

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in RCW 42.30.030 has been suspended until termination of the state of emergency pursuant to RCW 43.06.210, or until rescinded, whichever occurs first.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waivers and suspensions therein until termination of the state of emergency pursuant to RCW 43.06.210 or until rescinded.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 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 **February 14, 2022**.

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 **2485 018 9050** for the 3:30 p.m. Briefing Session or **2490 654 8727** for the 6:00 p.m. Legislative Session when prompted; meeting password is **0320**.

**To participate in virtual public comment (including Open Forum):**

Sign up to give testimony on legislative items and during Open Forum at <https://forms.gle/Vd7n381x3seaL1NW6>. You must sign up in order to be called on to testify. **The form will be open at 5:00 p.m. on Monday, February 14, 2022, and will close at 6:00 p.m.** At 6:00 p.m., you will call in to the meeting using the information above or join by WebEx video using the information provided on the form. When it is your turn to testify, Council President will call your name. Instructions for participation are provided on the form when you sign up. 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.

# THE CITY OF SPOKANE



## ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, FEBRUARY 14, 2022

### **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 JONATHAN BINGLE**

**COUNCIL MEMBER LORI KINNEAR**

**COUNCIL MEMBER BETSY WILKERSON**

**COUNCIL MEMBER MICHAEL CATHCART**

**COUNCIL MEMBER KAREN STRATTON**

**COUNCIL MEMBER ZACK ZAPPONE**

**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.

### **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 by accessing the City website at [www.spokanecity.org](http://www.spokanecity.org).

# 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

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## ADMINISTRATIVE SESSION

### CONSENT AGENDA

#### REPORTS, CONTRACTS AND CLAIMS

#### RECOMMENDATION

- |   |                |                              |
|---|----------------|------------------------------|
| 1. Master Value Blanket Order renewal with Connell Oil (Spokane, WA) for the purchase of miscellaneous lubricants to be used by multiple City departments from February 11, 2022 through July 31, 2026—estimated encumbrance \$662,500 (\$150,000 annually). (Council Sponsor: Council Member Kinnear)<br><b>Rick Giddings</b>  | Approve        | OPR 2020-0086                |
| 2. Value Blanket Renewal 1 of 3 with Pete Lien and Sons (Rapid City, SD) for purchase and delivery of high calcium quicklime at the Waste to Energy Facility from March 1, 2022 through February 28, 2023—additional cost not to exceed \$1,500,000 (plus tax). (Council Sponsor: Council Member Kinnear)<br><b>David Paine</b> | Approve        | OPR 2020-0091<br>ITB 5210-19 |
| 3. Purchase Agreement Renewals 2 of 2 with:   | Approve<br>All |                              |
| a. Polydyne, Inc. (Riceboro, GA) to supply polymer to the Riverside Park Water Reclamation Facility from  |                | OPR 2018-0127<br>BID 4438-18 |

March 1, 2022 through February 28, 2023—\$467,100, and

- b. Kemira Water Solutions (Lawrence, KS) to supply liquid aluminum sulfate to the Riverside Park Water Reclamation Facility from April 1, 2022 through March 31, 2023—\$2,678,400.

OPR 2018-0213  
BID 4442-18

(Council Sponsor: Council Member Kinnear)

**Mike Cannon**

4. Contract with Compunet, Inc. (Grangeville, ID) utilizing Washington State Contract No. 05819 for the purchase of Cisco hardware and one year of licensing, maintenance and support—\$407,436.37 (incl. tax). (Council Sponsor: Council Member Cathcart)  
**Michael Sloon**
5. Consultant Agreement with MurraySmith (Spokane, WA) to provide engineering study of fluoridation of City of Spokane Water from February 21, 2022 through August 31, 2023—\$599,300. (Council Sponsors: Council Members Kinnear and Zappone) (Relates to RES 2022-0016)  
**Katherine Miller**
6. Power Purchase Agreement (PPA) between the City of Spokane's Water Utility and Avista Utilities (Spokane, WA) defining the terms for the sale of surplus power from the City's Upriver Hydroelectric Project to Avista, effective upon signing through December 31, 2037—\$3,000,000 Revenue. (Council Sponsor: Council Member Kinnear)  
**Cadie Olsen**
7. Power Purchase Agreement (PPA) between the City of Spokane's Solid Waste Utility and Avista Utilities (Spokane, WA) that defines the terms for the sale of surplus power generated by the City's Waste to Energy Facility, effective upon signing through December 30, 2037—\$6,000,000 Revenue. (Council Sponsor: Council Member Kinnear)  
**Cadie Olsen**
8. Report of the Mayor of pending:
- a. Claims and payments of previously approved obligations, including those of Parks and Library, through \_\_\_\_\_, 2022, total \$\_\_\_\_\_, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$\_\_\_\_\_.

Approve

OPR 2022-0090

Approve

OPR 2022-0091

Approve

OPR 2022-0092

Approve

OPR 2022-0093

Approve &  
Authorize  
Payments

CPR 2022-0002

CPR 2022-0003

- b. Payroll claims of previously approved obligations through\_\_\_\_\_, 2022: \$\_\_\_\_\_.

9. City Council Meeting Minutes: \_\_\_\_\_, 2022.

Approve  
All

CPR 2022-0013

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## **EXECUTIVE SESSION**

(Closed Session of Council)

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

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## **CITY COUNCIL SESSION**

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

(Council Briefing Center)

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

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## **LEGISLATIVE SESSION**

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

**WORDS OF INSPIRATION**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL OF COUNCIL**

**ANNOUNCEMENTS**

(Announcements regarding Changes to the City Council Agenda)

**NO BOARDS AND COMMISSIONS APPOINTMENTS**

**ADMINISTRATIVE REPORT**

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## COUNCIL COMMITTEE REPORTS

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

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## LEGISLATIVE AGENDA

### SPECIAL BUDGET ORDINANCE

(Requires Five Affirmative, Recorded Roll Call Votes)

Ordinance C36174 amending Ordinance No. C36161 passed by the City Council December 13, 2021, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2022, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2022, and providing it shall take effect immediately upon passage," and declaring an emergency and appropriating funds in:

#### City Street Fund

1) Increase revenue by \$262,000

A) Of the increased revenue, \$262,000 is a contribution from the Spokane Transit Authority for the Gardner Avenue project.

2) Increase appropriation by \$3,980,000

A) Of the increased appropriation, \$3,980,000 is provided solely for grind and overlay project costs in the Street Department.

(This action arises from the need to fund the "Business Area Grind & Overlays" project.) (Council Sponsors: Council Members Kinnear and Wilkerson)

**Marlene Feist**

### EMERGENCY ORDINANCE

(Requires Five Affirmative, Recorded Roll Call Votes)

ORD C36175 Imposing additional regular property tax levies for emergency medical services for the years 2023 through 2028; and submitting the proposition to a special municipal election to be held on April 26, 2022, and declaring an emergency. (Council Sponsors: Council President Beggs and Council Member Kinnear) (Relates to Resolution 2022-0015)  
**Tonya Wallace**

## RESOLUTIONS & FINAL READING ORDINANCE

(Require Four Affirmative, Recorded Roll Call Votes)

RES 2022-0015 Requesting the Spokane County Auditor to hold a special election on April 26, 2022 to submit a proposition regarding additional regular

property tax levies for Emergency Medical Services. (Council Sponsors: Council President Beggs and Council Member Kinnear) (Relates to Emergency Ordinance C36175)

**Tonya Wallace**

RES 2022-0016 Concerning moving forward on community water fluoridation into the 30% design feasibility phase. (Council Sponsors: Council President Beggs and Council Member Wilkerson) (Relates to Consent Agenda Item No. 5, OPR 2022-0091)

**Council President Beggs**

ORD C36168 (To be considered under Hearings Item H1.b.)

## FIRST READING ORDINANCE

ORD C36037 Vacation of the alley between Columbia Avenue and Joseph Avenue, from Julia Street to Myrtle Street as requested by Dan Cantu. (Council Sponsor: Council Member Cathcart)

**Eldon Brown**

FURTHER ACTION DEFERRED

## NO SPECIAL CONSIDERATIONS

## HEARINGS

### RECOMMENDATION

H1.	a. Hearing expressing the intention of the City Council to designate multi-family tax exemption (MFTE) residential targeted areas and amend SMC 8.15.030.	Receive Public Testimony & Close Hrg	RES 2022-0011
	b. Final Reading Ordinance C36168 relating to multiple family housing property tax exemption; amending SMC section 8.15.030D, by amending the map Attachment A: Spokane MFTE Target Area through expansion of the target area boundary. (Council Sponsors: Council President Beggs and Council Member Stratton) <b>Teri Stripes</b>	Pass Upon Roll Call Vote	ORD C36168

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**Motion to Approve Advance Agenda for February 14, 2022  
(per Council Rule 2.1.2)**

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**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/Vd7n381x3seaL1NW6>. The form will open at 5:00 p.m. on Monday, February 14, 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 February 14, 2022, Regular Legislative Session of the City Council will be held and is adjourned to February 28, 2022.

**NOTE:** The regularly scheduled City Council meeting for Monday, February 21, 2022, has been canceled (in recognition of President's Day).

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**NOTES**





**Agenda Sheet for City Council Meeting of:**  
02/14/2022

<b><u>Date Rec'd</u></b>	12/10/2021
<b><u>Clerk's File #</u></b>	OPR 2020-0086
<b><u>Renews #</u></b>	

<b><u>Submitting Dept</u></b>	FLEET SERVICES	<b><u>Cross Ref #</u></b>	VB301127
<b><u>Contact Name/Phone</u></b>	RICK GIDDINGS 625 7706	<b><u>Project #</u></b>	
<b><u>Contact E-Mail</u></b>	RGIDDINGS@SPOKANECITY.ORG	<b><u>Bid #</u></b>	WA STATE
<b><u>Agenda Item Type</u></b>	Purchase w/o Contract	<b><u>Requisition #</u></b>	VB
<b><u>Agenda Item Name</u></b>	5100 MASTER VALUE BLANKET RENEWAL FOR LUBRICANTS		

**Agenda Wording**

Master Value Blanket Order renewal with Connell Oil (Spokane, WA) for the purchase of Miscellaneous Lubricants to be used by multiple City Departments through July 31, 2026, with an estimated encumbrance of \$662,500(\$150,000 annually).

**Summary (Background)**

This Master Value Blanket Order renewal allows the Fleet Services Department and other departments to purchase lubricants utilizing the WA State Contract #02418, that is valid through July 31, 2026.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Expense	\$ 662500	# various
Select	\$	#
Select	\$	#
Select	\$	#

**Budget Account**

**Approvals**

<b><u>Dept Head</u></b>	GIDDINGS, RICHARD
<b><u>Division Director</u></b>	WALLACE, TONYA
<b><u>Finance</u></b>	ORLOB, KIMBERLY
<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>	PIES 1/31/22
<b><u>Council Sponsor</u></b>	CM Kinnear

**Distribution List**

<b><u>Additional Approvals</u></b>	thayden@spokanecity.org
<b><u>Purchasing</u></b>	PRINCE, THEA mmartinez@spokanecity.org

## Committee Agenda Sheet

### [COMMITTEE]

<b>Submitting Department</b>	Fleet Operations
<b>Contact Name &amp; Phone</b>	Rick Giddings 509 625 7706
<b>Contact Email</b>	rgiddings@spokanecity.org
<b>Council Sponsor(s)</b>	CM Kinnear
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion   Time Requested: <u>1/12/2022</u>
<b>Agenda Item Name</b>	Master Value Blanket renewal with Connell Oil for Lubricants
<b>Summary (Background)</b>	<p>Lubricants are required to maintain City equipment.</p> <p>The Master Value Blanket VB-301127, with Connell Oil, was put in place from February 10, 2020 through February 10, 2022, utilizing the Washington State Contract #02418.</p> <p>The renewal of Master Value Blanket with Connell Oil would allow the Fleet Services Department and other departments to continue to purchase lubricants utilizing the Washington State Contract #02418.</p> <p>The renewal would be valid through July 31, 2026, in line with terms of Washington State Contract #02418.</p> <p>Impact- Master VB allows the purchase of oils, grease and other automotive lubricants to maintain the City of Spokane equipment fleet.</p> <p>Action- Recommend approval for \$662,500 (\$150,000 annually) for renewal through July 31, 2026.</p> <p>Funding- Funding is available in the Fleet Services and affected department's budgets.</p>
<b>Proposed Council Action &amp; Date:</b>	PIES   Date January 31, 2022
<b>Fiscal Impact:</b> Total Cost: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: VARIOUS  Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring  Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impacts</b>	
What impacts would the proposal have on historically excluded communities?   None	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?   Date would not be collected.	

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

A review of lubricant purchases, by Departments, from 2/11/2022 to 7/31/2026, could be conducted to assist in determining future contracting requirements.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

Strategic Plan - Lubricants are required to maintain City equipment

Current Contract Information

Invitation for Bid No. 02418, Lubricants, Virgin and Re-Refined

**CUSTOMER SERVICE / ORDER PLACEMENT**

**Order Placement:** Orders are placed in the region/zone of the site location where the product is to be delivered to. If there is more than one jobber in a region/zone, selection of the jobber is at the discretion of the customer. Regardless of jobber used in order placement, invoicing is to come from and direct payment is to be sent to Phillips66.

