurement for Body Armor and Ballistics Resistant Products led by the State of Colorado for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities" or "Purchasers"):
  - (a) **WASHINGTON STATE AGENCIES.** All Washington state agencies, departments, offices, divisions, boards, and commissions.
  - (b) **WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES).** Any the following specific institutions of higher education in Washington:
    - State universities – i.e., University of Washington & Washington State University;
    - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
    - The Evergreen State College;
    - Community colleges; and
    - Technical colleges.
  - (c) **MCUA PARTIES.** The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
    - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
    - Federal governmental agencies or entities;
    - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
    - Federally-recognized Indian Tribes located in the State of Washington.

By placing an order under this Participating Addendum, each Purchasing Entity agrees to be bound by the terms and conditions of this Participating Addendum, including the Master Agreement. Each Purchasing Entity shall be responsible for its compliance with such terms and conditions.

### **3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:**

- 3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at [WEBS](#).

Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

- 3.2. **WASHINGTON’S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington’s Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).
- 3.3. **CONTRACT SALES REPORTING:** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.
- (a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services’ [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
  - (b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
  - (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

- 3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.5 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax) authorized by this Participating Addendum.
- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:  
$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .0150.$$
  - (b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
  - (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor’s VMF payment to Enterprise Services must reference

the following:

- This Washington Master Contract No.: 03720
  - The NASPO Master Agreement No.: 164719
  - The year and quarter for which the VMF is being remitted, and
  - Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

**3.5. CONTRACTOR REPRESENTATIONS AND WARRANTIES:** Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- (b) **PAY EQUALITY.** Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30)

days, Enterprise Services may suspend or terminate this Participating Addendum and Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to this Participating Addendum.

- (c) **EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION).** Contractor represents and warrants, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Master Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- (d) **GREEN/SUSTAINABLE.** Contractor represents and warrants that Contractor shall endeavor to supply and delivery goods in alignment with the State of Washington’s green/sustainability strategy which, at a minimum is designed to minimize the use of unnecessary product packaging, reduce the use of toxic chemicals, and offer Purchasers, where practicable, ‘green products’ that provide equivalent performance.

**3.6. COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION:** Contractor shall comply with all applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

**3.7. CONTRACTOR’S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES:**

- (a) **CONTRACTOR’S SALES AUTHORITY.** Pursuant to this Participating Addendum, Contractor is authorized to provide only those Products set forth in the Master Agreement as conditioned by this Participating Addendum. Contractor shall not represent to any Purchasing Entity hereunder that it has any authority to sell any other materials, supplies, services and/or equipment.
- (b) **PURCHASE ORDERS.** All purchase orders issued by purchasing entities pursuant to this Participating Addendum shall include both the Participating State contract number 164719 and the Lead State Master Agreement Number 03720.
- (c) **INVOICES.** Contractor must provide a properly completed invoice to Purchasing Entity. All invoices are to be delivered to the address indicated in the purchase order. Each invoice must include the:
  - Washington Master Contract Number 03720;
  - Lead State Master Agreement Number 164719;
  - Contractor’s statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM);
  - Applicable Purchasing Entity’s order number;

Invoices must be prominently annotated by the Contractor with all applicable volume discount(s).

4. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

**Contractor**

Point Blank Enterprises, Inc.  
2102 SW 2<sup>nd</sup> Street  
Pompano Beach, FL 33069

Attn: Daniela Domenecci  
Tel: (954) 630-0900 ext. 1329  
Email: [ddomenecci@pbearmor.com](mailto:ddomenecci@pbearmor.com)

**Participating State**

State of Washington  
Department of Enterprise Services  
Contracts & Procurement Division  
P.O. Box 41411  
Olympia, WA 98504-1411

Attn: Breann Aggers  
Tel: (360) 407-9416  
Email: [breann.aggers@des.wa.gov](mailto:breann.aggers@des.wa.gov)

5. **AGENTS AND DISTRIBUTORS:** Except for subcontracts with Contractor's designated Agents and Distributors, Contractor shall not subcontract, assign, or otherwise transfer its obligations under the Master Agreement and this Participating Addendum without Enterprise Services' prior written consent. Violation of this condition shall constitute a material breach establishing grounds for termination of this Participating Addendum.

- **AGENTS AND DISTRIBUTORS.** Contractor is authorized, without additional Participating State consent, to utilize its Agents and Distributors to provide sales and service support to Purchasers hereunder; *provided*, however, that such participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum. Contractor shall maintain a list of such Agents and Distributors utilized for this Participating Addendum, and, upon request, promptly provide Enterprise Services with such list and any updates.
- **CONTRACTOR RESPONSIBILITY FOR AGENTS AND DISTRIBUTORS.** Contractor shall be responsible to ensure that all requirements of the Master Agreement (including, but not limited to, insurance requirements, indemnification, Washington state business registration, etc.) flow down to any and all Agents and Distributors. In no event shall the existence of a subcontract between Contractor and its Agents and Distributors operate to release or reduce Contractor's liability to the Participating State or any Purchaser for any breach of the Master Agreement or this Participating Addendum. As to Participating State and Purchasers hereunder, Contractor shall have full and complete responsibility and liability for any act or omission by Contractor's Agents and Distributors.
- **PURCHASER PAYMENT REGARDING CONTRACTOR'S AGENTS AND DISTRIBUTORS.** Notwithstanding any provision to the contrary, the parties understand and agree that for any contract sales or service provided pursuant to the Master Agreement and this Participating Addendum, Purchaser payment shall be made directly to Contractor as the awarded vendor pursuant to the competitive procurement; *provided*, however, that, in the event any such sales or services are performed by a Agents and Distributors for Contractor, Contractor may instruct such Purchaser to make payment for such sales or services to Contractor's identified Agents and Distributors. Regardless of whether Contractor instructs a Purchaser to make such payment to Contractor's Agents and Distributors, Contractor shall remain responsible for performance.



- **CONTRACT SALES REPORTING.** Notwithstanding any provision to the contrary, Contractor shall report to Enterprise Services total contract sales, delineated by purchaser, made by each individual Agents and Distributors and also report total contract sales, delineated by purchaser, on a consolidated Contractor 'roll-up' basis. Contractor shall maintain records supporting such reports in accordance with the Master Agreement's records retention requirements.

6. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.

7. **GENERAL:**

- (a) **INTEGRATED AGREEMENT; MODIFICATION.** This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
- (b) **AUTHORITY.** Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- (c) **ELECTRONIC SIGNATURES.** A signed copy of this Participating Addendum or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
- (d) **COUNTERPARTS.** This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

**STATE OF WASHINGTON**  
**DEPARTMENT OF ENTERPRISE SERVICES**

By: Elena McGrew

Elena McGrew

Its: Acting Enterprise Procurement Manager

**POINT BLANK ENTERPRISES, INC.,**  
**A FLORIDA CORPORATION**

By: Hoyt Schmidt

Hoyt Schmidt

Its: EVP of Commercial Business

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

09/20/2021

**Date Rec'd**

9/8/2021

**Clerk's File #**

OPR 2021-0614

**Renews #****Submitting Dept**

CITY COUNCIL

**Cross Ref #**

RES 2021-0070

**Contact Name/Phone**SHAUNA 828-0185  
HARSHMAN**Project #****Contact E-Mail**

SHARSHMAN@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

Contract Item

**Requisition #**

BT

**Agenda Item Name**0320 - CONSULTANT AGREEMENT FOR TRAFFIC CALMING FACILITATION  
TRAINING**Agenda Wording**

Contract with Pomegranate Associates for facilitation and engagement training for City staff and Neighborhood Councils related to the Traffic Calming Program

**Summary (Background)**

On August 23, 2021, Council approved Resolution 2021-0070, declaring Pomegranate Associates the sole source provider for facilitation and engagement training for the new Traffic Calming Program. This Consultant Agreement, which runs from 9/13/2021-12/31/2022, is for an amount not to exceed \$115,000.00, to come from the Traffic Calming Fund.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact****Budget Account**

Expense \$ 115,000

# 1380-30210-21100-54201-99999

Select \$

#

Select \$

#

Select \$

#

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

ALLERS, HANNAHLEE

**Study Session\Other**

8/16 Urban Experience

**Division Director****Council Sponsor**

CP Beggs

**Finance**

ORLOB, KIMBERLY

**Distribution List****Legal**

PICCOLO, MIKE

sharshman@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

korlob@spokanecity.org

**Additional Approvals**

nzollinger@spokanecity.org

**Purchasing**

tschroff@spokanecity.org

# Briefing Paper

## Finance and Administration Committee

<b>Division &amp; Department:</b>	City Council
<b>Subject:</b>	A resolution approving sole source contract to Pomegranate Associates for facilitation training and workshop design services.
<b>Date:</b>	August 5th, 2021
<b>Author (email &amp; phone):</b>	Shauna Harshman ( <a href="mailto:sharshman@spokanecity.org">sharshman@spokanecity.org</a> ) 828-0185
<b>City Council Sponsor:</b>	Breann Beggs
<b>Executive Sponsor:</b>	None
<b>Committee(s) Impacted:</b>	PIES – Finance & Administration
<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)	The Traffic Calming Program is well aligned with Shaping Spokane, the City's Comprehensive Plan, and Chapter 4 – Transportation. Specifically the key themes of making Spokane a City of transportation choices, Health and Safety, livable streets, and is specifically called out in Figure TR1 as an element of a balanced approach to transportation planning that improves the quality of travel.
<b>Strategic Initiative:</b>	PIES
<b>Deadline:</b>	Will file for Council consideration following committee meeting.
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Will seek resolution and contract approval from City Council in August 2021. Staff training and workshop development to begin in early fall 2021.
<b>Background/History:</b>  <p>Traffic calming is the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior, and improve the conditions for non-motorized street users.</p> <p>The Traffic Calming Program began in 2010, with funding coming from Photo Red Light Camera tickets. The funds generated from School Speed Radar and Photo Red Light tickets fund the traffic calming program.</p> <p>The Traffic Calming program has been fundamentally redesigned in 2020 and 2021 to increase community engagement, improve internal review and analysis, and recognize efficiencies of a longer term project list. These changes are predicated upon skilled staff facilitation of community workshops with all of the city's neighborhoods.</p>	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>The traffic calming program has been redesigned to achieve more equitable participation from every neighborhood in the City.</li> <li>The traffic calming program will hold issue identification and prioritization workshops to create at a minimum, a four-year traffic calming project list beginning later this year.</li> <li>The Pomegranate Method of both facilitation and workshop design has been identified as essential to ensuring the public has a collaborative and consensus based voice in traffic calming issue identification and prioritization.</li> <li>The safety of our residents depends on a well-designed traffic calming program where the community needs originate from the neighborhoods.</li> </ul>	

Budget Impact:

Approved in current year budget? ☐ Yes ☒ No

Annual/Reoccurring expenditure? ☐ Yes ☒ No

If new, specify funding source: There is no expense associated with the ordinance. The funding for the contract however, will come from one of two potential sources, either the Traffic Calming fund or ARPA funding. The Traffic Calming fund has the revenue to fund this request, and due to the revenue loss in Traffic Calming Revenue during Covid an ARPA request has also been submitted.

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No

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

Specify changes required: This Sole Source Resolution will not require changes to current operations or policies.

Known challenges/barriers: None identified.



**City of Spokane**  
**CONSULTANT AGREEMENT**  
**Title: FACILITATION TRAINING**  
**AND WORKSHOP DESIGN**

This Consultant Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **POMEGRANATE ASSOCIATES**, whose address is 16611 SE 45<sup>th</sup> Street, Bellevue, Washington 98006-8924, as ("Consultant"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the purpose of this Agreement is to provide Facilitation Training and Workshop Design; and*

*WHEREAS, the Consultant has been deemed a Sole Source Provider.*

*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 September 13, 2021, and ends on December 31, 2022, unless amended by written agreement or terminated earlier under the provisions.

**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 the Consultant's Training Proposal dated May 11, 2021, which is attached as Exhibit B and made a part of this Agreement. In the event of a conflict or discrepancy in the contract documents, this Consultant 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.

Compensation under this time and materials Agreement shall not exceed **ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$115,000.00)**, plus applicable tax, 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 City of Spokane City Council Office, 808 West Spokane Falls Blvd., 7<sup>th</sup> Floor, Spokane, Washington 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and 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 [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 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 Title 48 RCW;

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

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) 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 forty-five (45) 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 professional engineers or Consultants performing the same or similar services at the time said services are performed. The Final Work Product is defined as a stamped, signed work product. Consultant, without additional compensation, shall correct or revise errors or mistakes in designs, drawings, specifications, and/or other consultant services immediately upon notification by the City. 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/PUBLIC RECORDS.**

Notwithstanding anything to the contrary, City will maintain the confidentiality of Company's materials and information only to the extent that is legally allowed in the State of Washington. City is bound by the State Public Records Act, RCW Ch. 42.56. That law presumptively makes all records in the possession of the City public records which are freely available upon

request by anyone. In the event that City gets a valid public records request for Company's materials or information and the City determines there are exemptions only the Company can assert, City will endeavor to give Company notice. Company will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Company does not get a timely injunction preventing the release of the records, the City will comply with the Public Records Act and release the records.

## **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 sixty (60) 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 sixty (60) business days prior to the effective date of termination.
- C. For Convenience: Either party may terminate this Agreement without cause, upon sixty (60) days written notice to the other party.
- 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 an exhibit. 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.

**POMEGRANATE ASSOCIATES**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

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

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

**Attachments:** Exhibit A – Certificate Regarding Debarment  
Exhibit B – Consultant's Training Proposal dated May 11, 2021

21-160a

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

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



## EXHIBIT B

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

09/20/2021

**Date Rec'd**

9/9/2021

**Clerk's File #**

OPR 2021-0615

**Renews #****Cross Ref #**

OPR 2019-0463

**Submitting Dept**

HOUSING &amp; HUMAN SERVICES

**Contact Name/Phone**

CASSI BROWN 625-6053

**Project #****Contact E-Mail**

CBROWN@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

Contract Item

**Requisition #****Agenda Item Name**

1680 - SPOKANE COUNTY CONSOLIDATED HOMELESS GRANT

**Agenda Wording**

CHHS is requesting approval to accept this grant award in the amount of \$821,163 from Spokane County and permission to subaward the funds out to partner agencies as described below.

**Summary (Background)**

Spokane County subgranted their Consolidated Homeless Grant from the Washington State Department of Commerce to the City starting in 2019 to coordinate funds and effectively serve households experiencing homelessness within the community. Funded projects were procured by Spokane County. Three agreements will be amended to add funds as follows: Catholic Charities Rapid Rehousing for Families (\$297,672), SNAP Rapid Rehousing for Singles (\$231,127), & YWCA Safe Shelter (\$202,197).