ZONE CONTACTS ARE IN CITY ALPHA ORDER:

Place your order based on the Zone/Region customer user site is located. If more than one jobber in a zone, selection is based on customer discretion. Map at end of "Customer Service/Order Placement" section.

<b>Zone / Region</b>	<b>Zone 1, Northwest Region</b>	<b>Zone 1, Northwest Region</b>	<b>Zone 1, Northwest Region</b>	
<b>Company TIN</b>	91-1110458	91-1110458	91-1110458	
<b>Company Name</b>	<b>Reisner Distributor Inc</b>	<b>Reisner Distributor Inc</b>	<b>Reisner Distributor Inc</b>	
<b>Company Address</b>	310 Commercial Avenue	500 Kentucky St	1922 Front St	
	Anacortes WA 98221	Bellingham WA 98221	Lynden WA 98264	
<b>Contact Person</b>	Dan Averill	Lynda Maconghie	Dan Averill	
<b>Phone Number</b>	360-293-2197	360-734-6100	360-293-2197	
<b>Zone / Region</b>	<b>Zone 1, Northwest Region</b>	<b>Zone 1, Northwest Region</b>	<b>Zone 1, Northwest Region</b>	
<b>Company TIN</b>	91-1175876	91-1175976	91-0938310	
<b>Company Name</b>	<b>Nelson Petroleum</b>	<b>Nelson Petroleum</b>	<b>Don Small &amp; Sons</b>	
<b>Company Address</b>	1125 80 <sup>th</sup> SW	208 West Ave South	PO Box 626	
	Everett WA 98302	Arlington WA 98223	Auburn WA 98002	
<b>Contact Person</b>	Mark Nelson	Cindy Heath	Rick Walker	
<b>Phone Number</b>	1-800-562-9882	360-435-2208	1-800-626-3213	
<b>Zone / Region</b>	<b>Zone 1, Northwest Region</b>	<b>Zone 1, Northwest Region</b>	<b>Zone 2, North Central Region</b>	
<b>Company TIN</b>	91-0938310	91-1186058	91-1375975	
<b>Company Name</b>	<b>Don Small &amp; Sons</b>	<b>Associated Petroleum</b>	<b>Connell Oil</b>	
<b>Company Address</b>	West 150 Sanderson Way	2320 Milwaukee Way	1015 N Oregon Avenue	
	Shelton WA 98584	Tacoma WA 98401	Pasco WA 99301	
<b>Contact Person</b>	Rick Walker	Nick Schoenfelder	Brad Bell	
<b>Phone Number</b>	1-800-626-3213	1-253-627-6179 Ext. 4373	509-547-3326	
<b>Zone / Region</b>	<b>Zone 2, North Central Region</b>	<b>Zone 2, North Central Region</b>	<b>Zone 2, North Central Region</b>	
<b>Company TIN</b>	91-1375975	91-1375975	<b>93-0975750</b>	
<b>Company Name</b>	<b>Connell Oil</b>	<b>Freeth Fuel</b>	<b>Mid-Columbia Producers Inc</b>	
<b>Company Address</b>	3727 N Tschirley	1025 N 6th Avenue	2003 1st ST\ PO BOX 344	
	Spokane Wa 99216	Yakima WA 98902	Moro, OR 97039	
<b>Contact Person</b>	Mark Gilbert	Brad Bond	Robert Jessiman	
<b>Phone Number</b>	509-535-1534	509-453-3920	541-382-4751	
<b>Zone / Region</b>	<b>Zone 3, Olympic Region</b>	<b>Zone 3, Olympic Region</b>	<b>Zone 3, Olympic Region</b>	
<b>Company TIN</b>	91-0938310	<b>91-1186058</b>	91-0938310	
<b>Company Name</b>	<b>Don Small &amp; Sons</b>	<b>Associated Petroleum</b>	<b>Don Small &amp; Sons</b>	
<b>Company Address</b>	West 150 Sanderson Way	2320 Milwaukee Way	PO Box 626	
	Shelton WA 98584	Tacoma WA 98401	Auburn WA 98002	
<b>Contact Person</b>	Rick Walker	Nick Schoenfelder	Rick Walker	



Current Contract Information  
 Invitation for Bid No. 02418, Lubricants, Virgin and Re-Refined

Phone Number	1-800-626-3213	1-253-627-6179 Ext. 4373	1-800-626-3213	
Zone / Region	Zone 4, Southwest Region	Zone 4, Southwest Region	Zone 4, Southwest Region	
Company TIN	93-0975750	91-0938310	91-0938310	
Company Name	Mid-Columbia Producers Inc	Don Small & Sons	Don Small & Sons	
Company Address	2003 1 <sup>st</sup> \ PO BOX 344	PO Box 626	West 150 Sanderson Way	
	Moro, OR 97039	Auburn WA 98002	Shelton WA 98584	
Contact Person	Robert Jessiman	Rick Walker	Rick Walker	
Phone Number	541-382-4751	1-800-626-3213	1-800-626-3213	
Zone / Region	Zone 4, Southwest Region	Zone 4, Southwest Region NEW SUPPLIER	Zone 4, Southwest Region	
Company TIN	91-1186058	93-0985141	91-1338338	
Company Name	Associated Petroleum	Tyree Oil	Stanley Oil	
Company Address	2320 Milwaukee Way	2429 N Borthwick Ave	111 Maple Street	
	Tacoma WA 98401	Portland OR 97227	Morton WA 98356	
Contact Person	Nick Schoenfelder	Brian Otto	Rob Stanley	
Phone Number	1-253-627-6179 Ext. 4373	503-478-9905	360-496-5166	
Zone / Region	Zone 4, Southwest Region		Zone 5, South Central Region	
Company TIN	93-0403718		91-1375975	
Company Name	Jubitz Corp.		Freeth Fuel	
Company Address	1503 NE 136 <sup>th</sup>		1025 N 6th Avenue	
	Vancouver WA 98685		Yakima WA 98902	
Contact Person	Todd Shaw		Brad Bond	
Phone Number	800-221-7067		509-453-3920	
Zone / Region	Zone 5, South Central Region	Zone 5, South Central Region	Zone 5, South Central Region	
Company TIN	91-1375975	91-1375975	91-1375975	
Company Name	Connell Oil	Connell Oil	Connell Oil	
Company Address	1015 N Oregon Avenue	106 N 9 <sup>th</sup> Street	1302 W First Ave	
	Pasco WA 99301	Sunnyside WA 98944	Ritzville WA 99169	
Contact Person	Brad Bell	Jim Heintz	Jim Whitman	
Phone Number	509-547-3326	509-837-5274	509-659-1532	
Zone / Region	Zone 6, Eastern Region	Zone 6, Eastern Region	Zone 6, Eastern Region	
Company TIN	91-1375975	91-1375975	91-1375975	
Company Name	Connell Oil	Connell Oil	Connell Oil	
Company Address	1015 N Oregon Avenue	3727 N Tschirley	1302 W First Ave	
	Pasco WA 99301	Spokane Wa 99216	Ritzville WA 99169	
Contact Person	Brad Bell	Mark Gilbert	Jim Whitman	
Phone Number	509-547-3326	509-535-1534	509-659-1532	

Current Contract Information

Invitation for Bid No. 02418, Lubricants, Virgin and Re-Refined

ADDITIONS - Jan 19, 2017

<b>Zone / Region</b>	<b>Zone 3, Olympic Region</b>
<b>Company TIN</b>	91-1175976
<b>Company Name</b>	<b>Nelson Petroleum</b>
<b>Company Address</b>	1125 80 <sup>th</sup> SW
	Everett WA 99302
<b>Contact Person</b>	Mark Nelson
<b>Phone Number</b>	800-562-9882

ADDITIONS - April 28,2021

<b>Zone/Region</b>	<b>Zone 4 Southwest Region</b>
<b>Company TIN</b>	90-0474611
<b>Company Name</b>	<b>Puget Sound Petroleum</b>
<b>Company Address</b>	1002 East D Street
	Tacoma Washington 98421
<b>Contact Person</b>	Vince McBroom
<b>Phone Number</b>	253-208-1293

**MASTER CONTRACT**

**No. 02418**

**LUBRICANTS AND DIESEL EXHAUST FLUID**

*For Use by Eligible Purchasers*

By and Between

**STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES**

and

**PHILLIPS 66 COMPANY**

Dated August 1, 2018

**MASTER CONTRACT****No. 02418****LUBRICANTS AND DIESEL EXHAUST FLUID**

This Master Contract ("Master Contract") 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 Phillips 66 Company, a Delaware Corporation ("Contractor") and is dated as of August 1, 2018.

**RECITALS**

- A. Pursuant to Legislative direction codified in RCW chapter 39.26, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid for general use by Washington state agencies and certain other entities (eligible purchasers).
- B. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Invitation For Bid No. 02418 dated June 29, 2018 regarding **LUBRICANTS AND DIESEL EXHAUST FLUID AND DIESEL EXHAUST FLUID**.
- C. Enterprise Services evaluated all responses to the Invitation For Bid and identified Contractor as an apparent successful bidder.
- D. Enterprise Services has determined that entering into this Master Contract will meet the identified needs and be in the best interest of the State of Washington.
- E. The purpose of this Master Contract is to enable eligible purchasers to purchase the Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid as set forth herein.

**AGREEMENT**

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

1. **TERM.** The term of this Master Contract is ninety-six (96) months, commencing August 1, 2018 and ending July 31, 2026. During the term of this Contract, Contractor may commence sales of covered goods, pursuant to the schedule set forth below:

CATEGORY NO.	CATEGORY	COMMENCEMENT DATE FOR ORDERS & SALES
1	Lubricating Oils	November 1, 2018
2	Grease/Gear Oil	November 1, 2018
3	Lubricating Oil for Rail Engines - Marine, Power, and Drilling Rig (EMD & GE)	No Award
4	Diesel Exhaust Fluid	No Award
5	Re-Refined Lubricants	August 1, 2018



**2. ELIGIBLE PURCHASERS.** This Master Contract may be utilized by any of the following types of entities ("Purchaser"):

**2.1. WASHINGTON STATE AGENCIES.** This Master Contract may be utilized by:

- Washington state agencies, departments, offices, divisions, boards, and commission; and
- Any the following institutions of higher education: state universities, regional universities, state college, community colleges, and technical colleges.

**2.2. MCUA PARTIES.** This Master Contract also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement with Enterprise Services:

- Political subdivisions (e.g., counties, cities, school districts, public utility districts);
- 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.

**3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.**

**3.1. CONTRACT SCOPE.** Pursuant to this Master Contract, Contractor is authorized to sell only those Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices*. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell any Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid beyond those set forth in *Exhibit A – Included Goods/Services*.

**3.2. STATE'S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT.** Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid included in this Master Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Master Contract.

**3.3. ECONOMIC ADJUSTMENT.** No increases to the discount(s) awarded are authorized for the duration of the contract.

**3.4. PRICE CEILING.** Although Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services* (subject to economic adjustment as set forth herein).

**3.5. MASTER CONTRACT INFORMATION.** Enterprise Services shall maintain and provide information regarding this Master Contract, including scope and pricing, to eligible Purchasers.

**4. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Master Contract and at the time any order is placed pursuant to this 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 of Contractor's knowledge of any breach notify Enterprise Services, in writing, of such breach.

- 4.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 4.2. SUSPENSION & DEBARMENT. Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 4.3. QUALITY OF GOODS OR SERVICES. Contractor represents and warrants that at the time of delivery any Lubricants and Diesel Exhaust Fluid sold pursuant to this Master Contract shall be merchantable, shall conform to this Master Contract and Purchaser's Purchase Order, shall conform to the applicable product specification, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances and that the same do not infringe any third party patent. Upon breach of warranty, Contractor will repair or replace (at no charge to Purchaser) any Lubricants and Diesel Exhaust Fluid whose nonconformance is discovered and made known to the Contractor. If, in Purchaser's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 4.4. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Purchasers' employees.
- 4.5. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Master Contract, Contractor shall maintain an accurate profile in WEBS.
- 4.6. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
- 4.7. MASTER CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Master Contract with eligible Purchasers and to ensure that those entities that utilize this Master Contract are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor's Lubricants and Diesel Exhaust Fluid or suggesting that such Lubricants and Diesel Exhaust Fluid are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, any Purchaser, or the State of

Washington in any promotional material without the prior written consent of Enterprise Services.

- 4.8. MASTER CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Master Contract or a similar contract, is transitioned or assigned by Contractor to another contractor (e.g., Master Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

**5. USING THE MASTER CONTRACT – PURCHASES.**

- 5.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order Lubricants and Diesel Exhaust Fluid from this Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but, at a minimum, including the use of a purchase order. When practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order"). All order documents must reference the Master Contract number.
- 5.2. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of Lubricants and Diesel Exhaust Fluid will be made as required by this Master Contract, the Purchase Order used by Purchasers, or as otherwise mutually agreed in writing between the Purchaser and Contractor. The following apply to all deliveries:
- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchaser's normal work hours and within the time period mutually agreed in writing between Purchaser and Contractor at the time of order placement.
  - (b) Contractor shall ship all Lubricants and Diesel Exhaust Fluid purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Purchaser's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the Lubricants and Diesel Exhaust Fluid ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence.
  - (c) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Master Contract shall be identified by the Master Contract number set forth on the cover of this Master Contract and the applicable Purchaser's Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- 5.3. RECEIPT AND INSPECTION OF LUBRICANTS AND DIESEL EXHAUST FLUID. Lubricants and Diesel Exhaust Fluid purchased under this Master Contract are subject to Purchaser's reasonable inspection, testing, and approval at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of Lubricants and Diesel Exhaust Fluid that are not in accordance with this Master Contract and Purchaser's Purchase Order. Purchaser may charge Contractor for the cost of inspecting rejected goods. If there are any apparent defects in the Lubricants and Diesel Exhaust Fluid at the time of delivery, Purchaser promptly will notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged Lubricants and Diesel

Exhaust Fluid or, at Purchaser's option, Purchaser may note any damage to the Lubricants and Diesel Exhaust Fluid on the receiving report, decline acceptance, and deduct the cost of rejected Lubricants and Diesel Exhaust Fluid from final payment. Payment for any goods under such Purchase Order shall not be deemed acceptance of the goods.

- 5.4. ON SITE REQUIREMENTS. While on Purchaser's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, or other security requirements.

## 6. INVOICING & PAYMENT.

- 6.1. CONTRACTOR INVOICE. Contractor shall submit to Purchaser's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:

- (a) Master Contract No. 02418
- (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)
- (c) Contractor's Federal Tax Identification Number
- (d) Date(s) of delivery
- (e) Invoice amount; and
- (f) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Master Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

- 6.2. PAYMENT. Payment is the sole responsibility of, and will be made by, the Purchaser. Payment made by ACH, Wire, or Direct Debit is due within thirty (30) days of invoice. If Purchaser fails to make timely payments, or if reasonable grounds for insecurity arise with respect to Purchaser's performance, Contractor may defer shipments until payment is made, require cash payment, change Purchaser's credit terms, or require other assurance of performance. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.
- 6.3. OVERPAYMENTS. Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchaser may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 6.4. NO ADVANCE PAYMENT. No advance payments shall be made for any products or services furnished by Contractor pursuant to this Master Contract.
- 6.5. NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 6.6. TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Contract. Failure to do so shall constitute breach of this Master Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax, Petroleum Property Tax (PPT), and the Hazardous Substance Tax (HST) imposed by the State of

Washington on purchased Lubricants and Diesel Exhaust Fluid as a separate line item. Contractor, however, shall not make any charge for federal excise taxes and Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

**7. CONTRACT MANAGEMENT.**

- 7.1. **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Master Contract. Enterprise Services' contract administrator shall provide Master Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Master Contract. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**

Attn: Keith Farley  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411  
Tel: (360) 407-9419  
Email: Keith.Farley@des.wa.gov

**Contractor**

Attn: Dennis Hammons  
Phillips 66 Company  
22515 NE 39<sup>th</sup> Way  
Redmond, WA 98053  
Tel: (425) 868-3739  
Email: duck.d.hammons@p66.com

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 7.2. **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Master Contract.
- 7.3. **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**

Attn: Legal Services Manager  
Washington Dept. of Enterprise  
Services  
PO Box 41411  
Olympia, WA 98504-1411  
Email: greg.tolbert@des.wa.gov

**Contractor**

Attn: Dennis Hammons  
Phillips 66 Company  
22515 NE 39<sup>th</sup> Way  
Redmond, WA 98053  
Tel: (425) 868-3739  
Email: [duck.d.hammons@p66.com](mailto:duck.d.hammons@p66.com)

With copy to:

Phillips 66 Company  
 Lubricants Contract Administration  
 2331 CityWest Boulevard  
 Houston, TX 77042  
[LubricantsContractAdministration@P66.com](mailto:LubricantsContractAdministration@P66.com)

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

**8. CONTRACTOR SALES REPORTING; VENDOR MANAGEMENT FEE; & CONTRACTOR REPORTS.**

**8.1. MASTER CONTRACT SALES REPORTING.** Contractor shall report total Master Contract sales quarterly to Enterprise Services, as set forth below.

- (a) Master Contract Sales Reporting System. Contractor shall report quarterly Master Contract sales in Enterprise Services' Master Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor's Bidder Profile.
- (b) Data. Each sales report must identify every authorized Purchaser 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 purchasers specified herein during the term of the Master Contract. If there are no Master Contract sales during the reporting period, Contractor must report zero sales.
- (c) Due dates for Master Contract Sales Reporting. Quarterly Master Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

FOR CALENDAR QUARTER ENDING	MASTER CONTRACT SALES REPORT DUE
March 31:	April 30
June 30:	July 31
September 30:	October 31
December 31:	January 31

**8.2. VENDOR MANAGEMENT FEE.** Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.50 percent on the purchase price for all Master Contract sales (the purchase price is the total invoice price less applicable sales tax).

- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:



Amount owed to Enterprise Services = Total Master Contract sales invoiced (not including sales tax) x .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 Master Contract sales reported by Contractor. Contractors are not to remit payment until they receive an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Master Contract number, work request number (if applicable), the year and quarter for which the VMF is being remitted, and the Contractor's name as set forth in this Master Contract, if not already included on the face of the check.
  - (d) Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the VMF, may be cause for Master Contract termination or the exercise of other remedies provided by law. Without limiting any other available remedies, the Parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums. The sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.
  - (e) Enterprise Services reserves the right, upon sixty (60) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Master Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.
- 8.3. ANNUAL MASTER CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Master Contract sales report. Such report shall include, at a minimum: Product description, part number or other Product identifier, per unit quantities sold, and Master Contract price. This report must be provided in an electronic format that can be read by MS Excel.
- 8.4. SMALL BUSINESS INCLUSION. Upon Request by Enterprise Services, Contractor shall provide, within thirty (30) days, an Affidavit of Amounts Paid. Such Affidavit of Amounts Paid either shall state, if applicable, that Contractor still maintains its MWBE certification or state that its subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE subcontractor under this Master Contract. Contractor shall maintain records supporting the Affidavit of Amounts Paid in accordance with this Master Contract's records retention requirements.

## 9. RECORDS RETENTION & AUDITS.

- 9.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation,

claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 9.2. **AUDIT.** Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced Purchasers and that Contractor has paid all applicable contract management fees. Accordingly, Contractor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Contract or orders placed by a Purchaser under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 9.3. **OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES.** Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Master Contract or orders, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor's records; and (b) reimburse Enterprise Services for any underpayment of fees, at a rate of 125% of such fees found as a result of the examination of the Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by \$500, Contractor would be required to pay to Enterprise Services  $\$500 \times 1.25 = \$625$ ).

## 10. INSURANCE.

- 10.1. **REQUIRED INSURANCE.** During the Term of this Master Contract, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*.
- 10.2. **WORKERS COMPENSATION.** Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Master Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.
- 10.3. **SELF INSURANCE.** In lieu of any insurances required under the Master Contract, and notwithstanding anything to the contrary contained herein, Contractor may self-insure against the risks for which Contractor is obligated, at levels that meet coverages and limits set forth in Exhibit C, and satisfy any requirement for such evidence of such writing with a self-administered claims letter to the State of Washington.

## 11. CLAIMS.

- 11.1. **ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES.** Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees, agents, and contractors in connection with Contractor's operations under this Master Contract, except to



the extent that the loss, damage, death, or injury was caused by the negligence or willful misconduct of the Purchaser. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from its acts or omissions under this Master Contract, to the extent caused by the negligence or willful misconduct by Contractor or its agents.

- 11.2. **THIRD-PARTY CLAIMS; INDEMNITY.** To the extent of Contractor's negligence, Contractor shall defend, indemnify, and hold harmless Enterprise Services and any Purchaser and their employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Contractor or its successors, agents, and subcontractors under this Master Contract. Contractor shall take all steps needed to keep Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed. To the extent of Enterprise Services' negligence, Enterprise Services shall defend, indemnify, and hold harmless Contractor and their employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Enterprise Services, any Purchaser or its successors, agents, and subcontractors under this Master Contract.

12. **DISPUTE RESOLUTION.** The parties shall cooperate to resolve any dispute pertaining to this Master Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have ten (10) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

**13. SUSPENSION & TERMINATION; REMEDIES.**

- 13.1. **SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this Master Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Master Contract. All of Contractor's obligations to Enterprise Services and Purchasers survive termination of Contractor's rights under this Master Contract, until such obligations have been fulfilled.
- 13.2. **DEFAULT.** Each of the following events shall constitute default of this Master Contract by Contractor:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Master Contract including, but not limited to, Contractor's obligation to pay contract management fees when due;
  - (b) Contractor breaches any representation or warranty provided herein; or

- (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

13.3. REMEDIES FOR DEFAULT.

- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Master Contract are in addition to all other available remedies.
- (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasers replacement Lubricants and Diesel Exhaust Fluid. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Master Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

13.4. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party, including Contractor, Enterprise Services or Purchaser be liable to the other for lost profit, consequential, indirect, goodwill, exemplary or punitive damages.

13.5. GOVERNMENTAL TERMINATION.

- (a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Master Contract if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Master Contract; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Purchaser from payment for Lubricants and Diesel Exhaust Fluid already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.
- (b) Termination for Convenience. Enterprise Services, for convenience, may terminate this Master Contract; *Provided*, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for convenience shall not relieve any Purchaser from payment for Lubricants and Diesel Exhaust Fluid already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

13.6. TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Purchasers all Lubricants and Diesel Exhaust Fluid that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Master Contract and the applicable Purchase Order. Unless directed by Enterprise Services

to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

**14. GENERAL PROVISIONS.**

- 14.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Contract.
- 14.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law.
- 14.3. INTEGRATED AGREEMENT. This Master Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 14.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.
- 14.5. AUTHORITY. Each party to this Master Contract, 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 Master Contract and that its execution, delivery, and performance of this Master Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 14.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Master Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 14.7. ASSIGNMENTS. This Master Contract is not transferable or assignable without prior written consent of both parties.
- 14.8. BINDING EFFECT; SUCCESSORS & ASSIGNS. This Master Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 14.9. PUBLIC INFORMATION. This Master Contract and all related documents are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56.
- 14.10. ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any Lubricants and Diesel Exhaust Fluid provided in Washington for the purpose of carrying out the Contractor's obligations under this Master Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 14.11. FEDERAL FUNDS. To the extent that any Purchaser uses federal funds to purchase Lubricants and Diesel Exhaust Fluid pursuant to this Master Contract, such Purchaser shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.
- 14.12. SEVERABILITY. If any provision of this Master Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Contract, and to this end the provisions of this Master Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good

faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Master Contract.

- 14.13. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Contract, nor shall any purported oral modification or rescission of this Master Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 14.14. **FORCE MAJEURE.** If either party is rendered unable, wholly or in part, to perform its obligations under this Master Contract (other than to make payment for the Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid sold hereunder) due to acts of God, floods, fires, explosions or storm, transportation difficulties, strikes, lockouts, or other industrial disturbances; wars; embargoes or other import or export restrictions; or any law, rule, order or action of any court or instrumentality of the federal or of any state government; exhaustion, reduction or unavailability of the Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid at the source of supply from which deliveries are normally made hereunder, or exhaustion or unavailability or delay in delivery of any material or product necessary in the manufacture of the Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid deliverable hereunder; or any other cause or causes beyond its control, performance under this Master Contract shall be suspended. It is agreed that on such party's giving notice and full particulars of such force majeure to the other party, then the obligations of the party giving such notice will be suspended from the date of receipt of such notice and for the continuance of any inability so caused but for no longer period, and such cause will, so far as possible, be remedied with all reasonable dispatch. Contractor shall not be obligated to sell or deliver, and Enterprise Services shall not be obligated to purchase or accept any Lubricants and Diesel Exhaust Fluid and Diesel Exhaust Fluid withheld by Contractor during a period of force majeure or at any time following the force majeure.
- 14.15. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Contract shall survive and remain in effect following the expiration or termination of this Master Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 14.16. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Master Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.
- 14.17. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Master Contract, the parties agree to submit to exclusive in personam jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 14.18. **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Master Contract or any provision hereof, or in connection with any alleged

dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.

- 14.19. **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Master Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Master Contract. Each party hereto and its counsel has reviewed and revised this Master Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Master Contract. Each term and provision of this Master Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 14.20. **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Master Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Contract.
- 14.21. **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Master Contract in their entirety.
- 14.22. **CAPTIONS & HEADINGS.** The captions and headings in this Master Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Master Contract nor the meaning of any provisions hereof.
- 14.23. **ELECTRONIC SIGNATURES.** A signed copy of this Master Contract 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 Master Contract or such other ancillary agreement for all purposes.
- 14.24. **COUNTERPARTS.** This Master Contract may be executed in any number of 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 Master Contract 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 Master Contract.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES

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

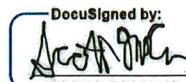
Josh Klika

Its: Procurement Supervisor

PHILLIPS 66 COMPANY, A TEXAS CORPORATION

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

Its: Phillips 66 General Manager

DocuSigned by:  
  
E562B94B3C3843F...  
SCOTT McCREARY

DS  
LG

## EXHIBIT A

## INCLUDED GOODS/SERVICES

CATEGORY NO.	CATEGORY	MANUFACTURER AWARDED	CATALOG
1	Lubricating Oils	Phillips 66	State of Washington Price Schedule
2	Grease/Gear Oil	Phillips 66	State of Washington Price Schedule
3	Lubricating Oil for Rail Engines - Marine, Power, and Drilling Rig (EMD & GE)	No Award	
4	Diesel Exhaust Fluid	No Award	
5	Re-Refined Lubricants	Phillips 66	State of Washington Price Schedule

## Exhibit B

## PRICES FOR GOODS/SERVICES

CATEGORY No.	CATEGORY	MANUFACTURER AWARDED	DISCOUNT
1	Lubricating Oils	Phillips 66	20%
2	Grease/Gear Oil	Phillips 66	20%
3	Lubricating Oil for Rail Engines - Marine, Power, and Drilling Rig (EMD & GE)	No Award	-
4	Diesel Exhaust Fluid	No Award	-
5	Re-Refined Lubricants	Phillips 66	20%

## Exhibit C

## INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Master Contract, Contractor obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
  - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Master Contract.
  - b. **Commercial Automobile Liability Insurance.** 'Symbol 1' Commercial Automobile Liability coverage (and, if necessary, commercial umbrella liability insurance) including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$5,000,000 and shall include a rider evidencing pollution liability broadened coverage for covered autos and broadened coverage for pollution conditions occurring while loading and unloading.
  - c. **Transportation Pollution Liability Coverage.** Contractor shall provide transportation pollution liability insurance in an amount not less than \$10,000,000 per occurrence and \$20,000,000 aggregate.
  - d. **Contractor's Pollution Liability Insurance.** Pollution Liability Insurance coverage (to include, without limitation, loading and unloading of all Fuel Products) with a combined single limit per occurrence of not less than \$5,000,000, or the equivalent. Such insurance shall provide coverage for bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and costs and expenses incurred in the investigation, defense or settlement of claims. Such coverage shall provide coverage for both on-site and off-site clean-up costs and cover gradual and sudden pollution.