Lease? NO

Grant related? YES

Public Works? NO

**Fiscal Impact****Budget Account**

Neutral \$ \$821,163

# 1540-95483-XXXXX-XXXXX-99999

Select \$

#

Select \$

#

Select \$

#

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

DAVIS, KIRSTIN

**Study Session\Other**

PS &amp; CH - 8/30/21

**Division Director**

DAVIS, KIRSTIN

**Council Sponsor**

CM Kinnear

**Finance**

HUGHES, MICHELLE

**Distribution List****Legal**

ODLE, MARI

chhsgrants@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

chhsaccounting@spokanecity.org

**Additional Approvals**

cmis@spokanecity.org

**Purchasing**

kdavis@spokanecity.org

**GRANTS,  
CONTRACTS &  
PURCHASING**

BROWN, SKYLER

# Briefing Paper

## Public Safety & Community Health Committee

<b>Division &amp; Department:</b>	Neighborhoods, Housing & Human Services: CHHS
<b>Subject:</b>	2021-2023 Spokane County System Demonstration Grant Agreement (Consolidated Homeless Grant)
<b>Date:</b>	August 16, 2021
<b>Author (email &amp; phone):</b>	Cassi Brown ( <a href="mailto:cbrown@spokanecity.org">cbrown@spokanecity.org</a> / 625-6053)
<b>City Council Sponsor:</b>	CM Kinnear
<b>Executive Sponsor:</b>	Kirstin Davis
<b>Committee(s) Impacted:</b>	
<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)	2020-2025 Strategic Plan to Prevent & End Homelessness
<b>Strategic Initiative:</b>	Safe & Healthy / Reduce Homelessness
<b>Deadline:</b>	Start date is retroactive to July 1, 2021
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	CHHS is requesting approval to accept this grant award from Spokane County and permission to subaward the funds out to partner agencies.
<b>Background/History:</b> Spokane County subgranted their Consolidated Homeless Grant from the Washington State Department of Commerce to the City starting in 2019 to coordinate funds and effectively serve households experiencing homelessness within the community. Funded projects were procured by Spokane County.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>The total award is \$821,163 and runs from July 1, 2021 through June 30, 2022.</li> <li>Three projects are supported with these funds: one rapid rehousing project for families, one rapid rehousing project for single persons, and one shelter project.</li> <li>In acknowledgement of the CHHS department's status as Collaborative Applicant for the regional Continuum of Care Grant, the Department of Commerce has renewed the City's status as System Demonstration Grantee (SDG) for CHG which offers a higher degree of flexibility in program implementation.</li> </ul>	
<b>Budget Impact:</b> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If new, specify funding source: N/A Other budget impacts: None	
<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: None Known challenges/barriers: None	

# **AGREEMENT BETWEEN SPOKANE COUNTY AND THE CITY OF SPOKANE FOR ADMINISTERING SPOKANE COUNTY'S FY 2021 SYSTEM DEMONSTRATION GRANT (SDG)**

<b>1. Contractor</b> City of Spokane 808 West Spokane Falls Boulevard Spokane, WA 99201		<b>2. Contract Amount</b>  \$821,163.00	<b>3. Tax ID#</b> 91-6001280 <b>4. DUNS#</b> 115528189
<b>5. Representative</b> Kirstin Davis, Communications Manager City of Spokane Community, Housing and Human Services 808 West Spokane Falls Boulevard Spokane, WA 99201 (509) 625-7773 kdavis@spokanecity.org		<b>6. Spokane County's Representative</b> Kathleen Torella, Director Spokane County Community Services, Housing, and Community Development (CSHCD) Department 1116 W. Broadway Avenue Spokane, WA 99260 509-477-7561 ktorella@spokanecounty.org	
<b>7. Contract ID #</b> 21HCD2581	<b>8. Original Grant ID#</b> 20-46108-29	<b>9. Start Date</b> 07/01/2021	<b>10. End Date</b> 06/30/2022
<b>11. Funding Source:</b> <div style="text-align: right;"> <input type="checkbox"/> Federal    <input type="checkbox"/> State    <input checked="" type="checkbox"/> Local         </div>			
<b>12. Federal Funds (as applicable)</b> N/A	<b>CFDA #</b> N/A	<b>Federal Agency:</b> N/A	
<b>13. Contractor Selection Process: (check all that apply or qualify)</b> <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E Services <input type="checkbox"/> Competitive Bidding <input checked="" type="checkbox"/> Pre-approved by Funder		<b>14. Contractor Type: (check all that apply)</b> <input type="checkbox"/> Private Organization/Individual <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> Non-Profit <input type="checkbox"/> For-Profit	
<b>15. Grant Purpose &amp; Description:</b> This grant provides resources to assist people who are experiencing homelessness, obtain and maintain housing stability. The Contractor and its subcontractors must prioritize unsheltered homeless households for assistance and services.			
<b>16. IN WITNESS WHEREOF</b> Spokane County and the City of Spokane, acknowledge and accept the terms of this Agreement, including all referenced Exhibits and Attachments which are hereby incorporated in and made a part hereof, and have executed this Agreement as of the date below. This Agreement Face Sheet; Scope of Work (Exhibit A); Budget (Exhibit B); Department of Commerce SDG Agreement (Exhibit C); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.			
<b>FOR THE CONTRACTOR:</b>  <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="display: flex; justify-content: space-between;"> <span>Signature</span> <span>Date</span> </div> <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="display: flex; justify-content: space-between;"> <span>Name</span> <span></span> </div> <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="display: flex; justify-content: space-between;"> <span>Title</span> <span></span> </div>		<b>FOR SPOKANE COUNTY:</b>  <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="display: flex; justify-content: space-between;"> <span>Signature</span> <span>Date</span> </div> <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="display: flex; justify-content: space-between;"> <span>Name</span> <span></span> </div> <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="display: flex; justify-content: space-between;"> <span>Title</span> <span></span> </div>	

This Agreement, (the AGREEMENT), is entered into by and between SPOKANE COUNTY, a political subdivision of the State of Washington, in care of the Spokane County Community Services, Housing, and Community Development Department, whose address is 1116 W. Broadway Avenue, Spokane, WA 99260 (herein after referred to as COUNTY), and the CITY OF SPOKANE (herein after referred to as "CITY", a municipal corporation of the State of Washington, in care of the Community Housing and Human Services Department (CHHS), whose address is 808 West Spokane Falls Boulevard, Spokane, WA 99201, and jointly referred to, as the "Parties." In the matter set forth herein.

### **WITNESSETH**

WHEREAS, The Spokane County Board of County Commissioners, pursuant to the provisions of the Revised Code of Washington (RCW) Section 36.32.120(6), has the care of SPOKANE COUNTY property and the management of COUNTY funds and business; and

WHEREAS, the CITY is a first-class charter city duly incorporated and validly existing under the laws and Constitution of the State of Washington; and

WHEREAS, pursuant to the provisions of the RCW 39.080, the COUNTY and the CITY may contract with each other to perform any governmental service which each may legally perform; and

WHEREAS, the purpose of this AGREEMENT, is to contract with the CITY to administer the COUNTY'S portion of the System Demonstration Grant (SDG) funds, provided through the Washington State Department of Commerce (COMMERCE); and

WHEREAS, for purposes of administering the Grant, SPOKANE COUNTY designates the CITY to act, on behalf of the COUNTY, as its subcontractor in providing homeless assistance to individuals and families within the City of Airway Heights, City of Cheney, City of Deer Park, City of Liberty Lake, City of Medical Lake, City of Millwood, City of Spokane Valley, Town of Fairfield, Town of Latah, Town of Rockford, Town of Spangle, the Town of Waverly, and the unincorporated areas of the COUNTY; and

WHEREAS, the COUNTY and the City shall collaborate in the use of grant funded activities, pursuant with the most recent SDG Guidelines, as amended, and the established Regional Homeless Crisis Response System; and

WHEREAS, the SDG is authorized, in accordance with Chapter RCW 43.185C, of the Homeless Housing and Assistance Act (HHAA).

NOW, THEREFORE, in consideration of the mutual promises made herein and the mutual benefits received hereunder, the Parties agree as follows:

## 1. PERIOD OF PERFORMANCE

- 1.1. Contingent on the receipt of a notice to proceed from the COUNTY, this AGREEMENT shall be effective on July 1, 2021 and shall be completed no later than June 30, 2022 hereinafter referred to as the Project Period.
- 1.2. Except as stated herein, the Project Period may be changed only by amendment to this AGREEMENT executed no less than forty-five (45) days in advance of the expiration date of this AGREEMENT, acceptance of which amendment shall be within the sole discretion of the COUNTY.

## 2. SERVICES

- 2.1. The CITY agrees to provide the services set forth herein, and provide the required reporting of its contractual duties in a manner consistent with this AGREEMENT, the applicable sections of the COMMERCE/COUNTY Agreement attached as Exhibit C, and generally accepted practices.

## 3. STATEMENT OF WORK AND DELIVERABLES

- 3.1. The CITY will plan, administer, and implement the Project as described in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference as though fully set forth. The CITY and its subcontractors, shall adhere to the agreed upon budgets, schedules, and commitments.
- 3.2. The CITY shall be responsible for meeting the following deliverables, as well as others identified in this AGREEMENT, unless otherwise exempted in this AGREEMENT or by written notification of exemption by the COUNTY:

Document	Due Date
Certificates of Insurance or Self-Insurance Letter	Upon execution of this AGREEMENT and within five (5) days of renewal of coverage
Fraud and Abuse Policy	Available upon request
Records Retention and Storage Policy	Available upon request

- 3.3. In compliance with RCW 39.26.180, the CITY shall provide access to data generated under this AGREEMENT to SPOKANE COUNTY, COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the CITY's reports, including computer models and the methodology for those models.

### 3.4. Reports

- 3.4.1. The CITY shall prepare, complete and submit reports and other information as required by the COUNTY to demonstrate compliance with applicable regulations, and project performance standards as described in this document. Failure to prepare and submit required reports and documents will constitute a breach of the performance of this Agreement

and lead to suspension and/or termination of the Agreement pursuant to the terms of this Agreement.

3.4.2. The CITY shall:

- 3.4.2.1. Report to the COUNTY methods used to implement Fair Housing Laws and affirmatively market services to otherwise qualified persons, without regard to age, sex, color, ethnic origin, religion, disability or familial status.
- 3.4.2.2. Include identification of the COUNTY SDG funding on all printed materials, including signage, books, reports, pamphlets, brochures, posters and articles, published and circulated for the purpose of describing, evaluating, or publicizing services or activities funded under this Agreement.
- 3.4.2.3. Submit project progress, project benefit, and project financial reports within the timelines presented below.
  - 3.4.2.3.1. Reports will include the following:
    - 3.4.2.3.1.1. Local Homeless Housing Plan Updates;
    - 3.4.2.3.1.2. Annual County Report/Homeless Housing Inventory including Point-In-Time County information;
    - 3.4.2.3.1.3. Essential Needs Report; and
    - 3.4.2.3.1.4. Complete data that is timely, truthful, and accurate.
- 3.4.2.4. At the earliest date during and/or after completion of the project, submit to the COUNTY an audit report of the project, for the project period if applicable. Refer to Section 9. Access, Examination, Audit, and Monitoring, for instructions regarding audit requirements.
- 3.4.2.5. Attend quarterly CITY/COUNTY collaborative meetings. Meetings will cover the following topics at a minimum:
  - 3.4.2.5.1. Macros of full system homeless housing system delivery per HMIS;
  - 3.5.2.5.2. Breakdowns per intervention type;
  - 3.5.2.5.3. Further drill downs to cities and towns;
  - 3.5.2.5.4. SDG-program specific breakdowns; and
  - 3..5.2.5.5. Survey results and ongoing discussion regarding access point data (e.g. COC Report on Access/Assessment).
- 3.4.3. All reports, unless otherwise specifically noted, will be due by the 15th of each month and will contain data obtained during the preceding month, or other indicated reporting period.

- 3.4.4. Accurate input and maintenance of data in an approved HMIS is a condition of funding.
  - 3.4.4.1. Input and maintenance of data must be completed by the 5<sup>th</sup> day of the month following the month of service.
- 3.4.5. **Reimbursement for project costs incurred will be contingent upon the submission of required reports. Failure to notify a CITY subcontractor to submit timely required reports, does not release the CITY from the responsibility for their timely submittal.**

### 3.5. Data Collection

- 3.5.1. The CITY will submit reports, in a form and format to be provided by COMMERCE and at intervals as agreed by the PARTIES, regarding work under this AGREEMENT performed by the CITY and the portion of funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, women-owned, and veteran-owned business subcontractors. Subcontractors shall mean subcontractors at any tier.

## 4. RELATIONSHIP OF THE PARTIES

- 4.1. The PARTIES intend that an independent contractor relationship will be created by this AGREEMENT. The CITY and/or employees or agents performing under this AGREEMENT are not employees or agents of the COUNTY or COMMERCE in any manner whatsoever. The CITY will not be presented as, nor claim to be, an officer or employee of the COUNTY or COMMERCE by reason of this AGREEMENT nor will the CITY make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the COUNTY or COMMERCE by reason of this AGREEMENT, including but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under RCW chapter 41.06.
- 4.2. The CITY agrees to not hold the State of Washington or COMMERCE liable for claims or damages arising from the CITY's performance of this AGREEMENT.

## 5. COMPENSATION/REIMBURSEMENT/INVOICING PROCEDURES

- 5.1. Funding sources under this AGREEMENT are as follows:
 

SDG Funds RCW 43.185C:	\$851,163.00
------------------------	--------------
- 5.2. Total maximum funding under this AGREEMENT is Eight Hundred Fifty-One Thousand, One Hundred Sixty-Three Dollars (\$851,163.00). Only funds for the reimbursement of actual allowable costs will be reimbursed to the CITY.
- 5.3. The CITY must abide by the limitations outlined in the Scope of Work, Exhibit A, including any mutually agreed upon Exhibit A updates, for the allowable and unallowable uses of funds under this program.



- 5.4. The COUNTY shall make no payments in advance or in anticipation of goods or services to be provided under this AGREEMENT. The CITY shall not invoice the COUNTY in advance of delivery and invoicing of such goods or services.
- 5.5. Duplication of Billed Costs. The CITY shall not bill the COUNTY for services performed under this AGREEMENT, and the COUNTY shall not pay the CITY, if the CITY is entitled to payment or has been or will be paid by any other source, including grants for that service.
- 5.6. The CITY is responsible for any audit exceptions or disallowed costs incurred by its own organizations or that of its subcontractors.
- 5.7. Eligible Uses of Funds. Funding awarded under the AGREEMENT may only be used for eligible activities and expenses described in the SDG Program Guidelines found at <https://www.commerce.wa.gov/serving-communities/homelessness/consolidated-homeless-grant/>.
- 5.8. Requests for Reimbursement
  - 5.8.1. The CITY shall submit requests for reimbursement of actual allowable costs incurred by the CITY in performance of this Agreement and in accordance with the attached budget, Exhibit B. Requests for reimbursement must be accompanied by documentation substantiating eligibility of costs for which reimbursement is requested. The CITY shall submit the final requests for reimbursement not later than thirty (30) days after this expiration of the close of the Project period. The final request for reimbursement shall provide a reconciliation of actual revenue and expenses for the entire period of this Agreement.
  - 5.8.2. Costs incurred prior to the effective date of or after the expiration date of this Agreement, ineligible costs, or unallowable costs, will not be reimbursed by the COUNTY, unless previously approved by the COUNTY and subject to this Agreement being signed by all parties.
  - 5.8.3. Only those budget line items that appear in the budget section of Exhibit B will be considered for reimbursement.
  - 5.8.4. No change(s) to the budget shall be binding upon the Parties except by amendment to this Agreement executed pursuant to the General Terms and Conditions of this Agreement.
  - 5.8.5. If allowable actual costs for a given month are less than the budgeted amount pursuant to the budget, Exhibit B, reimbursement shall not exceed the allowable actual costs. The maximum allowable monthly payment shall equal the total budget maximum to date less the total payments to date.
  - 5.8.6. All funds obligated or committed by the CITY to contractors, suppliers, etc. during the Project Period must be expended on or before June 30, 2022 SDG funds, which are not expended by June 30, 2022, shall be returned to the COUNTY.