The limits of all insurance required to be provided by Contractor shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits.

A cross-liability clause or separation of insured condition shall be included in the general liability and the pollution liability policies required by this Master Contract.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Except for Works' Compensation, Professional Liability, Personal Automobile Liability, and Pollution Liability Insurance, all required insurance shall include the State of



Washington and all authorized Purchasers (and their agents, officers, and employees) as an Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

4. **CERTIFICATE OF INSURANCE.** Upon request by Enterprise Services, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. A renewal certificate shall be delivered to Enterprise Services no less than ten (10) days prior to coverage expiration. Failure to provide proof of insurance, as required, will result in contract cancellation. All policies and certificates of insurance shall include the Master Contract number stated on the cover of this Master Contract.
5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Master Contract number stated on the cover of this Master Contract.

## Exhibit D

## FTA CLAUSES FOR LUBRICANTS AND DIESEL EXHAUST FLUID

## 1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.

- (a) Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.
- (b) Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## 2. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD.

- (a) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- (b) Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- (c) Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## 3. ACCESS TO THIRD PARTY CONTRACT RECORDS.

- (a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant

to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- (b) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- (c) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (d) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (e) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (f) Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (g) FTA does not require the inclusion of these requirements in subcontracts.

4. CHANGES TO FEDERAL REQUIREMENTS. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

5. TERMINATION.

- (a) Termination for Convenience. The (Recipient) may terminate this Contract, in whole or in part, at any time by written notice to Contractor when it is in the Government's best interest.

Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If Contractor has any property in its possession belonging to the (Recipient), Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

- (b) Termination for Default. If Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on Contractor setting forth the manner in which the Contractor is in default. Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- (c) Opportunity to Cure. The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- (d) Waiver of Remedies for any Breach. In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### 6. CIVIL RIGHTS.

- (a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 102, section 202 of the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 2132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:
  - i. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity

requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

- ii. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- iii. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- 7. DISADVANTAGED BUSINESS ENTERPRISES. The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 and USDOT's official interpretations (i.e., Questions & Answers) apply to this Contract. As such, the requirements of this Contract are to make affirmative efforts to solicit DBEs, provide information on who submitted a Bid or quote and to report DBE participation. No preference will be included in the evaluation of Bids/Proposals, no minimum level of DBE participation shall be required as a Condition of Award and Bids/Proposals may not be rejected or considered non-responsive on that basis.
- 8. ADA Access. Contractor shall comply with the requirements of 49 CFR FTA C 4710.1 as applicable to this Contract. Equal access and the opportunity should be given to individuals with disabilities to fully participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations.
- 9. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA

Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

10. DEBARMENT AND SUSPENSION. This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Enterprise Services. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Enterprise Services, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. BUY AMERICA. Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7.

12. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION.

- (a) Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.
- (b) Performance During Dispute. Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- (c) Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- (d) Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

(e) Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. LOBBYING. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]. Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

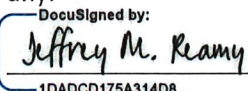
- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.



This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, PHILLIPS 66, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

DocuSigned by:  
 Signature of Contractor's Authorized Official  
 1DADCD175A314D8...  
Jeffrey M. Reamy Name and Title of Contractor's Authorized Official  
October 23, 2018 Date

#### 14. CLEAN AIR.

- (a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### 15. CLEAN WATER.

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### 16. CARGO PREFERENCE - USE OF UNITED STATES-FLAG VESSELS. Contractor agrees to:

- (a) Use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

- (b) Furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
  - (c) Include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- 17. FLY AMERICA REQUIREMENTS. Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
- 18. ENERGY CONSERVATION. Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- 19. RECYCLED PRODUCTS. Contractor shall comply with the requirements of 40 CFR part 247 comprehensive procurement guideline for products containing recovered material.



# Agenda Sheet for City Council Meeting of: 02/14/2022

<b>Date Rec'd</b>	1/27/2022
<b>Clerk's File #</b>	OPR 2020-0091
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	ITB 5210-19
<b>Requisition #</b>	VALUE BLANKET

<b>Submitting Dept</b>	SOLID WASTE DISPOSAL
<b>Contact Name/Phone</b>	DAVID PAINE 625-6878
<b>Contact E-Mail</b>	DPAINE@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	4490 PURCHASE OF HIGH CALCIUM QUICKLIME AT THE WTE

## **Agenda Wording**

Value blanket renewal #1 of 3 with Pete Lien and Sons (Rapid City, SD) for the purchase and delivery of high calcium quicklime at the WTE from Mar. 1, 2022 through Feb. 28, 2023 with an additional cost not to exceed \$1.5M plus tax.

## **Summary (Background)**

High calcium quicklime is used to reduce the acid in the flue gas and control the final pH of the ash. On Dec. 16, 2019 bidding closed on ITB 5210-19 for the purchase and delivery of this quicklime and Pete Lien and Sons, of Rapid City, SD was the only responsible bidder. The initial value blanket award in 2019 was for two years, with the option of three additional one-year renewals. This will be the first of those renewals and the price per ton will increase from \$200.09 to \$218.87.

Lease? NO Grant related? NO Public Works? NO

## **Fiscal Impact**

Expense	\$ 1,500,000.00	<b>Budget Account</b>	# 4490-44100-37148-53203
Select	\$		#
Select	\$		#
Select	\$		#

## **Approvals**

<b>Dept Head</b>	AVERYT, CHRIS
<b>Division Director</b>	FEIST, MARLENE
<b>Finance</b>	ALBIN-MOORE, ANGELA
<b>Legal</b>	ODLE, MARI
<b>For the Mayor</b>	ORMSBY, MICHAEL

## **Council Notifications**

<b>Study Session\Other</b>	PIES 1/31/22
<b>Council Sponsor</b>	CM Lori Kinnear

## **Distribution List**

<b>Additional Approvals</b>	tprince@spokanecity.org
<b>Purchasing</b>	PRINCE, THEA rrinderle@spokanecity.org
	DocuSign: Daryl Mecham, dmecham@petelien.com

## Committee Agenda Sheet

### Public Infrastructure, Environment and Sustainability

<b>Submitting Department</b>	Solid Waste Disposal
<b>Contact Name &amp; Phone</b>	David Paine, 625-6878
<b>Contact Email</b>	<a href="mailto:dpaine@spokanecity.org">dpaine@spokanecity.org</a>
<b>Council Sponsor(s)</b>	CM Lori Kinnear
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion     Time Requested: _____
<b>Agenda Item Name</b>	Value Blanket Renewal for High Calcium Quicklime for the WTE.
<b>Summary (Background)</b>	<p>High Calcium Quicklime is required for operation of the WTE. It is used to reduce the acid gases in the flue gas and control the final pH of the ash. Water is added to the powdered lime to create a slurry which is injected into the flue gas to remove hydrochloric acid and sulfur dioxide to comply with environmental regulations. The slurry also helps to cool the flue gasses to the correct emission temperature.</p> <p>On December 16, 2019 bidding closed for ITB 5210-19 for the purchase and delivery of this High Calcium Quicklime. Two responses were received and Pete Lien and Sons, of Rapid City, SD, was the only responsible bidder and was awarded a two year value blanket which spanned from March 1, 2020 through February 28, 2022 with the option of three (3) additional one-year contract periods. This will be the first of those renewals from Mar. 1, 2022 through Feb. 28, 2023 with an additional cost not to exceed \$1.5M. The price for lime for this renewal was increased from 200.09/ton to \$218.87/ton and the fuel surcharge has gone from \$762.56 to \$876.99 per delivery.</p>
<b>Proposed Council Action &amp; Date:</b>	Council approval January 31, 2022
<b>Fiscal Impact:</b> Total Cost: <b>\$1.5M</b> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: <b>WTE Disposal Operations Rates: 2022 SWD Budget</b>  Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring  Other budget impacts: (revenue generating, match requirements, etc.) N/A	

**Operations Impacts**

What impacts would the proposal have on historically excluded communities?

N/A

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

N/A

How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?

High Calcium Quicklime is used in the WTE's Emission Controls Process. The use of this product has been tried and tested at WTE Facilities worldwide. WTE tracks and maintains a record of all chemical usages and air emissions from the Facility. The Washington Air Agency monitors and reviews the data collected in the WTE databases. The WTE is continues to research products that will ensure our compliance with our permits and support the emissions reduction efforts into the future.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

Air emissions are regulated and tracked as part of the COS's WTE Operating Permits. This product supports efforts outlined in the Sustainability Action Plan by keeping the Facility's Air Emissions within the guidelines of the Operating Permits. When and if newer or better technology evolves, the WTE's Capital Plan would be programed to support any necessary or required changes.



**City of Spokane**

**PURCHASE AGREEMENT  
RENEWAL 1 OF 3**

**Title: HIGH CALCIUM QUICKLIME**

This Contract Renewal is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **PETE LIEN AND SONS, INC.** whose address is 3401 Universal Drive, Rapid City, South Dakota 57702 as ("Vendor"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the parties entered into a Contract wherein the Vendor agreed to provide the City with High Calcium Quicklime; and*

*WHEREAS, the initial contract provided for three (3) additional one-year renewals, with this being the first of those renewals.*

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

**1. CONTRACT DOCUMENTS.**

The original Contract, dated February 13, 2020 and February 26, 2020, any previous amendments, renewals and / or extensions / thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

**2. EFFECTIVE DATE.**

This Contract Renewal shall become effective on March 1, 2022 and shall run through February 28, 2023.

**3. COMPENSATION.**

The City shall pay an estimated maximum annual cost not to exceed **ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 (\$1,500,000.00)** excluding applicable sales tax, for everything furnished and done under this Contract Renewal. This is the maximum amount to be paid under this Renewal, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this Renewal document.

**4. 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.

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

**PETE LIEN AND SONS, INC.**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

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

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

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

Certificate of Debarment

22-025



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

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

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

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

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

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

02/14/2022

**Date Rec'd**

2/1/2022

**Clerk's File #**

OPR 2018-0127

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

WASTEWATER MANAGEMENT

**Contact Name/Phone**

MIKE CANNON 625-4642

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

MCANNON@SPOKANECITY.ORG

**Bid #**

4438-18

**Agenda Item Type**

Contract Item

**Requisition #**

VALUE BLANKET

**Agenda Item Name**

4320-RENEWAL OF CONTRACT FOR POLYMER WITH POLYDYNE, INC.

**Agenda Wording**

Council approval for the final renewal with Polydyne, Inc. to supply polymer to RPWRF for the period of March 1, 2022 through February 28, 2023 for a cost of \$467,100.00 polymer \$2.15/lb and anionic polymer \$2.18/lb.

**Summary (Background)**

Polymer is used in three processes - the Belt Filter Press for land application, the Gravity Belt Thickener processes for blending and the Primary Clarifiers for enhanced nutrient removal.

Lease? NO

Grant related? NO

Public Works? NO

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

Expense \$ 467,100.00

# 4320.43260.35148.53203

Select \$

#

Select \$

#

Select \$

#

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

GENNETT, RAYLENE

**Study Session\Other**

PIES 1/31

**Division Director**

FEIST, MARLENE

**Council Sponsor**

CM Kinnear

**Finance**

ALBIN-MOORE, ANGELA

**Distribution List****Legal**

SCHOEDEL, ELIZABETH

hbarnhart@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

kkeck@spokanecity.org

**Additional Approvals**

mhughes@spokanecity.org

**Purchasing**

PRINCE, THEA

Tax &amp; Licenses

tprince@spokanecity.org

mcannon@spokanecity.org

jeckhart@spokanecity.org

## Committee Agenda Sheet

### [Public Infrastructure, Environment & Sustainability]

<b>Submitting Department</b>	RPWRF
<b>Contact Name &amp; Phone</b>	Mike Cannon 625-4642
<b>Contact Email</b>	<a href="mailto:mcannon@spokanecity.org">mcannon@spokanecity.org</a>
<b>Council Sponsor(s)</b>	CM Kinnear
<b>Select Agenda Item Type</b>	<input type="checkbox"/> <input type="checkbox"/>
<b>Agenda Item Name</b>	Renewal of contract to supply Polymer
<b>Summary (Background)</b>	<p>Polymer is used in three processes - the Belt Filter Press for land application, the Gravity Belt Thickener processes for blending and the Primary Clarifiers for enhanced nutrient removal.</p>
<b>Proposed Council Action &amp; Date: 2/14/22</b>	Council approval for the final renewal with Polydyne, Inc. to supply polymer to Riverside Park Water Reclamation Facility.
<b>Fiscal Impact:</b> Total Cost: <u>\$467,100.00</u> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: Department  Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring  Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impacts</b>	

What impacts would the proposal have on historically excluded communities?