- 5.8.7. Invoices are due by no later than the 15<sup>th</sup> day of the month following the provision of services. If the CITY fails to submit an invoice prior to the 16<sup>th</sup> of the month following the provision of services, without a reasonable explanation, the COUNTY may withhold payment.
  - 5.8.7.1. The City will make every attempt to include all contracted sub-grantee totals on the invoice; if their sub-grantee invoice is delayed, the City will submit a supplemental invoice for those sub-grantee's totals, no later than the 30th day of the month following the provision of services.
  - 5.8.7.2. Invoices must be [submitted](#) through the Neighborly Software Reporting Module.
- 5.8.8. Complete invoices are defined as submitting a timely, completed and signed county-designed invoice form, supportive documentation for administrative, operational and programmatic expenditures, the monthly report and supportive documentation substantiating numbers submitted on the monthly reports. Please see the Performance Measurement and Supportive Reports section for more details. Invoices are not considered complete until all pieces have been received and will not be sent forward for payment.
- 5.8.9. The Invoice and Voucher Detail Worksheet must also be submitted to the COUNTY in conjunction with each monthly invoice submitted through Neighborly Software Reporting Module.
- 5.9. Budgeting.
  - 5.9.1. RCWs 36.22.179 and 36.22.1791 shall apply to the AGREEMENT and to all funds disbursed hereunder. Except as noted in the AGREEMENT, costs are reimbursable under the Budgeting Accounting Reporting System (BARS), including all supplements and revisions thereto, prescribed by the Washington State Auditor's Office.
  - 5.9.2. Up to One Thousand Five Hundred Dollars (\$1,500.00) per grant period can be spent on equipment expenditures, unless approved in advance by the COUNTY in writing.
  - 5.9.3. All budget revisions must be requested in writing and approved by the COUNTY in writing. The detailed budget form submitted upon application to deliver services for this contract shall be used when requesting revisions and will include a column for the original budget and a column clearly denoting the newly revised and requested budget.
  - 5.9.4. When revisions move funds from one budget category to another and/or the revision reaches more than ten percent (10%) of the grant total a formal amendment is additionally required-
- 5.10. Recovery of Overpayment to the CITY. The CITY shall not be reimbursed more than the amount of the allowable costs of performance of this AGREEMENT. When the CITY, COUNTY, or any other state or federal agency determines that

the CITY has received payments under this AGREEMENT in excess of reimbursement described in the reimbursement subsection of this AGREEMENT, or otherwise not in conformity with the AGREEMENT, the COUNTY shall recoup those payments, together with interest, from what would otherwise be the COUNTY's liability under this AGREEMENT. If the CITY receives a notice of overpayment, which the COUNTY shall be required to timely provide, the CITY may protest the overpayment determination pursuant to the Dispute Resolution Section of this AGREEMENT. Failure to invoke said section within fifteen (15) days of receipt of a notice of overpayment will result in an overpayment debt against the CITY.

## **6. AUDIT**

### **6.1. General Requirements**

- 6.1.1. The CITY shall procure audit services based on the following guidelines.
- 6.1.2. The CITY shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that subcontractors also maintain auditable records.
- 6.1.3. The CITY is responsible for any audit exceptions incurred by its own organization or that of its subcontractors.
- 6.1.4. The COUNTY reserves the right to recover from the CITY all disallowed costs resulting from the audit.
- 6.1.5. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The CITY must respond to the COUNTY requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

### **6.2. State Funds Requirements**

- 6.2.1. In the event an audit is required, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the CITY.
- 6.2.2. The CITY shall include the above audit requirements in any subcontracts.
- 6.2.3. In any case, the CITY's records must be available for review by the COUNTY or by COMMERCE.

### **6.3. Documentation Requirements**

- 6.3.1. The CITY must send a copy of any audit report no later than six (6) months after the end of the CITY's fiscal year(s) by sending an emailed copy to [CSHCDHCDFinance@spokanecounty.org](mailto:CSHCDHCDFinance@spokanecounty.org) or a hard copy to:

Spokane County Community Services, Housing, and  
Community Development Department  
Attn: Fiscal Division  
1116 W. Broadway Avenue  
Spokane, WA 99260

6.3.1.1. In addition to sending a copy of the audit, when applicable, the CITY must include:

6.3.1.1.1. Corrective action plan for audit findings within three (3) months of the audit being received by the COUNTY.

6.3.1.1.2. Copy of the Management Letter and management Decision Letter, where applicable.

6.3.1.2. If the CITY is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to the COUNTY; no other report is required.

## **7. VENUE STIPULATION**

7.1. This AGREEMENT has and shall be construed as having been made and delivered in the State of Washington and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of this AGREEMENT or any provision hereto shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

## **8. COMPLIANCE WITH LAWS**

8.1. The CITY and its subcontractors shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

8.2. The CITY and its subcontractors shall comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 28 CFR Part 35 which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

8.3. During the performance of this AGREEMENT, the CITY and its subcontractors, shall comply with all federal, state, and local nondiscrimination laws, regulations, and policies. In the event of the CITY's or its subcontractors' noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this AGREEMENT may be rescinded, canceled or terminated in whole or in part, and the CITY or its subcontractors may be declared ineligible for further grants from the COUNTY or COMMERCE. The CITY or its subcontractors shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedures set forth herein.

## **9. ORDER OF PRECEDENCE**

9.1. In the event of an inconsistency in the AGREEMENT, the inconsistency shall be resolved by giving precedence in the following order:

9.1.1 Applicable federal and State of Washington Statutes and Regulations;

- 9.1.2. The agreement between COMMERCE and the COUNTY, Exhibit B;
- 9.1.3. This AGREEMENT and its Exhibits; and
- 9.1.4. The SDG Guidelines found at <https://www.commerce.wa.gov/serving-communities/homelessness/consolidated-homeless-grant/>.

## **10. FRAUD AND ABUSE**

- 10.1. The CITY shall establish, maintain and utilize internal systems and procedures sufficient to prevent, detect and correct incidents of waste, fraud and abuse in the performance of this AGREEMENT and to provide for the proper and effective management of all Program and fiscal activities by the Agreement. The CITY's internal control systems and all transactions and other significant events are to be clearly documented and the documentation shall be readily available for monitoring by the COUNTY.
- 10.2. The CITY shall do the following to guard against Fraud and Abuse:
  - 10.2.1. Develop written policies, procedures, and standards of conduct that articulate the CITY's commitment to comply with all applicable Federal and State standards including management responsibility and mandatory compliance plan;
  - 10.2.2. Provide effective, ongoing training, and education to the staff of the CITY and providers regarding fraud and abuse policies and procedures and the False Claims Act as identified in Section 1902(a) (68) of the Social Security Act, and whistle blower protection;
  - 10.2.3. Provide effective communication between, management, the CITYs staff, and providers;
  - 10.2.4. Enforce standards through well-publicized disciplinary guidelines;
  - 10.2.5. Conduct Internal monitoring and auditing;
  - 10.2.6. Respond promptly to detected offenses and development of corrective action initiatives; and
  - 10.2.7. Report fraud and/or abuse information to the COUNTY within one (1) business day of discovery to include the source of the complaint, the involved individual(s), nature of fraud or abuse complaint, approximate dollars involved, and the legal and administrative disposition of the case.
- 10.3. The CITY shall adhere to the following requirements, as outlined in Exhibits A and the SDG Guidelines: Fraud, Waste, and Abuse; HIPAA; and HIPAA HITECH.

## **11. CONFIDENTIALITY/SAFEGARDING INFORMATION**

- 11.1. Confidential Information as used in this section includes:
  - 11.1.1. All material provided to the CITY by the COUNTY or COMMERCE that is designated as "confidential" by the COUNTY or COMMERCE;

- 11.1.2. All material produced by the CITY that is designated as “confidential” by COMMERCE; and
- 11.1.3. All personal information in the possession of the CITY that may not be disclosed under state or federal law. “Personal Information” includes, but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” (PHI) under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 11.2. The CITY shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The CITY shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell, or disclose any Confidential Information to any third party except with the prior written consent of the COUNTY or COMMERCE or as may be required by law. The CITY shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale, or disclosure of the Confidential Information or violation of any state or federal laws thereto. Upon request, the CITY shall provide the COUNTY or COMMERCE with its policies and procedures on confidentiality. SPOKANE COUNTY or COMMERCE may require changes to such policies and procedures as they apply to this grant whenever it is determined that changes are necessary to prevent unauthorized disclosures. The CITY shall make the changes within the time period specified by SPOKANE COUNTY or COMMERCE. Upon request, the CITY shall immediately return to the COUNTY or COMMERCE any Confidential Information that the COUNTY or COMMERCE reasonably determines has not been adequately protected by the CITY against unauthorized disclosure.
- 11.3. Unauthorized Use or Disclosure. The CITY shall notify the COUNTY within one (1) working day of any unauthorized use or disclosure of Confidential Information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## **12. SUBCONTRACTORS**

- 12.1. The CITY shall seek and whenever appropriate will receive approval from the COUNTY for all subcontracts under this AGREEMENT.
- 12.2. The CITY shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the COUNTY or COMMERCE in writing may:
  - 12.2.1. Require the CITY to amend its subcontracting procedures as they relate to this AGREEMENT;
  - 12.2.2. Prohibit the CITY from subcontracting with a particular person or entity; or

12.2.3. Require the CITY to rescind or amend and subcontract.

- 12.3. Every subcontract shall bind the subcontractor to the follow all applicable terms of this AGREEMENT. The CITY is responsible to the COUNTY and COMMERCE if the CITY or its subcontractor fails to comply with any applicable term or condition of this AGREEMENT. The CITY shall appropriately monitor the activities of the subcontractor to assure fiscal conditions of this AGREEMENT. In no event, shall the existence of a subcontract operate to release or reduce the liability of the CITY to the COUNTY for any breach in the performance of the CITY's duties.
- 12.4. Every subcontract shall include a term that COMMERCE, the State of Washington, and the COUNTY are not liable for claims or damages arising from a subcontractors' performance of the subcontract.

### **13. MONITORING**

- 13.1. The COUNTY shall provide technical assistance to the CITY, to the extent practicable. The COUNTY will monitor the performance of services and evaluate accomplishments and compliance with the terms of this Agreement throughout the project period. Monitoring may include a visit to the project site or to the CITY, reports on monthly or quarterly basis, desk monitoring, assessments, and process/time studies.
- 13.1.1. The CITY will be given a minimum of thirty (30) days' notice for monitoring, unless there are special circumstances that required immediate attention. The notice will specify the monitoring components.
- 13.2. The CITY shall cooperate with the COUNTY or its agent in the evaluation of the CITY's performance under this AGREEMENT and make available all information reasonably required by any such evaluation process. Request for information will be responded to within three (3) business days and followed through within ten (10) business days. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW 42.56 and/or United States Code (USC) 5 USC 552 (Freedom of Information Act).
- 13.3. The CITY shall provide right of access to its facilities, including those of any subcontractor, to the COUNTY, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided for herein. The COUNTY shall provide reasonable notice of any COUNTY monitoring or evaluation, unless the COUNTY has reason to believe that monitoring without notice is necessary. The COUNTY shall monitor the CITY programmatically and financially on site within the sole discretion of the COUNTY. The CITY shall make available to the COUNTY, the state auditor, books or pertinent information which the CITY shall have kept pertaining to this AGREEMENT and as required by this AGREEMENT, Washington law. The CITY shall also furnish such progress reports, schedules, financial and costs reports, and other such program or fiscal data reasonably required to evaluate the performance of this AGREEMENT.

- 13.4. The CITY shall respond timely and accurately to requests from the COUNTY to provide information necessary to respond to inquiries from entities having authority to make such request.
- 13.5. The CITY agrees to notify the COUNTY in advance of any state or other formal inspections, audits, accreditation or program reviews and provide to the COUNTY copies of said review, including any final written plan of correction or other written response, within thirty (30) days of receipt.
- 13.6. The CITY will monitor the performance of services and evaluate accomplishments and compliance with the terms of its agreements with its subcontractors throughout the project period. Monitoring may include a visit to the project site or to the subcontractor's organization, reports on monthly or quarterly basis, desk monitoring, assessments, and process/time studies.
  - 13.6.1. The CITY will give its subcontractor a minimum of thirty (30) days' notice for monitoring, unless there are special circumstances that required immediate attention. The notice will specify the monitoring components.
  - 13.6.2. The CITY will include the monitoring language in 14.1. through 14.5. above in all subcontracts.

#### **14. AMENDMENTS AND MODIFICATIONS**

- 14.1. The COUNTY and/or the CITY may request, in writing, an amendment or modification of this AGREEMENT. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the COUNTY and the CITY. No other understandings or agreements, written or oral, shall be binding on the PARTIES.
- 14.2. The CITY hereby acknowledges that this AGREEMENT is subject to all, RCWs, and Washington Administrative Codes (WAC) applicable to this AGREEMENT. Any provision of the Agreement which conflicts with federal and state statutes or regulations is hereby amended to conform to the provisions of state law and regulations. Such amendment of the Agreement will be effective on the effective date of the statutes or regulations necessitating it and will be binding on the Parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties. The COUNTY will provide notice of such amendment required by this paragraph when the COUNTY is aware of them. The CITY agrees to accept, and execute any and all amendments offered by the COUNTY needed to effectuate the, RCW, and/or WAC.
- 14.3. Any proposed change(s) in the project scope of service, budget, location, or the number of beneficiaries served as described in the CITY's Application and Scope of Work, must be submitted in writing to the COUNTY for approval prior to incurring any project costs or implementing any substantial project modifications. Any such changes shall be considered a request to modify or amend this AGREEMENT.



## **15. WAIVER**

- 15.1. No officer, employee, agent or otherwise of the COUNTY or the CITY has the power, right or authority to waive any of the terms, conditions, provisions, and/or covenants to this AGREEMENT. No waiver of any breach or violation of any provision of this AGREEMENT shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this AGREEMENT or by law, shall be taken and construed as cumulative that is, in addition to every other remedy provided herein or by law. Failure of the COUNTY to enforce, at any time, any of the provisions of this AGREEMENT, or to require at any time performance by the CITY of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor in any way effect the validity of this AGREEMENT of any part hereof, or the right of the COUNTY to hereafter enforce each and every such provision.

## **16. TERMINATION FOR CAUSE / SUSPENSION**

- 16.1. In the event the COUNTY determines the CITY has failed to comply with the conditions of this AGREEMENT in a timely manner, the COUNTY has the right to suspend or terminate this AGREEMENT in whole or in part upon written notice to the CITY. Before suspending or terminating this AGREEMENT, the COUNTY shall notify the CITY in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, this AGREEMENT may be terminated or suspended. Such termination shall be deemed "Termination for Cause." Termination shall take effect on the date specified in the notice.
- 16.2. In the event of termination or suspension, the CITY shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement Agreement, as well as all costs associated with entering into the replacement Agreement (i.e., competitive bidding, mailing, advertising, and staff time).
- 16.3. The COUNTY reserves the right to suspend all or part of this AGREEMENT, withhold further payments, or may prohibit the CITY's from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CITY or decision by the COUNTY to terminate this AGREEMENT. A termination shall be deemed a "Termination for Convenience" if it is determined that the CITY was not in default or the failure to perform was outside his or her control, fault, or negligence.
- 16.4. All rights and remedies of the COUNTY provided in this AGREEMENT are not exclusive and are, in addition to any other rights and remedies, provided by law.

## **17. TERMINATION FOR CONVENIENCE**

- 17.1. Except as otherwise provided in this AGREEMENT, the COUNTY may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this AGREEMENT, in whole or in part, for convenience. If this AGREEMENT is so terminated, the COUNTY shall be liable only for payment

required under the terms of this AGREEMENT for services rendered prior to the effective date of termination.

## **18. TERMINATION PROCEDURES**

- 18.1. Upon termination of this AGREEMENT, the COUNTY in addition to any other rights provided in this AGREEMENT, may require the CITY to deliver to the COUNTY any property specifically produced or acquired for the performance of such part of this AGREEMENT as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.
- 18.2. The COUNTY shall pay the CITY the agreed upon price, if separately stated, for completed work and services accepted by the COUNTY, and the amount agreed upon by the CITY AND the COUNTY for: (i) completed works and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by the COUNTY; and (iv) the protection and presentation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of the COUNTY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this AGREEMENT. The COUNTY may withhold from any amounts due to the CITY such sum as the Authorized Representative determines to be necessary to protect the COUNTY against potential loss or liability.
- 18.3. The rights and remedies of the COUNTY under this Section are in addition to any other rights and remedies provided under this AGREEMENT or otherwise provided under law. Provided, further, in the event that the CITY fails to perform this AGREEMENT in accordance with state laws, federal laws, and/or the provisions of this AGREEMENT, the COUNTY reserves the right to recapture funds in an amount to compensate the COUNTY for the noncompliance in addition to any other remedies available at law or in equity.
- 18.4. After receipt of a Notice of Termination, and except as otherwise directed by the COUNTY, the CITY shall:
  - 18.4.1. Stop work under the Agreement on the date, and to the extent specified, in the notice;
  - 18.4.2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
  - 18.4.3. Assign to the COUNTY all of the rights, title, and interest of the CITY under the orders and subcontracts so terminated, in which case the COUNTY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the CITY to settle such claims must have the prior written approval of the COUNTY; and
  - 18.4.4. Preserve and transfer any materials, Agreement deliverables and/or the COUNTY property in the City's possession as directed by the COUNTY.

## **19. CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING**

- 19.1. Political activity of CITY employees and officers are limited by the State Campaign Finances and Lobbying provisions of RCW Chapter 42.17A and the Federal Hatch Act 5 USC 1501 – 1508.
- 19.2. No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

## **20. CONFLICT OF INTEREST**

- 20.1. No officer or employee of the COUNTY; no member, officer, or employee of the CITY or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the CITY who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this AGREEMENT.
- 20.2. The CITY shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.
- 20.3. Notwithstanding any determination made by the Executive Ethics Board of COMMERCE, other tribunal, or the Spokane Board of County Commissioners, the COUNTY may, in its sole discretion, by written notice to the CITY terminate this AGREEMENT if it is found after due notice and examination that there is a violation of Ethics in Public Service Act, RCW Chapters 42.52 and 42.23 or any other similar statute involving the CITY in the procurement of, or performance under this contract.
- 20.4. Specific restrictions apply to contracting with current or former state employees pursuant to RCW Chapter 42.52. The CITY and their subcontractor(s) must identify any person employed in any capacity by the State of Washington that worked on the SDG program (during the twenty-four (24) month period preceding the start date of this AGREEMENT) including but not limited to: formulating or drafting legislation; participating in grant procurement planning and execution; awarding grants; and monitoring grants. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined that a conflict exists, the CITY may be disqualified from further consideration for the award of this grant.

## **21. DISPUTE RESOLUTION**

- 21.1. Except as otherwise provided in this AGREEMENT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties and be sent to all parties. The panel shall consist of a representative appointed by the COUNTY, a

representative by the CITY and a third party mutually agreed upon by both parties. The panel shall by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel member.

## **22. INDEMNIFICATION AND INSURANCE**

### **22.1. Indemnification**

- 22.1.1. SPOKANE COUNTY shall protect, defend, indemnify and hold harmless the CITY, its officers, officials, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property). SPOKANE COUNTY will not be required to indemnify, defend, or save harmless the CITY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the CITY. Where such claims, suits, or actions result from the concurrent negligence of both PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence.
- 22.1.2. The CITY agrees to protect, defend, indemnify, and hold harmless the COUNTY, its officers, officials, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments and/or awards of damages (both to persons and/or property). the CITY will not be required to indemnify, defend, or save harmless the COUNTY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the COUNTY. Where such claims, suits, or actions result from the concurrent negligence of both PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence.
- 22.1.3. The COUNTY and the CITY agree that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any the COUNTY or CITY employees or agents while performing work authorized under this AGREEMENT. For this purpose, the COUNTY and the CITY, by mutual negotiation, hereby waive any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of chapter 51.12 RCW.
- 22.1.4. These indemnifications and waiver shall survive the termination of this AGREEMENT.
- 22.1.5. No officer or employee of the CITY or the COUNTY shall be personally liable for any act, or failure to act, in connection with this AGREEMENT. It is understood that in such matters they are acting solely as agents of their respective agencies.

22.1.6. Insofar as the funding source, is an agency of the government, the following shall apply:

22.1.6.1. 44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

22.1.6.2. OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA): The CITY represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the CITY's performance under this AGREEMENT. To the extent allowed by law, the CITY further agrees to indemnify and hold harmless the COUNTY, and its employees and agents from all liability, damages, and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the COUNTY as a result of the failure of the CITY to so comply.

## 22.2. Insurance

22.2.1. The CITY is self-funded for its liability exposures including General Liability and Automobile Liability to the limits of \$1.5 million and Workers Compensation to the limits of \$1 million. Should a covered loss occur in the fulfillment of this AGREEMENT, the CITY shall provide payment under the terms of its self-funded insurance program.

## 23. LOSS OR REDUCTION OF FUNDING

23.1. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this AGREEMENT and prior to normal completion or end date, the COUNTY may unilaterally reduce the scope of work and budget or unilaterally terminate all or part of the AGREEMENT as a "Termination for Cause" without providing the CITY an opportunity to cure. Alternatively, the PARTIES may renegotiate the terms of this AGREEMENT under "Amendments and Modifications" to comply with new funding limitations and conditions, although the COUNTY has no obligation to do so.

## 24. NONASSIGNABILITY

24.1. Neither this AGREEMENT, nor any claim arising under this AGREEMENT, shall be transferred or assigned by the CITY.

## 25. NOTICES

25.1. Any notices required in accordance with any of the provisions herein shall be delivered personally, or sent by registered or certified mail to:

To: **Director**

Spokane County Community Services, Housing, and Community  
Development Department  
1116 W. Broadway Avenue  
Spokane, WA 99260

With a copy to: **Community Development Specialist 3**

Spokane County Community Services, Housing, and Community  
Development Department  
1116 W. Broadway Avenue  
Spokane, WA 99260

Contractor to: **Kirstin David**

Communications Manager  
City of Spokane  
Community, Housing & Human Services Division  
808 West Spokane Falls Blvd  
Spokane, WA 99201

## **26. COPYRIGHT PROVISIONS**

- 26.1. The COUNTY hereby retains a nonexclusive, royalty free, and irrevocable right to duplicate, use for their own purposes, disseminate, disclose, or authorize others to utilize any copyrighted or copyrightable work developed or purchased with SDG funds.

## **27. PAY EQUITY**

- 27.1. The CITY agrees to ensure that “similarly employed” individuals in its workforce are compensated as equals, consistent with the following:
- 27.1.1. Employees are “similarly employed” if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
  - 27.1.2. The CITY may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
    - 27.1.2.1. A seniority system, a merit systems, a system that measures earnings by quality of production, a bona fide job-related factor or factors, or a bona fide regional difference in compensation levels.
      - 27.1.2.1.1. A bona fide job related factor or factors may include, but not be limited to: education; training; or experience that is consistent with business necessity, not based on or derived from a gender-based differential. and accounts for the entire differential.

- 27.1.2.1.2. A bona fide regional difference in compensation level must be consistent with business necessity, not based on or derived from a gender-based differential, and account for the entire differential.

- 27.2. This AGREEMENT may be terminated by the COUNTY, if the COUNTY or COMMERCE determines that the CITY is not in compliance with this provision.

## **28. POLITICAL ACTIVITY**

- 28.1. No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

## **29. PUBLICITY**

- 29.1. The CITY agrees to submit to the COUNTY and COMMERCE, prior to issuance all advertising and publicity matters relating to this AGREEMENT wherein the COUNTY's and/or COMMERCE's name is mentioned or language used from which the connection of the COUNTY and/or COMMERCE's name may, in the judgment of the COUNTY and/or the COMMERCE be inferred or implied. The CITY agrees not to publish or use such advertising and publicity matters without the prior written consent of the COUNTY and/or COMMERCE. The CITY may copyright original work it develops in the course of or under this AGREEMENT, however, pursuant to 2 CFR Part 200.315, COMMERCE reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the work for government purposes.
- 29.2. Publication resulting from work performed under this AGREEMENT shall include an acknowledgement of the COUNTY'S AND COMMERCE's financial support, and a statement that the publication does not constitute an endorsement by the COUNTY/COMMERCE or reflect the COUNTY/COMMERCE's views.

## **30. RECORDS**

- 30.1. The CITY agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect THE CITY's contracts, sub awards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this AGREEMENT (the "records").
- 30.2. The CITY's records related to this AGREEMENT and the projects funded may be inspected and audited by the COUNTY and/or COMMERCE or its designee, by the Office of the State Auditor, HUD or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the CITY with the terms of this AGREEMENT and to determine the appropriate level of funding to be paid under the AGREEMENT.

- 30.3. The records shall be made available by the CITY for such inspection, and audit together with suitable space for such purpose, at any and all times during the CITY's normal working day.
- 30.4. The CITY shall retain and allow access to all records related to this AGREEMENT and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this AGREEMENT. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

### **31. SEVERABILITY**

- 31.1. If any court of rightful jurisdiction holds any provision or condition under this AGREEMENT or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the AGREEMENT, which can be given effect without the invalid provision. To this end, the terms and conditions of this AGREEMENT are declared severable.

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

- 32.1 Unless otherwise provided in this AGREEMENT, the CITY shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the CITY or its staff required by statute or regulation that are applicable to the AGREEMENT performance.

### **33. UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)**

- 33.1. The CITY is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this AGREEMENT. The CITY may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

### **34. EXECUTION AND APPROVAL**

- 34.1. The signatories to this AGREEMENT represent that they have the authority to bind their respective organizations to this AGREEMENT. Only the PARTIES' authorized representatives shall have the express, implied or apparent authority to alter, amend, modify or waive any clause or condition of this AGREEMENT. Any alteration, amendment, modification, or waiver of any clause or condition of this AGREEMENT is not effective or binding unless made in writing and signed by both PARTIES' authorized representatives. Further, only the Authorized Signature representatives or the designee of the Authorized Signature representative shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans and other requests, certifications and documents authorized by or required under this AGREEMENT.



**35. MISCELLANEOUS**

- 35.1. All Writings Contained Herein. This AGREEMENT contains all the terms and conditions agreed upon by the PARTIES. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the PARTIES hereto. The CITY has read and understands all of this AGREEMENT and now states that no representation, promise, or condition not expressed in this AGREEMENT has been made to induce the CITY to execute the same.
- 35.2. Calculation of Time Periods. Unless otherwise specified, in calculating any period of time described in this AGREEMENT, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday, or County holiday, in which case the last day of the period shall be the next business day. The final day of any such period shall be deemed to end at 5 o'clock p.m., Pacific Time.
- 35.3. Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.
- 35.4. Further Documentation. The CITY agrees to execute, acknowledge, and deliver upon reasonable request by the COUNTY any document, which the COUNTY reasonably deems necessary or desirable to evidence or effectuate the rights herein conferred or to implement or consummate the purposes and intents hereof.
- 35.5. Gender and Grammar. Wherever appropriate in this AGREEMENT, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.
- 35.6. Headings. The headings are for convenience only and do not in any way limit or affect the terms and provisions hereof.
- 35.7. Licensing, Accreditation, and Registration. The CITY shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements or standards necessary for the performance of this AGREEMENT.
- 35.8. No Third-Party Beneficiaries. Nothing in this AGREEMENT is intended to give, or shall give, whether directly or indirectly, any benefits or right, greater than that enjoyed by the general public, to third persons.
- 35.9. Registration with the Department of Revenue. If required by law, the CITY shall complete registration with the Washington State Department of Revenue.
- 35.10. Right of Inspection. The CITY shall provide right of access to its facilities to the COUNTY, or any of its officers, or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this AGREEMENT.

- 35.11. Site Security. While on the COUNTY or COMMERCE premises, the CITY, it agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security policies or regulations.
- 35.12. Survival. The terms, conditions, and warranties contained in this AGREEMENT that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this AGREEMENT, shall so survive.
- 35.13. Time of Essence. Time is of the essence of this AGREEMENT.

## **SYSTEM DEMONSTRATION GRANT (SDG) SERVICES AGREEMENT**

### **EXHIBIT A**

### **SCOPE OF WORK**

1. CITY shall commit to operating a high-performing crisis response system in Spokane County by:
  - 1.1. Prioritizing unsheltered homeless households for services (Guidelines: Administrative Requirements).
  - 1.2. Prioritizing households most likely to become homeless when using prevention rent assistance. (Guidelines: Additional Requirements for Rapid-Rehousing and Targeted Prevention Programs).
2. CITY shall submit the following monthly deliverables in a timely manner with truthful, accurate information:
  - 2.1. Invoice and Voucher Detail Worksheet for reimbursement.
  - 2.2. Required report(s) from HMIS included with the Invoice (Guidelines: Fiscal Administration).
3. CITY shall submit the following deliverables in a timely manner with truthful, accurate information:
  - 3.1. Local Homeless Housing Plan Updates (Guidelines: Reporting Requirements).
  - 3.2. Annual County Report/Homeless Housing Inventory including Point-In-Time Count information (Guidelines: Reporting Requirements).
  - 3.3. Essential Needs Report (Guidelines: Reporting Requirements).
  - 3.4. Grantees shall commit to reporting complete quality data that is timely, truthful and accurate. (Guidelines: Administrative Requirements and HMIS).
4. CITY shall comply with all requirements, policies and procedures in the Consolidated Homeless Grant System Demonstration Grant Guidelines, including the Coordinated Entry Guidelines.
5. Performance activities will be monitored by COUNTY. CITY must submit the following deliverables upon request:
  - 5.1. Evidence of communicating performance outcomes with subgrantees through web-based dashboards, reports or other means.
  - 5.2. Evidence of performance monitoring.
  - 5.3. A description of performance monitoring outcomes including the number of projects with performance issues and specific actions taken (e.g. development of technical assistance plans, reduction in funding, etc.).
  - 5.4. A description of performance improvement strategies currently deployed or in development. A description of performance improvement strategies currently deployed or in development.

- 5.6. The unsheltered prioritization performance measure and benchmark is outlined in the table below. Grantees must meet or demonstrate progress towards established performance target (Guidelines: Administrative Requirements and Appendix A: Performance Requirements).

<b>Intervention Type</b>	<b>Performance Measure</b>	<b>SFY 2021 Baseline</b>	<b>Change from Baseline</b>	<b>June 30, 2022 Benchmark</b>
System	Increase Percent Unsheltered and Flee Violence	57%	Increase 5 percentage points	TBD

6. Consequences of non-compliance:

- 6.1. If COUNTY determines that CITY is failing to comply with the Guidelines, Terms, and Conditions, COUNTY will notify CITY that CITY will receive technical assistance and be required to respond to a corrective action plan to address and remedy the noncompliance.
- 6.2. If the CITY is still out of compliance after the technical assistance, COUNTY may move the CITY into a probationary period with a second corrective action plan and may reduce the grant total by 20%.
- 6.3. If the CITY remains out of compliance after the probation period, COUNTY may terminate the grant per the General Terms and Conditions TERMINATION FOR CAUSE.