N/A

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

N/A

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

In order to function as a wastewater treatment and water recycling facility, it is necessary to add polymer.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This aligns with our current Purchasing Policy guidelines. This is the final renewal from the awarded BID #4438-18 to Polydyne, Inc. (Riceboro, GA) who was the lowest responsive bidder that met our 7-day delivery requirements to supply polymer.



**City of Spokane**

**PURCHASE AGREEMENT RENEWAL  
2 OF 2**

**Title: PURCHASE AND DELIVERY OF LIQUID AND DRY  
CHEMICAL ORGANIC POLYMER FLOCCULENT**

This Purchase Agreement Renewal is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **POLYDYNE, INC.**, whose address is 1 Chemical Plant Road, Riceboro, Georgia 31323 (*Remittance address: P.O. Box 279, Riceboro, Georgia 31323*), as ("Vendor"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the Vendor agreed to sell to the City LIQUID AND DRY CHEMICAL ORGANIC POLYMER FLOCCULENT; and*

*WHEREAS, the original Agreement provided for 2 additional one-year renewals, with this being the 2nd of those renewals; and*

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

**1. CONTRACT DOCUMENTS.**

The original Agreement, dated March 14, 2018, any previous amendments, renewals and / or extensions / thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

**2. EFFECTIVE DATE.**

This Agreement Renewal shall become effective on March 1, 2022 and shall run through February 28, 2023.

**3. COMPENSATION.**

The City shall pay an estimated maximum annual cost not to exceed **FOUR HUNDRED SIXTY-SEVEN THOUSAND ONE HUNDRED AND 00/100 (\$467,100.00)** for the following goods to be purchased under this Agreement Renewal.

**Approximately 210,600 lbs. of dry polymer/yr. at a cost of \$2.15/lb; and  
6600 lbs. of Anionic polymer, powder/yr. at a cost of \$2.18/lb.**

This is the maximum amount to be paid under this Renewal, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Agreement and this Renewal document.

**4. DEBARMENT AND SUSPENSION.**

The Vendor 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.

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 Renewal by having legally-binding representatives affix their signatures below.

**POLYDYNE, INC.**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

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

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

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

22-021

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

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

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

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

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



January 13, 2022

Heather Barnhart  
City of Spokane  
4401 N. Aubrey L. White Parkway  
Spokane, WA 99205

RE: Polymer Contract Renewal Proposal – Bid # 4438-18; Liquid and Dry Chemical Organic Polymer Flocculant

Dear Ms. Barnhart,

Polydyne Inc. would like to thank you for the option to renew the above-referenced Agreement. While we are pleased to extend, we must request a reasonable price adjustment for the extension period in response to continued increases for both raw materials and transportation services.

Regarding raw materials, an all-time record demand for finished polymers coupled with a tight global supply of raw materials has driven the cost of these raw materials rapidly higher. Two key cost drivers of polymers, propylene and acrylonitrile, have seen substantial increases. Propylene has increased more than 74% over the last year and acrylonitrile has increased more than 67% over this same period. Please see attached corresponding price graph. Also attached for your reference, please find the BLS Producer Price Index (PPI) for Chemicals and Allied Products (Series ID: WPU066) showing an increase of 43.5%.

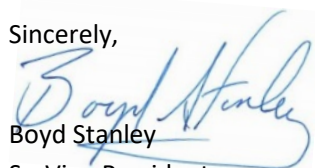
Regarding transportation costs, the current demand for trucking services exceeds available supply. As a result, we are experiencing substantial base-rate increases. These rising trucking rates impact both the cost for raw materials delivered to our manufacturing facilities and the cost to ship finished polymers to our valued customers. Please find attached graph for Long-Distance Trucking, which reflects an increase of 20% over the last year. While this does not fully encompass the totality of increases we have experienced, it is illustrative of the market conditions for trucking services.

Effective March 1, 2022 through February 28, 2023, we propose to supply CLARIFLOC WE-471 at an adjusted unit price of \$2.15/Lb. and CLARIFLOC A-6350 at an adjusted unit price of \$2.18/Lb.

You have our commitment that reliably supplying the City with the polymer you require will always be our highest priority. Please be assured that we are closely monitoring all aspects of our business and are working to remain the low-cost supplier. We greatly appreciate your understanding of our position and the market factors that have necessitated this request. Please respond via email to [bids@polydyneinc.com](mailto:bids@polydyneinc.com) if this offer is acceptable.

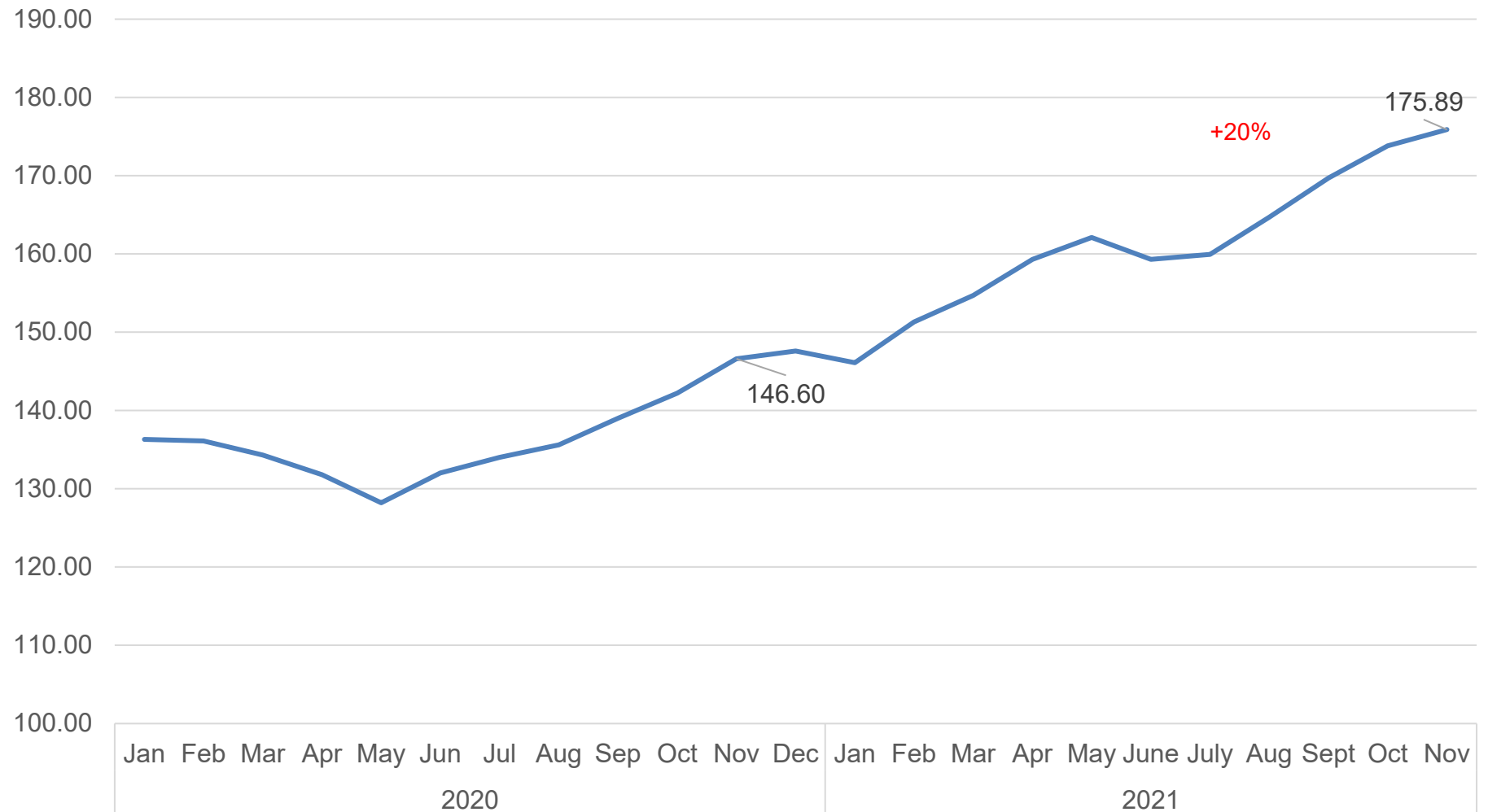
We greatly appreciate your business and look forward to continuing our valued partnership. Should you have any questions, please feel free to contact Charles Scott, Technical Representative, at (916) 202-6191.

Sincerely,

  
Boyd Stanley  
Sr. Vice-President

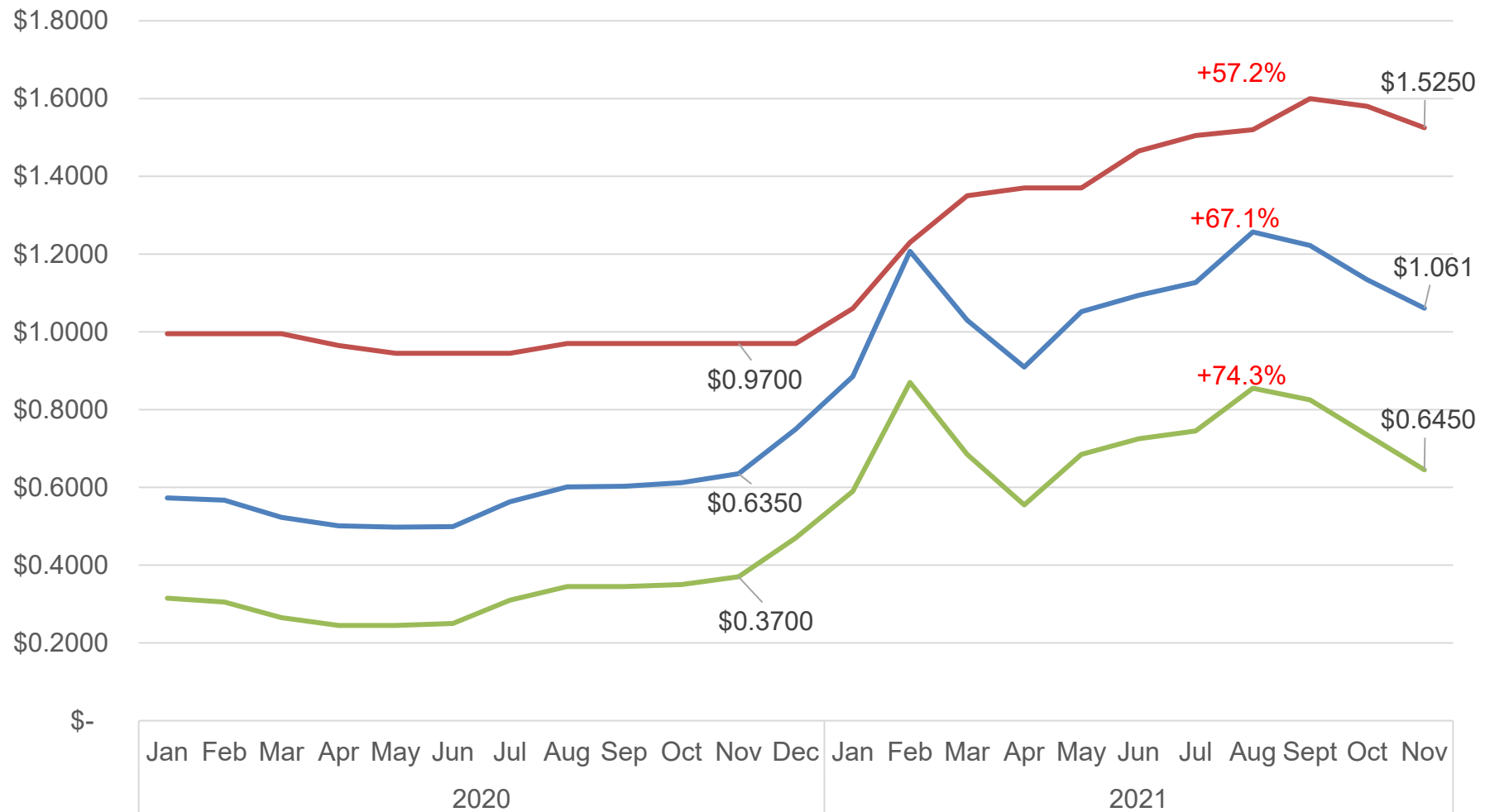
Attachments

# PPI: General Freight Trucking, Long-Distance Truckload



<https://fred.stlouisfed.org/series/PCU484121484121#0>

# 2020-2021 Raw Material Graph



Source:

Acrylic Acid – ICIS USA Domestic Contract

Acrylonitrile – HIS Chemical

Propylene – CG Propylene Contract as published by HIS Chemical

— Acrylonitrile

— Acrylic Acid

— Propylene

**POLYDYNE**

**U.S. BUREAU OF LABOR STATISTICS**

# Databases, Tables & Calculators by Subject

**Change Output Options:**From: 2011 ▼ To: 2021 ▼ ☐ include graphs ☐ include annual averages[More Formatting Options](#) 

Data extracted on: December 17, 2021 (8:14:07 AM)