**SYSTEM DEMONSTRATION GRANT (SDG) SERVICES AGREEMENT**  
**EXHIBIT B**  
**BUDGET**

<b>Budget Category</b>	<b>Amount</b>
SDG Base: Administrative Costs	\$89,162.00
SDG Base: Rent/Fac Support Lease	\$348,977.00
SDG Base: Other Rent/Fac Support Lease & Housing Costs	\$8,267.00
SDG Base: Operations	\$374,757.00
<b>Total Budget</b>	<b>\$821,163.00</b>

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

09/20/2021

**Date Rec'd**

9/9/2021

**Clerk's File #**

OPR 2021-0616

**Renews #****Cross Ref #****Project #****Bid #****Requisition #**

CR22907

**Submitting Dept**

FACILITIES MANAGEMENT

**Contact Name/Phone**

DAVE STEELE X6064

**Contact E-Mail**

DSTEELE@SPOKANECITY.ORG

**Agenda Item Type**

Contract Item

**Agenda Item Name**

5900 - ILA FOR ENVISION CENTER COST SHARING

**Agenda Wording**

This interlocal agreement establishes the interlocal relationship between Workforce Development, Spokane County, and the City of Spokane and agreed upon cost contribution by each agency over the life of the agreement.

**Summary (Background)**

The City of Spokane, Spokane County, and Workforce Development are working in partnership to support Envision Spokane and are collaborating on a transition of responsibility for the property lease to Spokane County. This interlocal establishes the framework between the three parties, setting terms for cost sharing and other elements.

Lease? YES

Grant related? NO

Public Works? NO

**Fiscal Impact****Budget Account**

Expense \$ 48,960 (June-Aug 2021)

# 5900-30900-18200-54501-89011

Revenue \$ 32,640 (June-Aug 2021)

# 5900-30900-99999-36710-89011

Expense \$ 29,110.67 (Sept-Dec 2021)

# 5900-30900-18200-54501-89011

Expense \$ 87,332 (2022); 36,388.33 (2023)

# 5900-30900-18200-54501-89011

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

TEAL, JEFFREY

**Study Session\Other**

PIES 7-26-2021

**Division Director**

WALLACE, TONYA

**Council Sponsor**

CM Kinnear

**Finance**

BUSTOS, KIM

**Distribution List****Legal**

PICCOLO, MIKE

twallace@spokanecity.org; jteal@spokanecity.org;  
dsteele@spokanecity.org**For the Mayor**

ORMSBY, MICHAEL

lkinnear@spokanecity.org; gbyrd@spokanecity.org

**Additional Approvals**

mhughes@spokanecity.org; cbaird@spokanecity.org

**Purchasing**

kbustos@spokanecity.org; ddaniels@spokanecity.org

**ACCOUNTING -  
LEASE**

HUGHES, MICHELLE

ablain@spokanecity.org;  
jemacio@spokanecounty.org

kbustos@spokanecity.org

## Briefing Paper

### PIES Committee

<b>Division &amp; Department:</b>	Finance – Facilities Department
<b>Subject:</b>	Interlocal Agreement between the City of Spokane, Spokane County, and Spokane Area Workforce Development regarding cost sharing for the Envision Center
<b>Date:</b>	07/26/2021
<b>Author (email &amp; phone):</b>	dsteale@spokanecity.org 625-6064
<b>City Council Sponsor:</b>	Councilwoman Kinnear
<b>Executive Sponsor:</b>	Tonya Wallace
<b>Committee(s) Impacted:</b>	N/A
<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)	Comp Plan, Strategic Plan
<b>Strategic Initiative:</b>	
<b>Deadline:</b>	8/1/2021
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Council approval of an interlocal agreement with the City of Spokane, Spokane County, and Workforce Development establishing the parameters of the long-term partnership supporting the Envision Center.
<b>Background/History:</b> The City of Spokane, Spokane County, and Workforce Development are working in partnership to support Envision Spokane and are collaborating on a transition of responsibility for the property lease to Spokane County. This interlocal establishes the framework between the three parties, setting terms for cost sharing and other elements.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>This interlocal agreement establishes the interlocal relationship between Workforce Development, Spokane County, and the City of Spokane and agreed upon cost contribution by each agency over the life of the agreement.</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: (revenue generating, match requirements, etc.) <i>Match requirements will be determined at the time of award.</i>	
<b>Operations Impact:</b> Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No N/A Specify changes required: Known challenges/barriers:	

**INTERLOCAL AGREEMENT AMONG SPOKANE COUNTY, CITY OF SPOKANE AND  
SPOKANE AREA WORKFORCE DEVELOPMENT COUNCIL REGARDING THE LEASE OF  
SPACE FOR THE RESOURCE CENTER OF SPOKANE COUNTY**

**THIS INTERLOCAL AGREEMENT** (“Agreement”), made and entered into among Spokane County, a political subdivision of the State of Washington, having offices for the transaction of business at 1116 West Broadway Avenue, Spokane, Washington 99260, hereinafter referred to as “**COUNTY**”, the City of Spokane, a municipal corporation of the State of Washington, having offices for the transaction of business at 808 West Spokane Falls Boulevard, Spokane, Washington 99201, hereinafter referred to as “**CITY**”, and Spokane Area Workforce Development Council, a non-profit corporation of the State of Washington having offices for the transaction of business at 140 S. Arthur Street, Suite 300A, Spokane, Washington 99202, hereinafter referred to as “**SAWDC**”, each individually referred to as a PARTY and jointly referred to along with the COUNTY and CITY as the PARTIES. The PARTIES agree as follows:

**SECTION 1.**                      **RECITALS AND FINDINGS**

(A) Pursuant to chapter 39.34 RCW (Interlocal Cooperation Act), the PARTIES may contract with each other to perform certain functions which each may legally perform.

(B) Pursuant to the provisions of RCW 36.32.120(6), COUNTY has the care of Spokane County property and the management of Spokane County funds and business and in this capacity, can participate in programs providing a range of services that meet the needs of Spokane County residents to help stabilize their living situations and enter a path of economic self-sufficiency that leverages the strong connection to the workforce system.

(C) Pursuant to the provisions of 29 USC § 3102 et seq., Congress of the United States enacted the Workforce Innovation and Opportunity Act (“WIOA”) on July 22, 2014 to help job seekers access employment, education, training and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. The WIOA superseded the Workforce Investment Act of 1998 (“WIA”). The COUNTY and CITY formed the SAWDC to receive federal dollars and implement the WIA and its successor the WIOA.

(D) The CITY to further its responsibilities under the WIOA entered into a lease of certain space located at 130 South Arthur, Spokane, Washington with Ulupalakua Ranch, Inc., (“Lease”) wherein SAWDC operates a Spokane County Resource Center which brings together various service providers providing a range of services that meet Spokane County residents’ needs to help stabilize their living situations and enter paths toward economic self-sufficiency. The Lease between the CITY and Ulupalakua Ranch, Inc. expired on May 31, 2021. It was extended for an additional three (3) month time frame through August 31, 2021. The rent under the Lease for June 2021, July 2021, and August 2021 was \$48,960 or \$16,320 per month. At the end of the three (3) month time frame, a new lease for the space at 130 South Arthur will be entered into between COUNTY and Ulupalakua Ranch, Inc. (“New Lease”). The New Lease will be for the same space as under the Lease. The term of the New Lease will be twenty-one months from September 1, 2021 through May 31, 2023. The rent under the New Lease will be \$261,966 annually or \$21,833 per month. The PARTIES desire to equally split the rent under the Lease for June 2021, July 2021 and August 2021, as well as equally split the rent under the New Lease for September 1, 2021 through May 31, 2023.

**SECTION 2.**                      **PURPOSE**

The purpose of this Agreement is to reduce to writing the PARTIES’ understanding regarding their respective financial obligations to equally split the rent under the Lease for June 2021, July 2021 and August 2021 as well as equally split the rent under the New Lease for September 1, 2021 through May 31, 2023.



The rent under the Lease for June 2021, July 2021 and August 2021 is \$16,320 per month for a total of \$48,960. Each PARTY will pay 1/3 of the total amount of \$48,960 or \$16,320 each.

The rent under the New Lease for the term of September 1, 2021 through May 31, 2023 will be \$21,833 per month for a total of \$458,493. Each PARTY will pay 1/3 of the total amount of \$458,493 or \$152,831 each. Provided, however in the event the total amount of rent under the New Lease for the term of September 1, 2021 through May 31, 2023 exceeds \$21,833 per month for a total of \$458,493, the PARTIES agree that the amount each PARTY pays will be adjusted in the last quarterly payment so the total rent for the entire term is split equally among the PARTIES.

### **SECTION 3.**                      **DURATION AND TERMINATION**

This Agreement shall commence upon execution of the Agreement by the PARTIES and shall terminate at the end of the New Lease. Provided, however, if the New Lease is extended by the COUNTY, SAWDC will be fully and solely responsible for the rent amounts as they become owing and due. COUNTY will advise SAWDC prior to March 1, 2023 of its desire to extend the New Lease subject to agreement with Ulupalakua Ranch, Inc., the term of the extension, and the monthly rent amount. SAWDC shall advise the COUNTY on or before April 1, 2023 if it can assume the sole responsibility for the rent amounts under the extended New Lease.

The CITY's participation or involvement in an extended New Lease shall require the CITY's written agreement.

Once this Agreement is executed it cannot be terminated by any PARTY nor can any PARTY withdraw.

### **SECTION 4.**                      **RESPONSIBILITIES OF THE PARTIES**

#### **(A.)        COUNTY RESPONSIBILITIES:**

The COUNTY will execute a New Lease for the same space and under substantially the same terms and conditions as identified in the Lease between CITY and Ulupalakua Ranch, Inc, consisting of approximately 20,116 rentable square feet located at 130 South Arthur, Spokane, Washington. The New Lease will be for a twenty-one (21) month term commencing September 1, 2021 and terminating May 31, 2023. The rent under the New Lease for the term of September 1, 2021 through May 31, 2023 will be \$21,833 per month for a total of \$458,493.

The COUNTY will pay all rent owing and due under the New Lease. The rent under the New Lease is due at the beginning of the month for each month. The COUNTY at the end of each three (3) month term of the New Lease will bill the CITY and SADC their proportionate share of the rent for that three (3) month time frame. The CITY and SAWDC shall reimburse the COUNTY their proportionate share of the rent for that three (3) month time frame within thirty (30) calendar days of billing. Billing statements shall be send via e-mail to the PARTIES' representatives set forth below. For example, for the time frame from September 1, 2021 through November 30, 2021, COUNTY will pay the monthly rent under the New Lease of \$21,833 per month for a total rental payment of \$65,499. At the end of November 2021, COUNTY will bill CITY and SAWDC one-third (1/3) of this amount or \$21,833 each. City and SAWDC shall pay the COUNTY this amount within thirty (30) days of billing.

#### **(B.)        CITY'S RESPONSIBILITIES:**

The CITY will pay all rent owing and due under the Lease for the months of June 2021, July 2021 and August 2021. The rent is due at the beginning of the month for the month. The rent under the Lease for June 2021, July 2021 and August 2021 is \$16,320 per month for a total of \$48,960. At the end of the three- month time frame, the CITY will divide the total monthly rental payment due under the Lease by three (3) and bill to COUNTY and SAWDC their proportionate share. The COUNTY and SAWDC shall reimburse the CITY their

proportionate share within thirty (30) days of billing. Billing statements shall be send via e-mail to the PARTIES' representatives set forth below. For example, for the time frame of June 1, 2021 through August 1, 2021, CITY will pay the monthly rent under the Lease of \$16,320 per month for a total rental payment of \$48,960. At the end of August 2021, CITY will bill COUNTY and SAWDC one-third of this amount or \$16,320 each.

(C.) **SAWDC'S RESPONSIBILITIES:**

In addition to the responsibilities in (A.) and (B.) above, SAWDC will also be responsible for operating Resource Center of Spokane County in the space identified in the Lease and New Lease and programming the space for the purpose of bringing together various service providers providing a range of services that meet Spokane County residents' needs to help stabilize their living situations and enter paths toward economic self-sufficiency. All prior agreements, arrangements, memorandums of understanding or other arrangements the CITY has or may have had with any of the service providers located at the Resource Center of Spokane County are void or otherwise superseded by the SAWDC'S operation of the Resource Center of Spokane County upon this Agreement being fully executed by the PARTIES.

To the extent the New Lease allows the COUNTY to sublease, and subject to any Landlord approval required in conjunction therewith, the COUNTY will entertain a request by SAWDC to sublease any of the space which is the subject of the New Lease. Any sublease revenues will be applied to the rental payment obligation of the COUNTY under the New Lease. As such each Party will have its 1/3 obligation for rental payments under the New Lease reduced by 1/3 of any revenues received from a sublessee.

SAWDC shall be responsible for executing the Subtenant Rider attached to the New Lease and complying with all provisions within the Subtenant Rider. A copy the New Lease to include Subtenant Rider is Attached hereto as Attachment "A".

Additionally, SAWDC in conjunction with operating the Resource Center of Spokane County in the space identified in the New Lease, at its sole cost and expense, and for the mutual benefit of COUNTY and SAWDC, shall carry and maintain:

- (a) Property insurance covering all personal property located on the space identified in the New Lease.
- (b) General Liability Insurance, including property damage, insuring COUNTY and SAWDC against liability for injury to persons or property occurring in or about the space identified in the New Lease or arising out of the maintenance, use or occupancy thereof. The liability limit under such insurance shall not be less than \$2,000,000.00 per occurrence, which includes general aggregate, products, completed operation and fire damage. The policy shall be endorsed and the certificate of insurance shall reflect that the County of Spokane is an additional named insured on SAWDC's general liability policy with respect to activities under the operation of the Resource Center of Spokane County in the space identified in the New Lease. SAWDC's insurer shall have a minimum A.M. Best's rating of A-VII and shall be authorized to do business in the State of Washington. Evidence of such insurance shall consist of a completed copy of the certificate of insurance, signed by the insurance agent and any required endorsement(s). Proof of insurance must be forwarded to the COUNTY annually. The certificate shall reflect that the COUNTY is a named Certificate Holder on SAWDC'S general liability policy with respect to obligations to operate the Resource Center of Spokane County in the space identified in the New Lease. The insurance afforded therein shall be primary insurance any insurance or self-insurance carried by the SAWDC shall be excess and not

contributory insurance to that provided by the SAWDC. The insurance policy or policies will not be canceled, materially changed or altered without forty-five (45) days prior notice submitted to the COUNTY.

Failure of the SAWDC to fully comply with the insurance requirements set forth herein, during the term of the their operation of the Resource Center in the space identified in the New Lease, or any renewal or extension thereof, shall be considered a material breach of their responsibility herein and in such instance, the COUNTY may acquire the insurance provided for herein and bill the SAWDC the amount thereof which shall be paid by SAWDC within thirty (30) days of billing or in the alternative, COUNTY may terminate its financial participation provided for under this Agreement. The COUNTY's ability to terminate its financial participation in this Agreement under this provision shall supersede any provision to the contrary in this Agreement.

COUNTY and SAWDC hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies including any extended endorsement thereto. This release shall be inapplicable only to the extent that it would have the effect of invalidating any insurance coverage of COUNTY and SAWDC.

SAWDC shall defend, indemnify, and hold COUNTY harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of SAWDC or any occupants it allows to use the space identified in the New Lease to include the occupant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees arising from any breach of SAWDC's operation of the Resource Center of Spokane County in the space identified in the New Lease. SAWDC shall use legal counsel reasonably acceptable to COUNTY in defense of any action within SAWDC's defense obligation.

## **SECTION 5.**                    **NOTICE**

All notices, other than billings addressed in Section 4, shall be in writing and served on any of the PARTIES either personally or by certified mail, return-receipt requested, at their respective addresses set forth above. Notices sent by certified mail shall be deemed served when deposited in the United States mail, postage prepaid.

Notices with respect to billing statements addressed in Section 4 shall be sent via email to:

COUNTY:	Gary Petrovich Chief Budget Officer <a href="mailto:gpetrovich@spokanecounty.org">gpetrovich@spokanecounty.org</a>
CITY:	Tonya Wallace Chief Financial Officer <a href="mailto:twallace@city.org">twallace@city.org</a>
SAWDC	Mark Mattke Chief Executive Officer <a href="mailto:mmattke@spokaneworkforcc.org">mmattke@spokaneworkforcc.org</a>

## **SECTION 6.**                    **COUNTERPARTS**

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

**SECTION 7.**                    **RELATIONSHIP OF THE PARTIES**

The PARTIES intend that an independent contractor relationship will be created by this Agreement. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of the other party for any purpose.

**SECTION 8.**                    **MODIFICATION**

This Agreement may be modified in writing by mutual written agreement of the PARTIES.

**SECTION 9.**                    **DISPUTE RESOLUTION**

Any dispute between the PARTIES which cannot be resolved between the PARTIES shall be subject to arbitration. Except as provided for to the contrary herein, such dispute shall first be reduced to writing. If the PARTIES cannot resolve the dispute it will be submitted to arbitration. The provisions of chapter 7.04A RCW shall be applicable to any arbitration proceeding.

Each party shall have the right to designate one person each to act as an arbitrator. The three selected arbitrators shall then jointly select a fourth arbitrator. The decision of the arbitration panel shall be binding on the PARTIES and shall be subject to judicial review as provided for in chapter 7.04A RCW. The costs of the arbitration panel shall be equally split between the PARTIES.

**SECTION 10.**                    **VENUE STIPULATION**

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

**SECTION 11.**    **SEVERABILITY**

In the event any portion of this Agreement should become invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

**SECTION 12.**                    **RECORDS**

All public records prepared, owned, used or retained by either PARTY in conjunction with meeting its responsibilities under this Agreement shall be made available to the other PARTY upon written request subject to the attorney client and attorney work product privileges set forth in statute, court rule or case law.

**SECTION 13.**                    **COMPLIANCE WITH LAWS**

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

**SECTION 14.**                    **WAIVER**

No officer, employee, agent or otherwise of any PARTY, has the power, right or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and constructed as cumulative, that is, in addition to every other remedy provided herein or by law.

**SECTION 15.                    TIME OF ESSENCE OF AGREEMENT**

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

**SECTION 16.                    EXECUTION AND APPROVAL**

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

**SECTION 17.                    NO THIRD-PARTY BENEFICIARIES**

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

**SECTION 18.                    ASSIGNMENT**

This Agreement shall not be assigned, sublet, pledged, conveyed, sold, transferred, or otherwise disposed of in whole or in part without the express written consent of the PARTIES.

**SECTION 19.                    HEADINGS**

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

**SECTION 20.                    ANTI-KICKBACK**

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

**SECTION 21.                    RCW 39.34 REQUIRED CLAUSES**

- (A.)    **PURPOSE**: See Section 2 above.
- (B.)    **DURATION**: See Section 3 above.
- (C.)    **ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS**: No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- (D.)    **RESPONSIBILITIES OF THE PARTIES**: See provisions above.
- (E.)    **AGREEMENT TO BE FILED**: The PARTIES shall file this Agreement as provided in RCW 39.34.040
- (F.)    **FINANCING**: Each PARTY shall be responsible for the financing of its contractual obligations under its normal budgetary process as set forth herein.

(G.) **TERMINATION**: See Section 3 above.

(H.) **PROPERTY UPON TERMINATION**: Title to all property acquired by any PARTY in the performance of this Agreement shall remain with the acquiring PARTY upon termination of the Agreement.

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

**SPOKANE COUNTY**

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

BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

\_\_\_\_\_  
JOSH KERNS, CHAIR

ATTEST:

\_\_\_\_\_  
MARY L. KUNEY, VICE-CHAIR

\_\_\_\_\_  
Ginna Vasquez, Clerk of the Board

\_\_\_\_\_  
AL FRENCH, COMMISSIONER

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

**CITY OF SPOKANE**

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

Attest:

Title: \_\_\_\_\_

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

Approved as to form:

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

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

**SAWDC**

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

Title: \_\_\_\_\_

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE )  
EXECUTION OF AN INTERLOCAL )  
AGREEMENT AMONG SPOKANE COUNTY, )  
CITY OF SPOKANE AND SPOKANE AREA )  
WORKFORCE DEVELOPMENT COUNCIL )  
REGARDING THE LEASE OF SPACE FOR )  
THE RESOURCE CENTER OF SPOKANE )  
COUNTY AND OTHER MATTERS )  
RELATED THERETO )

**RESOLUTION**

**WHEREAS**, pursuant to the Constitution and laws of the State of Washington, Spokane County, Washington is a class A county duly organized and existing; and

**WHEREAS**, pursuant to the provisions of RCW 36.01.030, the powers of Spokane County can only be exercised through the Board of County Commissioners of Spokane County, Washington ("Board" or "Board of County Commissioners"); and

**WHEREAS**, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners has the care of Spokane County property and the management of Spokane County funds and business and in this capacity can participate in programs providing a range of services that meet the needs of Spokane County residents to help stabilize their living situations and enter a path of economic self-sufficiency that leverages the strong connection to the workforce system; and

**WHEREAS**, pursuant to the provisions of 29 USC § 3102 et seq., Congress of the United States enacted the Workforce Innovation and Opportunity Act ("WIOA") on July 22, 2014 to help job seekers access employment, education, training and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. The WIOA superseded the Workforce Investment Act of 1998 ("WIA"). The County and City of Spokane ("City") formed the Spokane Area Workforce Development Council ("SAWDC") to receive federal dollars and implement the WIA and WIOA; and

**WHEREAS**, the City to further its responsibilities under the WIOA entered into a lease of certain space located at 130 South Arthur, Spokane, Washington with Ulupalakua Ranch, Inc., ("Lease") wherein SAWDC operates a Resource Center of Spokane County which brings together various service providers providing a range of services that meet Spokane County residents' needs to help stabilize their living situations and enter paths toward economic self-sufficiency. The Lease between the City and Ulupalakua Ranch, Inc. expired on May 31, 2021. It was extended for an additional three (3) month time frame through August 31, 2021. The rent under the Lease for June 2021, July 2021, and August 2021 was \$48,960 or \$16,320 per month. At the end of the three (3) month time frame, a new lease for the space at 130 South Arthur, Spokane Washington will be entered into between County and Ulupalakua Ranch, Inc. ("New Lease"). The New Lease will be for the same space as under the Lease. The term of the New Lease will be twenty-one months from September 1, 2021 through May 31, 2023. The rent under the New Lease will be \$21,833 per month. The PARTIES desire to equally split the rent under the Lease for June 2021, July 2021 and August 2021, as well as equally split the rent under the New Lease for September 1, 2021 through May 31, 2023; and

**WHEREAS**, the County, City and SAWDC desire to reduce to writing their understanding regarding their respective financial obligations to equally split the rent under the Lease for June 2021, July 2021 and August 2021, equally split the rent under the New Lease for September 1, 2021 through May 31, 2023 and other matters related to the New Lease.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Spokane County, Washington, pursuant to the provisions of RCW 36.32.120(6), RCW 36.01.030 and 29 USC § 3102 et seq., that either the chair of the Board or the Board be and are hereby authorized to execute that document entitled "*INTERLOCAL AGREEMENT AMONG SPOKANE COUNTY, CITY OF SPOKANE AND SPOKANE AREA WORKFORCE DEVELOPMENT COUNCIL REGARDING THE LEASE OF SPACE FOR THE RESOURCE CENTER OF SPOKANE COUNTY*" pursuant to which the County, City and SAWDC will reduce to writing their understandings regarding their respective financial obligations to equally split the rent under the Lease identified above for June 2021, July 2021 and August 2021, equally split the rent under the New Lease identified above for September 1, 2021 through May 31, 2023, and other matters related to the New Lease.

PASSED AND ADOPTED this 31<sup>st</sup> day of August, 2021.

BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON



ATTEST:

  
Ginna Vasquez, Clerk of the Board

  
JOSH KERNS, Chair

  
MARY L. KUNEY, Vice-Chair

  
AL FRENCH, Commissioner



**INTERLOCAL AGREEMENT AMONG SPOKANE COUNTY, CITY OF SPOKANE AND  
SPOKANE AREA WORKFORCE DEVELOPMENT COUNCIL REGARDING THE LEASE OF  
SPACE FOR THE RESOURCE CENTER OF SPOKANE COUNTY**

**THIS INTERLOCAL AGREEMENT** ("Agreement"), made and entered into among Spokane County, a political subdivision of the State of Washington, having offices for the transaction of business at 1116 West Broadway Avenue, Spokane, Washington 99260, hereinafter referred to as "**COUNTY**", the City of Spokane, a municipal corporation of the State of Washington, having offices for the transaction of business at 808 West Spokane Falls Boulevard, Spokane, Washington 99201, hereinafter referred to as "**CITY**", and Spokane Area Workforce Development Council, a non-profit corporation of the State of Washington having offices for the transaction of business at 140 S. Arthur Street, Suite 300A, Spokane, Washington 99202, hereinafter referred to as "**SAWDC**", each individually referred to as a PARTY and jointly referred to along with the COUNTY and CITY as the PARTIES. The PARTIES agree as follows:

**SECTION 1.**                      **RECITALS AND FINDINGS**

(A) Pursuant to chapter 39.34 RCW (Interlocal Cooperation Act), the PARTIES may contract with each other to perform certain functions which each may legally perform.

(B) Pursuant to the provisions of RCW 36.32.120(6), COUNTY has the care of Spokane County property and the management of Spokane County funds and business and in this capacity, can participate in programs providing a range of services that meet the needs of Spokane County residents to help stabilize their living situations and enter a path of economic self-sufficiency that leverages the strong connection to the workforce system.

(C) Pursuant to the provisions of 29 USC § 3102 et seq., Congress of the United States enacted the Workforce Innovation and Opportunity Act ("WIOA") on July 22, 2014 to help job seekers access employment, education, training and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. The WIOA superseded the Workforce Investment Act of 1998 ("WIA"). The COUNTY and CITY formed the SAWDC to receive federal dollars and implement the WIA and its successor the WIOA.

(D) The CITY to further its responsibilities under the WIOA entered into a lease of certain space located at 130 South Arthur, Spokane, Washington with Ulupalakua Ranch, Inc., ("Lease") wherein SAWDC operates a Spokane County Resource Center which brings together various service providers providing a range of services that meet Spokane County residents' needs to help stabilize their living situations and enter paths toward economic self-sufficiency. The Lease between the CITY and Ulupalakua Ranch, Inc. expired on May 31, 2021. It was extended for an additional three (3) month time frame through August 31, 2021. The rent under the Lease for June 2021, July 2021, and August 2021 was \$48,960 or \$16,320 per month. At the end of the three (3) month time frame, a new lease for the space at 130 South Arthur will be entered into between COUNTY and Ulupalakua Ranch, Inc. ("New Lease"). The New Lease will be for the same space as under the Lease. The term of the New Lease will be twenty-one months from September 1, 2021 through May 31, 2023. The rent under the New Lease will be \$261,966 annually or \$21,833 per month. The PARTIES desire to equally split the rent under the Lease for June 2021, July 2021 and August 2021, as well as equally split the rent under the New Lease for September 1, 2021 through May 31, 2023.

**SECTION 2.**                      **PURPOSE**

The purpose of this Agreement is to reduce to writing the PARTIES' understanding regarding their respective financial obligations to equally split the rent under the Lease for June 2021, July 2021 and August 2021 as well as equally split the rent under the New Lease for September 1, 2021 through May 31, 2023.

The rent under the Lease for June 2021, July 2021 and August 2021 is \$16,320 per month for a total of \$48,960. Each PARTY will pay 1/3 of the total amount of \$48,960 or \$16,320 each.

The rent under the New Lease for the term of September 1, 2021 through May 31, 2023 will be \$21,833 per month for a total of \$458,493. Each PARTY will pay 1/3 of the total amount of \$458,493 or \$152,831 each. Provided, however in the event the total amount of rent under the New Lease for the term of September 1, 2021 through May 31, 2023 exceeds \$21,833 per month for a total of \$458,493, the PARTIES agree that the amount each PARTY pays will be adjusted in the last quarterly payment so the total rent for the entire term is split equally among the PARTIES.

### **SECTION 3.**                      **DURATION AND TERMINATION**

This Agreement shall commence upon execution of the Agreement by the PARTIES and shall terminate at the end of the New Lease. Provided, however, if the New Lease is extended by the COUNTY, SAWDC will be fully and solely responsible for the rent amounts as they become owing and due. COUNTY will advise SAWDC prior to March 1, 2023 of its desire to extend the New Lease subject to agreement with Ulupalakua Ranch, Inc., the term of the extension, and the monthly rent amount. SAWDC shall advise the COUNTY on or before April 1, 2023 if it can assume the sole responsibility for the rent amounts under the extended New Lease.

The CITY's participation or involvement in an extended New Lease shall require the CITY's written agreement.

Once this Agreement is executed it cannot be terminated by any PARTY nor can any PARTY withdraw.

### **SECTION 4.**                      **RESPONSIBILITIES OF THE PARTIES**

#### **(A.)      COUNTY RESPONSIBILITIES:**

The COUNTY will execute a New Lease for the same space and under substantially the same terms and conditions as identified in the Lease between CITY and Ulupalakua Ranch, Inc, consisting of approximately 20,116 rentable square feet located at 130 South Arthur, Spokane, Washington. The New Lease will be for a twenty-one (21) month term commencing September 1, 2021 and terminating May 31, 2023. The rent under the New Lease for the term of September 1, 2021 through May 31, 2023 will be \$21,833 per month for a total of \$458,493.

The COUNTY will pay all rent owing and due under the New Lease. The rent under the New Lease is due at the beginning of the month for each month. The COUNTY at the end of each three (3) month term of the New Lease will bill the CITY and SADC their proportionate share of the rent for that three (3) month time frame. The CITY and SAWDC shall reimburse the COUNTY their proportionate share of the rent for that three (3) month time frame within thirty (30) calendar days of billing. Billing statements shall be send via e-mail to the PARTIES' representatives set forth below. For example, for the time frame from September 1, 2021 through November 30, 2021, COUNTY will pay the monthly rent under the New Lease of \$21,833 per month for a total rental payment of \$65,499. At the end of November 2021, COUNTY will bill CITY and SAWDC one-third (1/3) of this amount or \$21,833 each. City and SAWDC shall pay the COUNTY this amount within thirty (30) days of billing.

#### **(B.)      CITY'S RESPONSIBILITIES:**

The CITY will pay all rent owing and due under the Lease for the months of June 2021, July 2021 and August 2021. The rent is due at the beginning of the month for the month. The rent under the Lease for June 2021, July 2021 and August 2021 is \$16,320 per month for a total of \$48,960. At the end of the three- month time frame, the CITY will divide the total monthly rental payment due under the Lease by three (3) and bill to COUNTY and SAWDC their proportionate share. The COUNTY and SAWDC shall reimburse the CITY their

proportionate share within thirty (30) days of billing. Billing statements shall be send via e-mail to the PARTIES' representatives set forth below. For example, for the time frame of June 1, 2021 through August 1, 2021, CITY will pay the monthly rent under the Lease of \$16,320 per month for a total rental payment of \$48,960. At the end of August 2021, CITY will bill COUNTY and SAWDC one-third of this amount or \$16,320 each.