**PPI Commodity Data****Series Id:** WPU066

Not Seasonally Adjusted

**Series** PPI Commodity data for Chemicals and allied products-Plastic resins and materials, not seasonally**Title:** adjusted**Group:** Chemicals and allied products**Item:** Plastic resins and materials**Base Date:** 198200**Download:**  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>2011</b>	213.2	218.8	223.2	229.1	239.5	238.4	236.7	233.8	235.3	229.2	231.5	227.2
<b>2012</b>	232.0	234.9	238.0	239.6	238.7	236.3	233.8	234.8	231.8	234.4	234.2	233.9
<b>2013</b>	239.7	244.1	247.1	245.9	244.6	245.4	244.4	245.1	245.5	245.8	247.9	247.7
<b>2014</b>	250.6	253.8	256.6	257.5	257.3	255.2	257.1	259.4	261.7	263.0	259.7	252.4
<b>2015</b>	243.2	237.3	230.2	229.4	230.3	231.5	230.5	227.7	221.3	218.9	217.7	218.1
<b>2016</b>	215.0	216.3	213.5	213.7	216.7	219.5	219.3	220.1	221.0	225.6	223.1	218.4
<b>2017</b>	220.5	225.2	232.3	235.8	234.3	232.8	230.4	230.3	232.9	237.7	239.7	240.2
<b>2018</b>	235.1	236.4	240.3	238.3	241.9	243.8	248.5	252.3	250.2	251.2	246.7	242.4
<b>2019</b>	235.9	230.8	226.6	225.0	227.4	223.9	223.9	224.7	224.2	224.6	222.0	217.3
<b>2020</b>	216.8	220.9	220.1	207.9	201.5	202.4	206.3	212.1	214.1	223.7	224.7	229.7
<b>2021</b>	237.7	249.9	274.0	289.7	298.5	311.4	320.153	326.872(P)	325.791(P)	326.761(P)	322.404(P)	

P : Preliminary. All indexes are subject to monthly revisions up to four months after original publication.

**+43.5%**

U.S. BUREAU OF LABOR STATISTICS Postal Square Building 2 Massachusetts Avenue NE  
Washington, DC 20212-0001

Telephone:1-202-691-5200\_ Federal Relay Service:1-800-877-8339\_ [www.bls.gov](http://www.bls.gov) [Contact Us](#)

## Barnhart, Heather

---

**From:** Gennett, Raylene  
**Sent:** Friday, January 14, 2022 12:23 PM  
**To:** Barnhart, Heather; Cannon, Mike  
**Subject:** RE: Poly - Final Renewal

Please move forward with this renewal. We are between a rock and hard place.

Thanks



### Raylene Gennett

City of Spokane | Wastewater Director  
509.625.7901 | fax 509.625.7940 | [rgennett@spokanecity.org](mailto:rgennett@spokanecity.org) | [spokanecity.org](http://spokanecity.org)



---

**From:** Barnhart, Heather <[hbarnhart@spokanecity.org](mailto:hbarnhart@spokanecity.org)>  
**Sent:** Friday, January 14, 2022 11:06 AM  
**To:** Gennett, Raylene <[rgennett@spokanecity.org](mailto:rgennett@spokanecity.org)>; Cannon, Mike <[mcannon@spokanecity.org](mailto:mcannon@spokanecity.org)>  
**Subject:** Poly - Final Renewal

Hello –

Attached is Polydyne's new quote for the final renewal. They too are increasing their prices due to raw materials and shipping costs.

We are currently paying;

Clarifloc WE-471 - \$1.59/per pound and they are requesting an increase to \$2.15/ per pound

Clarifloc Anionic A-6350 - \$1.75/per pound and they are requesting an increase to \$2.18/ per pound

Please see their attached quote and justification. If the increase is approved, I will get this placed on the PIES Committee agenda for January 31<sup>st</sup>.

Please advise.

### [CAUTION - EXTERNAL EMAIL - Verify Sender]

Good morning Heather,

Please see Polydyne's attached proposal and supporting justification for polymer pricing adjustments. As you are seeing, the chemical market is continuing to see rising costs with raw materials and freight. We thank the City for their

understanding and welcome addressing any questions. The City of Spokane is a highly valued customer and we look forward to continue working with you.

Have a great weekend.

Regards,

**Jacob Cole**  
Technical Sales Representative



Polydyne Inc.  
1 Chemical Plant Road  
Riceboro, Georgia 31323

Mobile: 360.931.5566  
[jcole@polydyneinc.com](mailto:jcole@polydyneinc.com)  
[polydyne.snf.com](http://polydyne.snf.com)

---

**From:** Barnhart, Heather  
**Sent:** Tuesday, January 11, 2022 10:03 AM  
**To:** Jacob Cole <[jcole@polydyneinc.com](mailto:jcole@polydyneinc.com)>; [bids@polydyneinc.com](mailto:bids@polydyneinc.com)  
**Subject:** Final Renewal - City of Spokane

Hello –

Are you interested in renewing for the final year at current pricing? Please see the current pricing attached and advise.

Happy New Year!

**Heather Barnhart** | Facility Inventory Foreperson | Procurement & Contracts Management  
Riverside Park Water Reclamation Facility | 4401 N Aubrey L White Pkwy, Spokane, WA 99205  
O: 509.625.4606 | C: 509.723.9392 | [hbarnhart@spokanecity.org](mailto:hbarnhart@spokanecity.org)

## Contact Sheet

TO: City of Spokane  
Attn: Heather Barnhart  
4401 N. Aubrey L White Parkway  
Spokane, WA 99205

Company Name: Polydyne Inc.  
Contact: Boyd Stanley, Vice-President  
Phone: (912) 880-2035  
Fax: (912) 880-2078  
Street Address: 1 Chemical Plant Road, Riceboro, GA 31323  
Mailing Address: PO Box 279, Riceboro, GA 31323  
Email: polybiddpt@snfhc.com

Federal Tax ID #: 34-1810283

PAYMENT Remit To Address: PO Box 404642, Atlanta, GA 30384  
Payment Terms: Net 30

Customer Service Contact: Chrystal Bailey ext. 8719  
Phone Number (Toll Free): 1-800-272-3949  
Phone Number: (912) 884-3366

Technical Sales Contact: Jacob Cole  
Phone Number: (360) 931-5566  
Email: jcole@polydyneinc.com

If you have any questions regarding the information provided above please do not hesitate to contact me at (912) 880-2035. Thank you.

Sincerely,

*Sandy Wells*

Sandy Wells  
Bids and Contracts Department





## Payment Instructions

### Wire Transfer:

BANK OF AMERICA, N.A.  
100 W. 33 St.  
New York, NY 10001

PHONE: (646) 733-4766 or (646) 733-4765  
FAX: (646) 733-4874

ABA: 026009593  
061000052 (use this ABA for all ACH payments)

SWIFT: BofAUS3N (if remit is in US Dollars)  
BofAUS6S (if remit is in Foreign Currency)

TELEX: 420831

IN FAVOR OF: POLYDYNE INC., RICEBORO, GA 31323 (USA)

ACCOUNT NUMBER: 3282509563

\*\*\*\*\*

### Credit Card:

Polydyne Inc. accepts all major credit cards. Credit card payments may be submitted online at <http://snf.us/paypolydyne/>. There is no fee for this secure and convenient service. A receipt will sent to the email address you provide once the transaction is complete.

\*\*\*\*\*

### Company Check/Other:

REMITTANCE CAN BE SENT BY **MAIL** TO:

POLYDYNE, INC.  
P. O. BOX 404642  
Atlanta, GA 30384-4642

REMITTANCE CAN BE SENT BY **COURIER**,  
**FEDEX, UPS** or other service to:

POLYDYNE, INC.  
ONE CHEMICAL PLANT ROAD  
RICEBORO, GA 31323 USA

Or:

POLYDYNE INC.  
LOCKBOX 404642  
6000 FELDWOOD ROAD  
COLLEGE PARK, GA 30349 USA

Thank you for your business. If you have any questions, please contact Reginald Lee at (912) 884-3366 extension 2056, or Courtney Ashley at extension 2099.

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

02/14/2022

<b>Date Rec'd</b>	2/1/2022
<b>Clerk's File #</b>	OPR 2018-0213
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	4442-18
<b>Requisition #</b>	VALUE BLANKET

<b>Submitting Dept</b>	WASTEWATER MANAGEMENT
<b>Contact Name/Phone</b>	MIKE CANNON 625-4642
<b>Contact E-Mail</b>	MCANNON@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	4320-RENEWAL OF CONTRACT FOR ALUMINUM SULFATE WITH KEMIRA WATER SOLUTIONS

**Agenda Wording**

Council approval to renew the final renewal with Kemira Water Solutions, Inc. to supply Liquid Aluminum Sulfate to Riverside Park Water Reclamation Facility, for a cost of \$2,678,400.00 (\$432 per dry ton), plus applicable taxes (4/1/22 - 3/31/23)

**Summary (Background)**

Aluminum Sulfate is used to remove Phosphorus from water from the Riverside Park Water Reclamation Facility that is discharged to the Spokane River. In order to remove Phosphorus from water discharged from RPWRF, it is necessary to add Liquid Aluminum Sulfate. RPWRF is required, by its discharge permit, to chemically remove Phosphorus from its effluent flow. We are anticipating usage of approximately 6,200 dry tons.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Expense	\$ 2,678,400.00	<b><u>Budget Account</u></b>	# 4320.43260.35148.53203
Select	\$		#
Select	\$		#
Select	\$		#

**Approvals**

<b><u>Dept Head</u></b>	GENNETT, RAYLENE
<b><u>Division Director</u></b>	FEIST, MARLENE
<b><u>Finance</u></b>	ALBIN-MOORE, ANGELA
<b><u>Legal</u></b>	SCHOEDEL, ELIZABETH
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL

**Council Notifications**

<b><u>Study Session\Other</u></b>	PIES 1/31
<b><u>Council Sponsor</u></b>	CM Kinnear

**Distribution List**

hbarnhart@spokanecity.org
kkeck@spokanecity.org
mhughes@spokanecity.org
Tax & Licenses
jeckhart@spokanecity.org
mcannon@spokanecity.org

**Additional Approvals**

<b><u>Purchasing</u></b>	PRINCE, THEA
--------------------------	--------------

## Committee Agenda Sheet

### [Public Infrastructure, Environment & Sustainability]

<b>Submitting Department</b>	RPWRF
<b>Contact Name &amp; Phone</b>	Mike Cannon 625-4642
<b>Contact Email</b>	<a href="mailto:mcannon@spokanecity.org">mcannon@spokanecity.org</a>
<b>Council Sponsor(s)</b>	CM Kinnear
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion     Time Requested: _____
<b>Agenda Item Name</b>	Renewal of contract to supply Liquid Aluminum Sulfate
<b>Summary (Background)</b>	<p>Aluminum Sulfate is used to remove Phosphorus from water from the Riverside Park Water Reclamation Facility that is discharged to the Spokane River. In order to remove Phosphorus from water discharged from RPWRF, it is necessary to add Liquid Aluminum Sulfate.</p> <p>RPWRF is required, by its discharge permit, to chemically remove Phosphorus from its effluent flow. We are anticipating usage of approximately 6,200 dry tons.</p>
<b>Proposed Council Action &amp; Date: 2/14/22</b>	Council approval for the final renewal with Kemira Water Solutions, Inc. to supply Liquid Aluminum Sulfate to Riverside Park Water Reclamation Facility.
<b>Fiscal Impact:</b> Total Cost: \$2,678,400.00 (\$432.00 per dry ton) Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: Department  Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring  Other budget impacts: (revenue generating, match requirements, etc.)	

**Operations Impacts**

What impacts would the proposal have on historically excluded communities?

N/A

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

N/A

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

In order to function as a wastewater treatment and water recycling facility, it is necessary to add liquid aluminum sulfate.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This aligns with our current Purchasing Policy guidelines. This is the final renewal from the awarded BID #4442-18 to Kemira Water Solutions, Inc. who was the lowest responsive bidder.



**City of Spokane**

**PURCHASE AGREEMENT RENEWAL  
2 OF 2**

**Title: PURCHASE AND DELIVERY OF  
ALUMINUM SULFATE**

This Contract Renewal is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **KEMIRA WATER SOLUTIONS** whose address is 4321 West 6<sup>th</sup> Street, Lawrence, Kansas 66049 as ("Vendor"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the parties entered into a Contract wherein the Vendor agreed to provide the City with Aluminum Sulfate; and*

*WHEREAS, the initial contract provided for 2 additional one-year renewals, with this being the second of those renewals.*

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

**1. CONTRACT DOCUMENTS.**

The original Contract, dated March 2, 2018 and April 12, 2018, any previous amendments, renewals and / or extensions / thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

**2. EFFECTIVE DATE.**

This Contract Renewal shall become effective on April 1, 2022 and shall run through March 31, 2023.

**3. COMPENSATION.**

The City shall pay an estimated maximum annual cost not to exceed **TWO MILLION SIX HUNDRED SEVENTY-EIGHT THOUSAND FOUR HUNDRED AND 00/100 (\$2,678,400.00)** excluding applicable sales tax, for everything furnished and done under this Contract Renewal. This is the maximum amount to be paid under this Renewal, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this Renewal document.