(C.) **SAWDC'S RESPONSIBILITIES:**

In addition to the responsibilities in (A.) and (B.) above, SAWDC will also be responsible for operating the Resource Center of Spokane County in the space identified in the Lease and New Lease and programming the space for the purpose of bringing together various service providers providing a range of services that meet Spokane County residents' needs to help stabilize their living situations and enter paths toward economic self-sufficiency. All prior agreements, arrangements, memorandums of understanding or other arrangements the CITY has or may have had with any of the service providers located at the Resource Center of Spokane County are void or otherwise superseded by the SAWDC'S operation of the Resource Center of Spokane County upon this Agreement being fully executed by the PARTIES.

To the extent the New Lease allows the COUNTY to sublease, and subject to any Landlord approval required in conjunction therewith, the COUNTY will entertain a request by SAWDC to sublease any of the space which is the subject of the New Lease. Any sublease revenues will be applied to the rental payment obligation of the COUNTY under the New Lease. As such each Party will have its 1/3 obligation for rental payments under the New Lease reduced by 1/3 of any revenues received from a sublessee.

SAWDC shall be responsible for executing the Subtenant Rider attached to the New Lease and complying with all provisions within the Subtenant Rider. A copy the New Lease to include Subtenant Rider is Attached hereto as Attachment "A".

Additionally, SAWDC in conjunction with operating the Resource Center of Spokane County in the space identified in the New Lease, at its sole cost and expense, and for the mutual benefit of COUNTY and SAWDC, shall carry and maintain:

- (a) Property insurance covering all personal property located on the space identified in the New Lease.
- (b) General Liability Insurance, including property damage, insuring COUNTY and SAWDC against liability for injury to persons or property occurring in or about the space identified in the New Lease or arising out of the maintenance, use or occupancy thereof. The liability limit under such insurance shall not be less than \$2,000,000.00 per occurrence, which includes general aggregate, products, completed operation and fire damage. The policy shall be endorsed and the certificate of insurance shall reflect that the County of Spokane is an additional named insured on SAWDC's general liability policy with respect to activities under the operation of the Resource Center of Spokane County in the space identified in the New Lease. SAWDC's insurer shall have a minimum A.M. Best's rating of A-VII and shall be authorized to do business in the State of Washington. Evidence of such insurance shall consist of a completed copy of the certificate of insurance, signed by the insurance agent and any required endorsement(s). Proof of insurance must be forwarded to the COUNTY annually. The certificate shall reflect that the COUNTY is a named Certificate Holder on SAWDC'S general liability policy with respect to obligations to operate the Resource Center of Spokane County in the space identified in the New Lease. The insurance afforded therein shall be primary insurance any insurance or self-insurance carried by the SAWDC shall be excess and not

contributory insurance to that provided by the SAWDC. The insurance policy or policies will not be canceled, materially changed or altered without forty-five (45) days prior notice submitted to the COUNTY.

Failure of the SAWDC to fully comply with the insurance requirements set forth herein, during the term of the their operation of the Resource Center in the space identified in the New Lease, or any renewal or extension thereof, shall be considered a material breach of their responsibility herein and in such instance, the COUNTY may acquire the insurance provided for herein and bill the SAWDC the amount thereof which shall be paid by SAWDC within thirty (30) days of billing or in the alternative, COUNTY may terminate its financial participation provided for under this Agreement. The COUNTY's ability to terminate its financial participation in this Agreement under this provision shall supersede any provision to the contrary in this Agreement.

COUNTY and SAWDC hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies including any extended endorsement thereto. This release shall be inapplicable only to the extent that it would have the effect of invalidating any insurance coverage of COUNTY and SAWDC.

SAWDC shall defend, indemnify, and hold COUNTY harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of SAWDC or any occupants it allows to use the space identified in the New Lease to include the occupant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees arising from any breach of SAWDC's operation of the Resource Center of Spokane County in the space identified in the New Lease. SAWDC shall use legal counsel reasonably acceptable to COUNTY in defense of any action within SAWDC's defense obligation.

## **SECTION 5.**                    **NOTICE**

All notices, other than billings addressed in Section 4, shall be in writing and served on any of the PARTIES either personally or by certified mail, return-receipt requested, at their respective addresses set forth above. Notices sent by certified mail shall be deemed served when deposited in the United States mail, postage prepaid.

Notices with respect to billing statements addressed in Section 4 shall be sent via email to:

COUNTY:	Gary Petrovich Chief Budget Officer <a href="mailto:gpetrovich@spokanecounty.org">gpetrovich@spokanecounty.org</a>
CITY:	Tonya Wallace Chief Financial Officer <a href="mailto:twallace@city.org">twallace@city.org</a>
SAWDC	Mark Mattke Chief Executive Officer <a href="mailto:mmattke@spokaneworkforce.org">mmattke@spokaneworkforce.org</a>

## **SECTION 6.**                    **COUNTERPARTS**

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

**SECTION 7.**                    **RELATIONSHIP OF THE PARTIES**

The PARTIES intend that an independent contractor relationship will be created by this Agreement. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of the other party for any purpose.

**SECTION 8.**                    **MODIFICATION**

This Agreement may be modified in writing by mutual written agreement of the PARTIES.

**SECTION 9.**                    **DISPUTE RESOLUTION**

Any dispute between the PARTIES which cannot be resolved between the PARTIES shall be subject to arbitration. Except as provided for to the contrary herein, such dispute shall first be reduced to writing. If the PARTIES cannot resolve the dispute it will be submitted to arbitration. The provisions of chapter 7.04A RCW shall be applicable to any arbitration proceeding.

Each party shall have the right to designate one person each to act as an arbitrator. The three selected arbitrators shall then jointly select a fourth arbitrator. The decision of the arbitration panel shall be binding on the PARTIES and shall be subject to judicial review as provided for in chapter 7.04A RCW. The costs of the arbitration panel shall be equally split between the PARTIES.

**SECTION 10.**                  **VENUE STIPULATION**

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

**SECTION 11.**    **SEVERABILITY**

In the event any portion of this Agreement should become invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

**SECTION 12.**                  **RECORDS**

All public records prepared, owned, used or retained by either PARTY in conjunction with meeting its responsibilities under this Agreement shall be made available to the other PARTY upon written request subject to the attorney client and attorney work product privileges set forth in statute, court rule or case law.

**SECTION 13.**                  **COMPLIANCE WITH LAWS**

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

**SECTION 14.**                  **WAIVER**

No officer, employee, agent or otherwise of any PARTY, has the power, right or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and constructed as cumulative, that is, in addition to every other remedy provided herein or by law.

**SECTION 15.                    TIME OF ESSENCE OF AGREEMENT**

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

**SECTION 16.                    EXECUTION AND APPROVAL**

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

**SECTION 17.                    NO THIRD-PARTY BENEFICIARIES**

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

**SECTION 18.                    ASSIGNMENT**

This Agreement shall not be assigned, sublet, pledged, conveyed, sold, transferred, or otherwise disposed of in whole or in part without the express written consent of the PARTIES.

**SECTION 19.                    HEADINGS**

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

**SECTION 20.                    ANTI-KICKBACK**

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

**SECTION 21.                    RCW 39.34 REQUIRED CLAUSES**

- (A.)    **PURPOSE:** See Section 2 above.
- (B.)    **DURATION:** See Section 3 above.
- (C.)    **ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS:** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- (D.)    **RESPONSIBILITIES OF THE PARTIES:** See provisions above.
- (E.)    **AGREEMENT TO BE FILED:** The PARTIES shall file this Agreement as provided in RCW 39.34.040
- (F.)    **FINANCING:** Each PARTY shall be responsible for the financing of its contractual obligations under its normal budgetary process as set forth herein.

(G.) **TERMINATION**: See Section 3 above.

(H.) **PROPERTY UPON TERMINATION**: Title to all property acquired by any PARTY in the performance of this Agreement shall remain with the acquiring PARTY upon termination of the Agreement.

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

**SPOKANE COUNTY**

DATED: 8.31.2021

BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

ATTEST:



Ginna Vasquez  
Ginna Vasquez, Clerk of the Board

Josh Kerns  
JOSH KERNS, CHAIR

Mary L. Kuney  
MARY L. KUNEY, VICE-CHAIR

Al French  
AL FRENCH, COMMISSIONER

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

**CITY OF SPOKANE**

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

Attest:

Title: \_\_\_\_\_

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

Approved as to form:

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

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

**SAWDC**

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

Title: \_\_\_\_\_

**From:** [Steele, David](#)  
**To:** [Blain, Amie](#)  
**Cc:** [Wallace, Tonya](#)  
**Subject:** FW: (Revised Tracked Changes) EnvisionILAPiccolo8-31-21Final  
**Date:** Tuesday, September 7, 2021 11:38:58 AM  
**Attachments:** [Envision ILA Final \(8-31-21\).docx](#)  
[image001.jpg](#)

---

Hi Amie,

I believe we are ready to go to council on this.... We hit committee a while back now.

Thank you,



**Dave Steele** | Real Estate Manager

City of Spokane Facilities Department

[dsteale@spokanecity.org](mailto:dsteale@spokanecity.org)  
509-625-6064

---

**From:** Piccolo, Mike <mpiccolo@spokanecity.org>  
**Sent:** Tuesday, August 31, 2021 10:20 AM  
**To:** Wallace, Tonya <twallace@spokanecity.org>; Steele, David <dsteale@spokanecity.org>  
**Cc:** Ormsby, Michael <mormsby@spokanecity.org>  
**Subject:** FW: (Revised Tracked Changes) EnvisionILAPiccolo8-31-21Final

Tonya and Dave,

Jim Emacio just sent an updated version with a change to the terminology as explained below. Nothing of substance. Please use this version when filing the agenda sheet. The County is still schedule to approve this ILA and lease this afternoon.

Mike P

Michael J. Piccolo  
Assistant City Attorney

**NOTICE:** This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Also, please indicate to the sender that you have



received this email in error, and delete the copy you received. Thank you.

---

**From:** Emacio, James <[JEmacio@spokanecounty.org](mailto:JEmacio@spokanecounty.org)>

**Sent:** Tuesday, August 31, 2021 10:06 AM

**To:** Piccolo, Mike <[mpiccolo@spokanecity.org](mailto:mpiccolo@spokanecity.org)>; [mmattke@spokaneworkforce.org](mailto:mmattke@spokaneworkforce.org); Dawn Karber <[dkarber@spokaneworkforce.org](mailto:dkarber@spokaneworkforce.org)>

**Cc:** Vasquez, Ginna <[GVASQUEZ@spokanecounty.org](mailto:GVASQUEZ@spokanecounty.org)>

**Subject:** FW: (Revised Tracked Changes) EnvisionILAPiccolo8-31-21Final

**[CAUTION - EXTERNAL EMAIL - Verify Sender]**

All:

I was asked to change the terminology "Resource Center" to "Resource Center of Spokane County".

The BOCC will sign the attached document with the "tracked" changes adopted this afternoon at its 2:00 p.m. Consent Agenda.

Can I ask that each of you use this version with the "tracked" changes adopted for signature by your respective client/entity.

And thanks.

Jim

---

**From:** Vasquez, Ginna

**Sent:** Tuesday, August 31, 2021 9:31 AM

**To:** Emacio, James <[JEmacio@spokanecounty.org](mailto:JEmacio@spokanecounty.org)>

**Subject:** (Revised Tracked Changes) EnvisionILAPiccolo8-31-21Final

Use this version

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

09/20/2021

**Date Rec'd**

9/8/2021

**Clerk's File #**

RES 2021-0077

**Renews #****Submitting Dept**DSC, CODE ENFORCEMENT &  
PARKING SERVICES**Cross Ref #****Contact Name/Phone**

ELDON BROWN 6305

**Project #****Contact E-Mail**

EBROWN@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

Resolutions

**Requisition #****Agenda Item Name**4700 – STREET VACATION OF ADAMS ST. AND THE ALLEY BETWEEN 3RD, I-90,  
ADAMS,**Agenda Wording**

Resolution setting a hearing before the City Council for October 25, 2021 for the vacation of Street Vacation of Adams St. and the nearby alley between 3rd, I-90, Adams, and Jefferson as requested by VOA Hope House.

**Summary (Background)**

The VOA Hope House and Silverstar Automotive would like to vacate these sections of RW to control access to the adjacent properties. The property owners would like City Council to consider vacating this RW at no cost.

Lease? NO

Grant related? NO

Public Works? YES

**Fiscal Impact****Budget Account**

Neutral

\$

#

Select

\$

#

Select

\$

#

Select

\$

#

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

WEST, JACQUE

**Study Session\Other**

PIES - 8/23/2021

**Division Director**

WEST, JACQUE

**Council Sponsor**

CM Lori Kinnear

**Finance**

ORLOB, KIMBERLY

**Distribution List****Legal**

RICHMAN, JAMES

edjohnson@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

ebrown@spokanecity.org

**Additional Approvals**

kbecker@spokanecity.org

**Purchasing**

rbenzie@spokanecity.org

rthompson@spokanecity.org

## **RESOLUTION 2021-0077**

A RESOLUTION INITIATING THE VACATION OF CITY RIGHT-OF-WAY AND SETTING A HEARING FOR THE VACATION OF ADAMS STREET FROM THE SOUTH LINE OF 3<sup>RD</sup> AVENUE TO THE NORTH LINE OF I-90, TOGETHER WITH THE ALLEY BETWEEN 3<sup>RD</sup> AVENUE AND I-90, FROM THE EAST LINE OF ADAMS STREET TO THE WEST LINE OF JEFFERSON STREET.

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

WHEREAS, the City Council desires to set a time and date through this resolution to hold a public hearing on the petition to vacate the above property in the City of Spokane;

NOW, THEREFORE,

The City Council does hereby resolve the following:

That a hearing on the petition to vacate Adams Street from the South line of 3<sup>rd</sup> Avenue to the North line of I-90, together with the alley between 3<sup>rd</sup> Avenue and I-90, from the East line of Adams Street to the West line of Jefferson Street will be held in front of the City Council at 6:00 P.M. or as soon thereafter as possible on **October 25, 2021**, and the City Clerk of the City of Spokane is instructed to proceed with all proper notice according to State law.

ADOPTED by the Spokane City Council, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

Approved as to form:


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

# Proposed Vacation



**Right-of-way Description:**  
Adams St. between 3rd and I-90, along with the alley  
between 3rd and I-90, from Adams to Jefferson

## Legend

 Proposed 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.



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

09/20/2021

**Date Rec'd**

9/8/2021

**Clerk's File #**

RES 2021-0078

**Renews #****Submitting Dept**

CITY ATTORNEY

**Cross Ref #****Contact Name/Phone**

MICHAEL ORMSBY 6287

**Project #****Contact E-Mail**

MORMSBY@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

Resolutions

**Requisition #****Agenda Item Name**

RESOLUTION FOR PURCHASE OF VEHICLES

**Agenda Wording**

Microchip shortages and Covid related supply chain disruptions are negatively impacting the City's ability to purchased vehicles for the fleet and this resolution will give Fleet Services the ability to acquire vehicles in a timely manner.

**Summary (Background)**

Approval of Resolution will allow Fleet Services to acquire vehicles required by various City Departments to provide services.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact****Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

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

PICCOLO, MIKE

**Study Session\Other**

9/13/21 Committee Meeting

**Division Director****Council Sponsor**

Council Member Wilkerson

**Finance**

ORLOB, KIMBERLY

**Distribution List****Legal**

PICCOLO, MIKE

sstopher@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

rgiddings@spokanecity.org

**Additional Approvals**

rgiddings@spokanecity.org

**Purchasing**

mormsby@spokanecity.org



## **RESOLUTION NO. 2021-0078**

A Resolution of the City Council of the City of Spokane pre-approving the purchase of vehicles by the City of Spokane

**WHEREAS**, the City of Spokane ("City") has a large fleet of vehicles necessary to provide services to the residents of and visitors to the City and those vehicles need to be replaced on a regular basis; and

**WHEREAS**, microchip shortages and the fallout from COVID 19 related supply change disruptions are negatively impacting the ability of the Fleet Department of the City to purchase necessary vehicles; and

**WHEREAS**, current purchasing process of the City takes four weeks or more from obtaining quotes or bids until approval of the City Council is received to purchase vehicles; and

**WHEREAS**, given current vehicle shortages and market conditions, in most cases vehicles that the City desires to purchase are sold within hours of their availability, long before the City can receive approval for such purchases through its normal purchasing process; and

**WHEREAS**, the City has established the following vehicle purchasing priorities: 1) to purchase or lease vehicles that fully meet the need to the department using the vehicle; 2) to purchase vehicles that are fueled by electricity or biofuels which will assist the City in reaching its clean energy goals; and 3) to lease vehicles in situations where clean fuel vehicles are not available, practicable or economically viable; and

**WHEREAS**, the City has identified certain compact SUV-All Wheel Drive vehicles, one half ton Four Wheel Drive trucks; and three quarter ton Four Wheel Drive trucks that are immediate needs of the City and it desires to purchase in the next thirty (30) to sixty (60) days if available; and

**WHEREAS**, the City Council desires to facilitate the timely purchase or lease of necessary vehicles within the legal and operational parameters of the City.

**NOW, THEREFORE, BE IT RESOLVED** by the Spokane City Council that due to the necessity set forth above, the City administration is authorized and empowered to enter into agreements to acquire or lease the vehicles identified in Exhibit A to this Resolution under the limitations set forin this Resolution and shall report back to the City Council within one week of the entry into a purchase or lease agreement.

ADOPTED by the City Council this \_\_\_\_\_ day of September 2021.

---

City Clerk

Approved as to Form:

---

Assistant City Attorney

Purchasing Strategy Remaining 2021 Budgeted Vehicles							
Usage Class	Recommended Vehicle	Est Purchase	Est Lease/mo	Department	Qty	Purchase Price	Total 3 year Lease
Compact SUV AWD	2022 Ford Escape Hybrid (Or Similar) Lease	\$25,000	\$450/mo	Building and Development Services	3		\$48,600
				Code Enforcement	1		\$16,200
				Water Department	1		\$16,200
				Upriver Dam	3		\$48,600
				Total	8		\$129,600
1/2 Ton 4WD Regular Cab Pickup	Ford F150 (Or Similar) Lease	\$27,500	\$475	Water Department	2		\$34,200
				Total	2		\$34,200
1/2 Ton 4WD Extended Cab Pickup	Ford F150 (Or Similar) Lease	\$30,500	\$525	Water Department	4		\$75,600
				Total	4		\$75,600
3/4 Ton 4WD Regular Cab Pickup Diesel	Ford F250 (Or Similar) Purchase	\$45,000	\$765	Waste to Energy	1	\$45,000	
				Total	1	\$45,000	
3/4 Ton Extended Cab Pickup	Ford F250 (Or Similar) Purchase	\$48,000	\$820	Waste to Energy	1	\$48,000	
				Total	1	\$48,000	
Total Vehicles					16	\$93,000	\$239,400

Purchasing Strategy Budgeted Vehicles by Department							
Department	Usage Class	Recommended Vehicle	Est Purchase	Est Lease/mo	Qty	Purchase Price	Total 3 Year Lease
Building and Development Services	Compact SUV AWD	2022 Ford Escape Hybrid	\$25,000	\$450	3		\$48,600
	Dept Total				3		\$48,600
Code Enforcement	Compact SUV AWD	2022 Ford Escape Hybrid	\$25,000	\$450	1		\$16,200
	Dept Total				1		\$16,200
Upriver Dam	Compact SUV AWD	2022 Ford Escape Hybrid	\$25,000	\$450	3		\$48,600
	Dept Total				3		\$48,600
Water	Compact SUV AWD	2022 Ford Escape Hybrid	\$25,000	\$450	1		\$16,200
	1/2 Ton 4 WD Reg Cab P/U	Ford F150	\$27,500	\$475	2		\$34,200
	1/2 Ton 4WD Ext Cab P/U	Ford F150	\$30,500	\$525	4		\$75,600
Dept Total				7		\$126,000	
Waste to Energy	3/4 Ton 4WD Reg Cab P/U	Ford F250	\$45,000	\$765	1	\$45,000	
	3/4 Ton 4WD Ext Cab P/U	Ford F250	\$48,000	\$765	1	\$48,000	
	Dept Total				2	\$93,000	
Total Vehicles					16	\$93,000	\$239,400



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

09/13/2021

**Date Rec'd**

8/25/2021

**Clerk's File #**

ORD C36104

**Renews #****Submitting Dept**

MUNICIPAL COURT

**Cross Ref #****Contact Name/Phone**

HOWARD DELANEY 625-4450

**Project #****Contact E-Mail**

HDELANEY@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

First Reading Ordinance

**Requisition #****Agenda Item Name**

PROBATION CHANGE TO COMMUNITY JUSTICE SERVICES

**Agenda Wording**

As part of the Court's ongoing criminal justice reform efforts, the Spokane Municipal Code will be amended to convert all references to the "Probation Department" to the Community Justice Services Department" and "probation" to "supervision".

**Summary (Background)**

The Probation Department has operated on a status quo basis for nearly 30 years, using traditional supervision approaches that have not kept pace with the evolution of evidence based supervision practices. As part of the Court's criminal justice reform initiatives, the Probation Department is completing a transition from a quasi-law enforcement supervision model to a more evidence based quasi-therapeutic/social work based model in advance of the launch of its supportive release pilot. Although the department will still operate under the authority of Rule 11 of the Administrative Rules for Courts of Limited Jurisdiction and SMC 03.01A.710, rebranding the department from "Probation" to "Community Justice Services" will better align the organization's title with its operational modality and assist in changing organizational and public opinions and perceptions associated with the name "Probation Department". Along with this change in the formal title of the organization, Civil Service is contemporaneously working on changing position titles within the organization from "Probation Officers" and Probation Specialist" to "Community Justice Counselors and Community Justice Specialists".

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact****Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

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

DELANEY, HOWARD

**Study Session\Other**

8/2 Public Safety

**Division Director**

ANTUSH, MATTHEW

**Council Sponsor**

CM Kinnear

**Finance**

BUSTOS, KIM

**Distribution List****Legal**

PICCOLO, MIKE

Howard Delaney

**For the Mayor**

ORMSBY, MICHAEL

Lori Kinnear

**Additional Approvals**

Michael Ormsby

**Purchasing**

Michael Diamond

## ORDINANCE C36104

An ordinance relating to the Municipal Court's Probation Department and services; amending sections 3.01A.710, 5A.05.020, 5A.11.005, 5A.11.030, 5A.11.030 and 10.07.038 of the Spokane Municipal Code.

Now, therefore, the City of Spokane does ordain:

Section 1. That Section 3.01A.710 of the Spokane Municipal Code is amended to read as follows:

### **3.01A.710 ((Probation)) Community Justice Services**

1. The ((probation)) community justice services department, which performs the function of a misdemeanor probation department under the authority provided in Rule 11 of the Administrative Rules for Courts of Limited Jurisdiction, supervises offenders placed on ((probation)) supervision by the municipal court to ensure compliance with court orders, supervises conditions of pre-trial release, refers offenders to various community agencies for programs, facilitates evidence based programs proven to reduce re-offense, conducts pre and post sentence investigations, conducts financial screening for public defense services, and works with law enforcement and community agencies to promote offender compliance and rehabilitation and promote victim and community safety.
2. The person responsible for the administrative oversight and day-to-day management of the ((probation)) community justice services department is appointed by presiding judge of the municipal court upon a majority vote of judges present at a regularly scheduled judges' meeting.

Section 2. That Section 5A.05.020 of the Spokane Municipal Code is amended to read as follows:

### **5A.05.020 Other Judicial Officers**

Judges Pro Tem.

1. Pursuant to RCW 3.50.090, the presiding municipal court judge may designate one or more persons as judges pro tem to serve in the absence or disability of the elected or duly appointed judges of the court, subsequent to the filing of an affidavit of prejudice, or in addition to the elected or duly appointed judges when the administration of justice and the accomplishment of the work of the court make it necessary.
2. The qualifications of a judge pro tempore shall be the same as for judges as provided under RCW 3.50.040, except that a judge pro tempore need not be a resident of the City or County of Spokane.

3. Judges pro tempore shall have all of the powers of the duly appointed or elected judges when serving as judges pro tempore of the court.
  4. Before entering his or her duties, each judge pro tempore shall take, subscribe, and file an oath as is taken by a duly appointed or elected judge.
  5. Judges pro tempore shall receive, and the City shall pay, compensation as fixed by ordinance. The compensation of a judge pro tem shall be one hundred twenty-five dollars per half-day of service.
  6. The City shall have authority to appoint a district judge as its municipal judge when the municipal judge is not required to serve full time. In the event of the appointment of a district judge, the City shall pay a pro rata share of the salary.
- B. Court Commissioners.
1. Pursuant to RCW 3.50.075, one or more court commissioners may be appointed by the presiding judge of the municipal court. Each commissioner holds office at the pleasure of the appointing judge.
  2. A commissioner authorized to hear or dispose of cases must be a lawyer who is admitted to practice law in the State of Washington or a nonlawyer who has passed, prior to January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.
  3. On or after July 1, 2010, when serving as a commissioner, the commissioner does not have authority to preside over trials in criminal matters or jury trials in civil matters unless agreed to on the record by all parties.
  4. A commissioner need not be a resident of the City or County of Spokane.
  5. Full-time commissioners shall receive compensation equivalent to between seventy-five percent (75%) and eighty percent (80%) of the salary set for a Spokane Municipal Court judge under the provisions of Section 05A.05.040(B) of the Spokane Municipal Code.

In the event the Presiding Judge, in consultation with the Associate Judges, elects to name a Court Commissioner as the Administrative Court Commissioner, with additional duties related to functions associated with unfilled positions for Court Administrator and (~~Chief Probation Officer~~) Director of Community Justice Services, the Administrative Court Commissioner shall receive compensation equivalent to between ninety percent (90%) and ninety-five percent (95%) of the salary set for a Spokane Municipal Court judge under the provisions of Section 05A.05.040(B) of the Spokane Municipal Code.

Newly appointed court commissioners or administrative court commissioners may be placed at any percentage of a Spokane Municipal Court judge's salary within the specified ranges, at the discretion of the Presiding Judge. Salary increases will not occur annually on an automatic basis, but will be approved or disapproved and established on an annual basis based upon an individual commissioner receiving a satisfactory rating on that commissioner's annual performance review. Performance reviews shall be conducted by the Presiding Judge, in consultation with the Associate Judges, on the annual anniversary date of each commissioner's appointment as a commissioner, or as soon thereafter as may be practical.

Section 3. That Section 5A.11.005 of the Spokane Municipal Code is amended to read as follows:

**5A.11.005 Sentencing Policy of the City of Spokane**

The City of Spokane Office of the City Attorney and the Municipal Court shall pursue sentences and dispositions that are most likely to protect crime victims and other community members from future recidivism of the person sentenced by the Municipal Court. This sentencing could include the criminogenic needs, responsivity and threat of the person sentenced. The sentencing and supervision through ~~((Probation))~~ the community justice services department could include the use of evidence based psychological instruments and data regarding disposition alternatives.

Section 4. That Section 5A.11.020 of the Spokane Municipal Code is amended to read as follows:

**5A.11.020 Suspension or Deferral of Sentences**

Unless otherwise provided by state law, the court shall have the following sentencing authority:

- A. Pursuant to RCW 3.50.320, after a conviction, the court may impose sentence by suspending all or a portion of the defendant's sentence or by deferring the sentence of the defendant and may place the defendant on ~~((probation))~~ post disposition supervision for a period of no longer than two years and prescribe the conditions thereof.
  - 1. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of ~~((probation))~~ post disposition supervision when ordered to do so by the court, shall have the term of ~~((probation))~~ post disposition supervision tolled until such time as the defendant makes his or her presence known to the court on the record.
  - 2. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty, permit the defendant to enter a plea of not guilty, and dismiss the charges.
- B. Pursuant to RCW 3.50.330, for a period not to exceed five years after imposition of sentence for a defendant sentenced under RCW 46.61.5055 and two years after imposition of sentence for all other offenses, the court shall have continuing jurisdiction and authority to suspend or defer the execution of all or any part of the sentence upon stated terms, including installment payment of fines.

1. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of ~~((probation))~~ post disposition supervision when ordered to do so by the court, shall have the term of ~~((probation))~~ post disposition supervision tolled until such time as the defendant makes his or her presence known to the court on the record.
  2. The jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720.
  3. Any time before entering an order terminating ~~((probation))~~ post disposition supervision, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence.
- C. Pursuant to RCW 3.50.340, deferral of sentence and suspension of execution of sentence may be revoked if the defendant violates or fails to carry out any of the conditions of the deferral or suspension.
1. Upon the revocation of the deferral or suspension, the court shall impose the sentence previously suspended or any unexecuted portion thereof. In no case shall the court impose a sentence greater than the original sentence, with credit given for time served and money paid on fine and costs.
  2. Any time before entering an order terminating ~~((probation))~~ post disposition supervision, the court may revoke or modify its order suspending the imposition or execution of the sentence.
  3. If the ends of justice will be served and when warranted by the reformation of the ~~((probationer))~~ supervisee, the court may terminate the period of ~~((probation))~~ post disposition supervision and discharge the person so held.

Section 5. That Section 5A.11.030 of the Spokane Municipal Code is amended to read as follows:

#### **5A.11.030 Offender Supervision by Another State**

- A. If a person placed on ~~((probation))~~ post disposition supervision for one year or more for a misdemeanor or gross misdemeanor by a municipal court requests permission to travel or transfer to another state, the assigned ~~((probation officer))~~ community justice services counselor shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the ~~((probation officer))~~ community justice services counselor shall:

1. notify the department of corrections of the ((probationer's)) supervisee's request;
  2. provide the department of corrections with the supporting documentation it requests for processing an application for transfer;
  3. notify the ((probationer)) supervisee of the fee due to the department of corrections for processing an application under the compact;
  4. cease supervision of the ((probationer)) supervisee while another state supervises the probationer pursuant to the compact;
  5. resume supervision if the ((probationer)) supervisee returns to this state before the term of ((probation)) supervision expires.
  - 6.
- B. The ((probationer)) supervisee shall receive credit for time served while being supervised by another state.
- C. Pursuant to RCW 3.50.355, if the ((probationer)) supervisee is returned to the state at the request of the receiving state under rules of the interstate compact for adult offender supervision, the department of corrections is responsible for the cost of returning the ((probationer)) supervisee.
- D. Pursuant to RCW 3.50.355, the City of Spokane and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence.

Section 6. That Section 10.07.038 of the Spokane Municipal Code is amended to read as follows:

#### **10.07.038 Rendering Criminal Assistance in the Second Degree**

- A. A person is guilty of rendering criminal assistance in the second degree if he renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, ((probation)) post disposition supervision or community supervision.
- B. Rendering criminal assistance in the second degree is a:
1. misdemeanor if it is established by a preponderance of the evidence that the actor is a "relative" as defined in SMC 10.07.036 or RCW 9A.76.060;
  2. gross misdemeanor in all other cases.

PASSED by the City Council on \_\_\_\_\_.

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

Attest:

Approved as to form:

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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