**4. 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.

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

**KEMIRA WATER SOLUTIONS**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

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

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

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

Certificate of Debarment

22-016

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

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

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

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

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

## Barnhart, Heather

---

**From:** Gennett, Raylene  
**Sent:** Monday, January 4, 2021 8:44 AM  
**To:** Coster, Michael; Barnhart, Heather  
**Subject:** RE: Kemira Contract Extension for Alum

I will follow Mike lead on this- please proceed

Raylene Gennett  
City of Spokane | Wastewater Director  
509.625.7901 | fax 509.625.7940 | rgennett@spokanecity.org | spokanecity.org

-----Original Message-----

From: Coster, Michael <mcoster@spokanecity.org>  
Sent: Monday, January 4, 2021 8:42 AM  
To: Barnhart, Heather <hbarnhart@spokanecity.org>  
Cc: Gennett, Raylene <rgennett@spokanecity.org>  
Subject: Re: Kemira Contract Extension for Alum

I think it's reasonable.

Sent from my iPhone

> On Jan 4, 2021, at 8:37 AM, Barnhart, Heather <hbarnhart@spokanecity.org> wrote:  
>  
> Happy New Year!  
>  
> In anticipation of me being out on surgery for a couple of weeks and COVID still slowing processes down a bit, I wanted to start the ball rolling on this renewal.  
>  
> Attached is an email from Kemira stating their price increase, which also implies that it will remain constant for the remainder of the contract.  
>  
> Is this agreeable to you two? If so, I will get the contract requested and moving it forward through council etc.  
>  
> Please advise.  
>  
> Thank you!



NOVEMBER 4, 2021 | COAGULANTS PRODUCT LINE MGMT NORTH AMERICA

# Alum Coagulants, North America Raw Material Feedstock Cost Development

KEMIRA CONFIDENTIAL INFORMATION

kemira

# Raw Material availability and price inflation challenges are expected to continue way into 2022

- Unless demand profile changes, **supply is unlikely to keep pace** over the next 12 months at least:
  - **Demand is expected to continue to grow** at healthy pace in 2022 for most industries and product streams
  - **Supply will need to reach its full potential utilization** in order to meet demand. Limited new additional capacities are planned to come on stream and operational reliability will have to greatly improve.
  - **Inventories at historically low levels** across multiple value chains will take time to replenish and will absorb part of supply capacity
- **Logistics constraints** across North America are persistent. Demand is greatly outpacing availability of trucks and drivers and not expected to subside soon.
- **Raw material availability** for coagulants is highly constrained, this includes all raw materials but is especially pronounced with chlorine, HCL, and sulfuric acid.
- **Price volatility is clearly to the upside** fueled by skyrocketing upstream feedstock / commodities as well as “seller’s market” appetite to maximize profit in tight supply and look for reinvestment economics



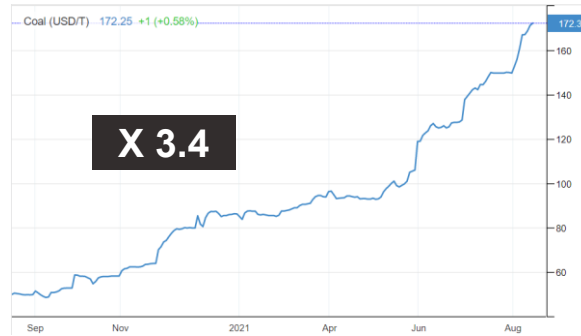


# Prices of utilities and primary materials have skyrocketed in 1 year

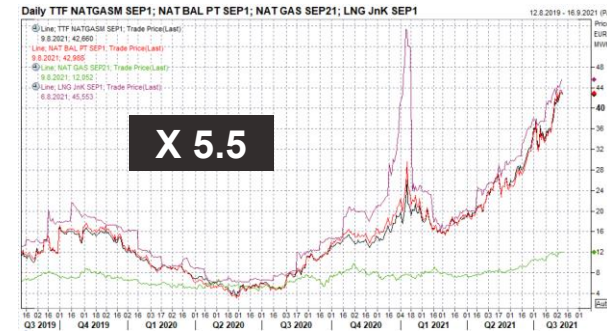
Oil



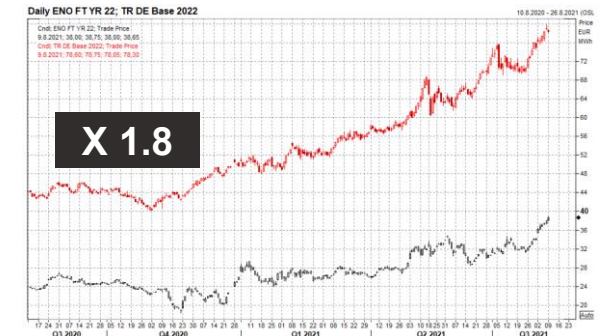
Coal



Natural Gas



Electricity



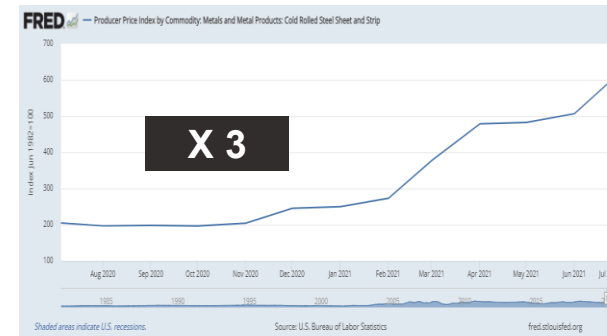
Copper



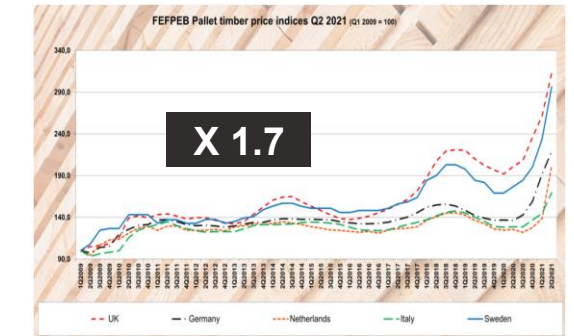
Aluminum



Col Rolled Steel

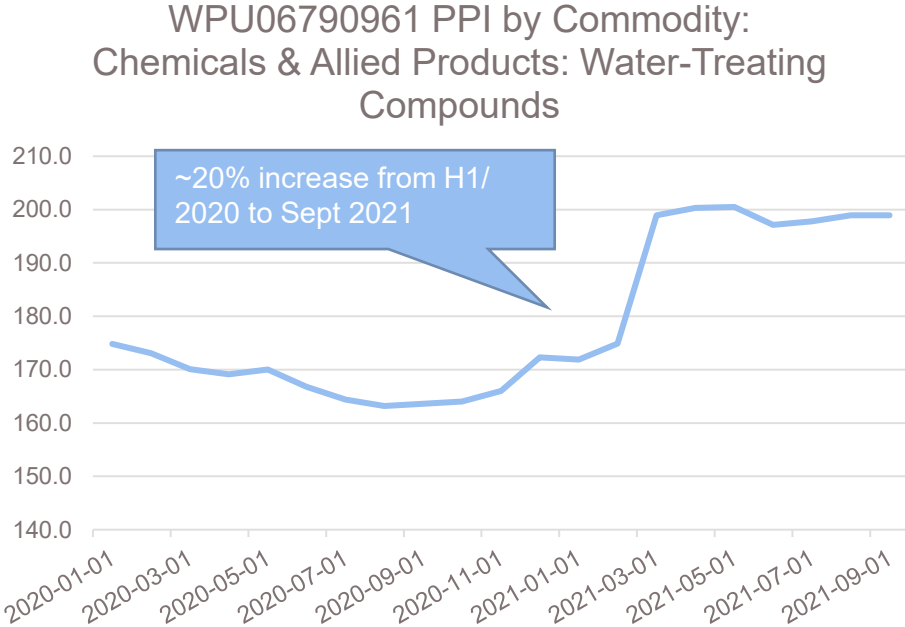
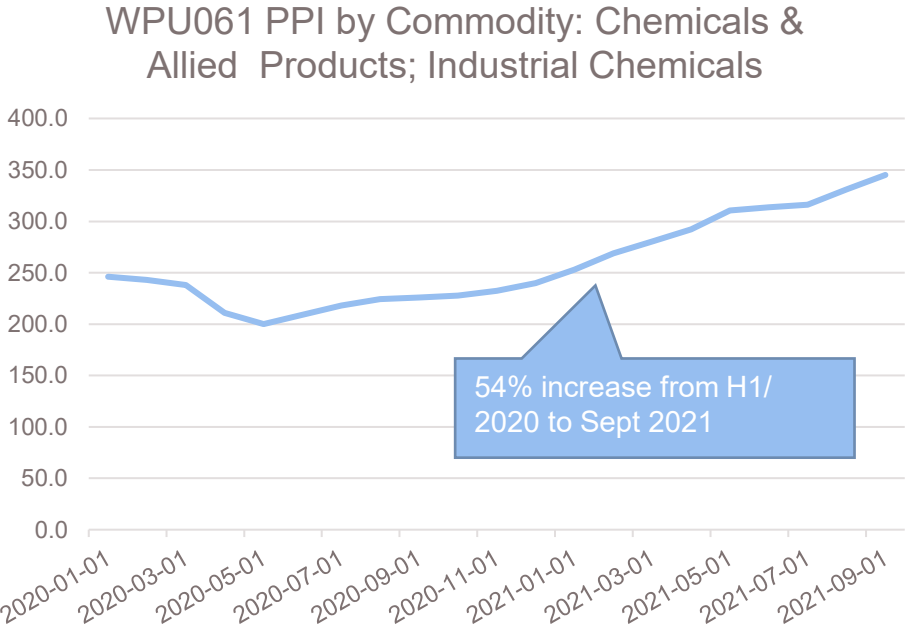


Wooden Pallets



# Commodity Chemical Pricing trend

PRODUCER PRICE INDEX REPORTED BY FED (FEDERAL RESERVE ECONOMIC DATA)  
[HTTPS://FRED.STLOUISFED.ORG](https://fred.stlouisfed.org)



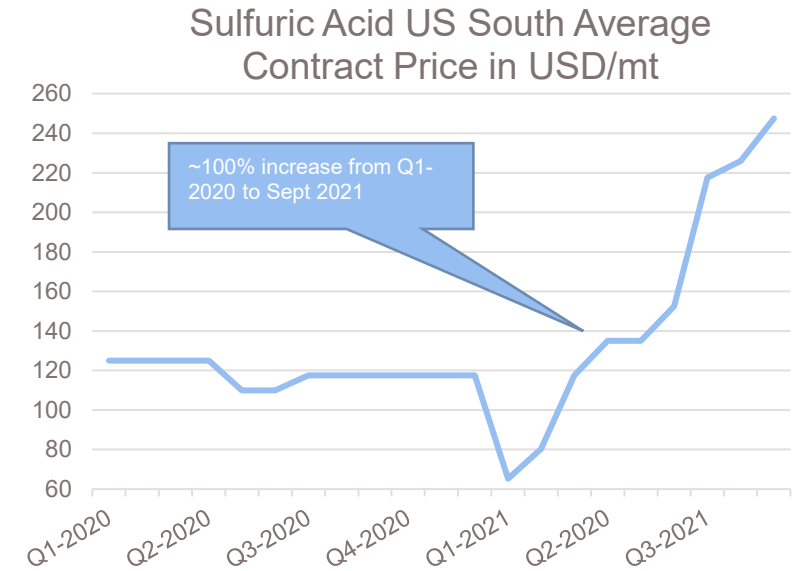
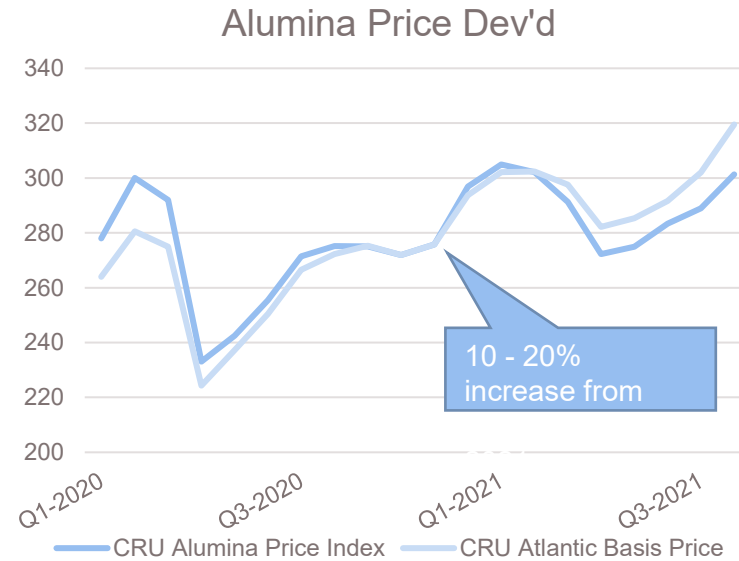
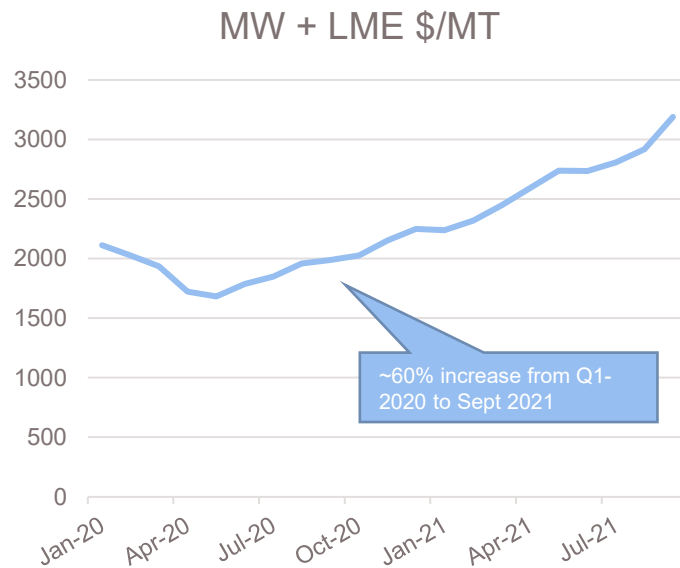
# Commodity Indexes are showing significant price increases from one year ago

Group	Commodity Code	Index			Percent Change to Sept 2021 from:	
		Apr-21	Jul-21	Sep-21	Sep-20	Aug-21
<b>Fuels &amp; related products and power</b>	5	181.4	206.9	212	43.5	3.1
<b>Chemicals and allied products</b>	6	320.5	338	348.8	24.8	1.0
<b>Metals &amp; Metal products</b>	10	273.4	304.4	316.1	42.8	1.8
<b>Industrial Chemicals</b>	61	292.2	316.2	345.2	52.9	4.3
<b>Iron &amp; steel</b>	101	321.3	380.1	402.9	96.3	3.0

[Table 8. Producer price indexes for selected commodity groupings, not seasonally adjusted \(bls.gov\)](#)

Source: U.S. Bureau of Labor Statistics

# Aluminum Coagulants RM Price Evolution



## Aluminum sources →

- ATH is expected to hold steady on price in H1-2021, and then catch up with index.
- Availability of ATH in NA is good and prices remain stable at the moment. Domestic producers are covering the majority of the demand and imports from Alunorte in Brazil is keeping domestic producers honest. Drivers to look out for going into 2022 that may push costs upwards, are increasing natural gas, increasing bulk ocean freight costs as well as tightening market conditions in EMEA for ATH.

## Sulfuric acid →

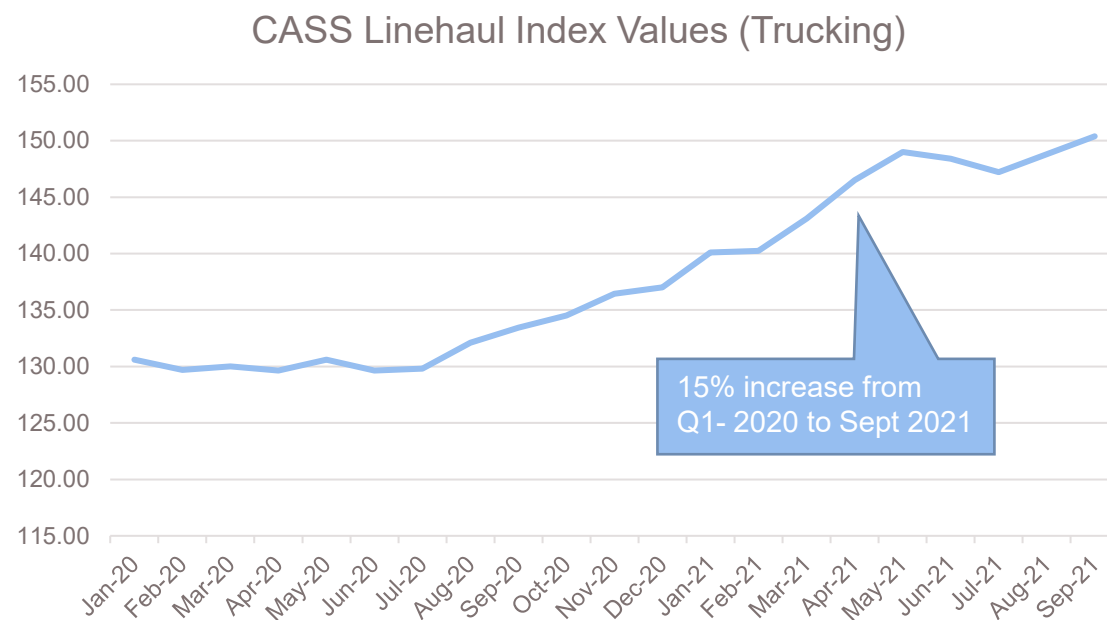
- Market is very tight as a result of rapidly increasing demand and ongoing supply interruptions with major producers. Sulfur prices are at \$195/ton, up from \$55/ton this time last year. Spot prices have recently been seen as high as \$345/ton, but with Vale mine resolving their labor issues and returning from strike, we expect prices to move downwards from the extreme peak. Expectation is still for ~50% price adjustment for 2022.

# Freight Logistics – Freight Trucking

SOURCE: CASS TRUCKLOAD LINEHAUL INDEX

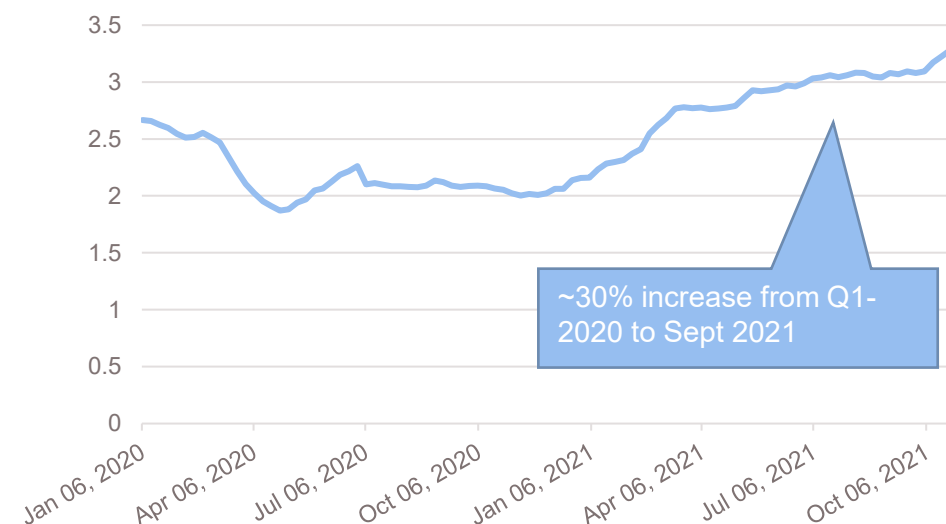
## Cass Truckload Linehaul Index & Fuel Cost Trend

A measure of changes in per-mile truckload linehaul rates



The Cass Truckload Linehaul Index™ is an accurate, timely indicator of market fluctuations in per-mile truckload pricing. The index isolates the linehaul component of full truckload costs from other components (e.g. fuel and accessorials), providing an accurate reflection of trends in baseline truckload prices.

## Weekly U.S. Regular Conventional Retail Gasoline Prices (Dollars per Gallon)

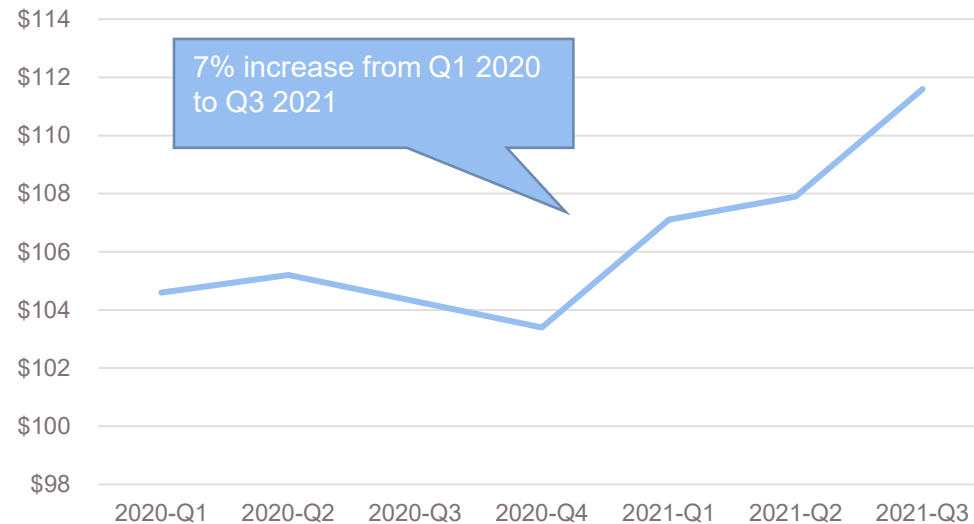


Freight cost have skyrocketed in North America in 2021, not only on increase in line haul rates and fuel, but also on extremely short supply and need to secure shipments from irregular sources. The cost increases in moving raw materials and finished goods have been unprecedented.

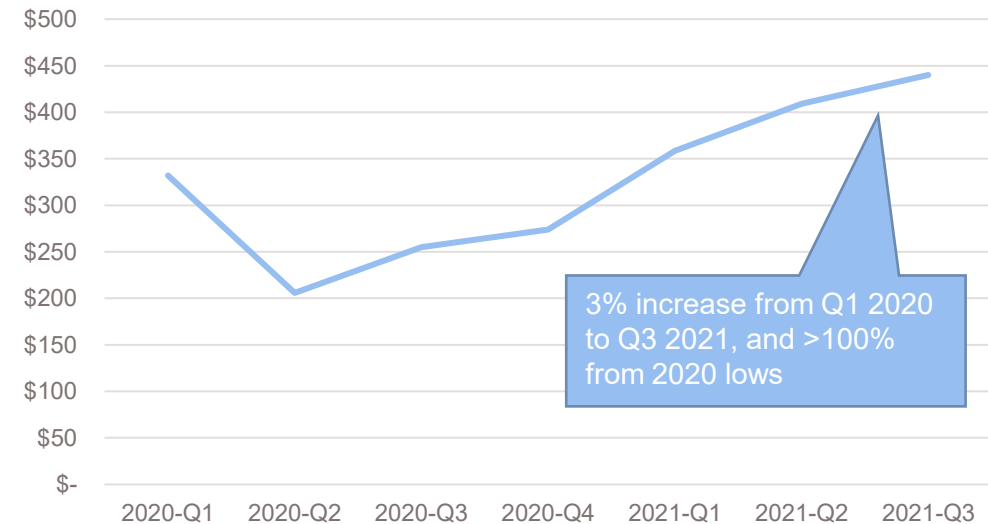
# Rail Freight Logistics

Federal Reserve Economic Data  
Federal Reserve Bank of St. Louis

Rail Cost Index - All costs LF, minus fuel  
Rail Cost Indexes - Association of American  
Railroads (aar.org)



Rail Cost Index - Fuel Charges  
Rail Cost Indexes - Association of American  
Railroads (aar.org)



- Rail costs have consistently increased year on year over the last several years.
- In addition to increases in rail haul rates, maintenance, lease and empty movement costs have increased.
- Hazardous chemicals bear the brunt of costs incurred by rail logistics companies; whereby certain regulations allows them to pass on these costs on chemicals.
- Rail transportation of freight reached a record high in 2021, on high demand and business pickup.
- Rail line haul costs have increased ~ 7% in 2021 from Q1, 2020. Additional increases came from fuel costs and in the form of maintenance and lease cost increases. This year especially, exception freight and demurrage costs are driving total costs up.



**kemira**

Where water  
meets chemistry™

# Index Reference

HCI Index → ICIS Report

CL2 Index → IHS Contract high price

Scrap Metal → AMM Avg. of Index TO/TG

Iron Ore → <https://markets.businessinsider.com/commodities/iron-ore-price>

Trucking → [Cass Transportation Index Report | February 2021 | Cass Information Systems](#)

Transportation fuel → [Cass Transportation Index Report | February 2021 | Cass Information Systems](#)

Index reference to Commodity Chemicals:

[United States - Producer Price Index by Commodity for Chemicals and Allied Products: Agricultural Chemicals and Chemical Products - 1947-2021 Data \(tradingeconomics.com\)](#)

**From:** Nikolai Alexejew  
**Sent:** Thu, 13 Jan 2022 21:47:59 +0000  
**To:** Barnhart, Heather  
**Subject:** Re: Kemira ALUM 2022 2023

[CAUTION - EXTERNAL EMAIL - Verify Sender]

Hi Heather,  
Yes, still accurate [kwsna.bids@kemira.com](mailto:kwsna.bids@kemira.com)  
Regards  
Nikolai Alex

Get [Outlook for iOS](#)

**From:** Barnhart, Heather <hbarnhart@spokanecity.org>  
**Sent:** Thursday, January 13, 2022 5:33:04 PM  
**To:** Nikolai Alexejew <nikolai.alexejew@kemira.com>  
**Subject:** Kemira ALUM 2022 2023

Hi Nikolai –

Attached is the final renewal for your review. Is the below still an accurate contact for signature of the electronic contract?

Thank you,

**Heather Barnhart** | Facility Inventory Foreperson | Procurement & Contracts Management  
Riverside Park Water Reclamation Facility | 4401 N Aubrey L White Pkwy, Spokane, WA 99205  
O: 509.625.4606 | C: 509.723.9392 | [hbarnhart@spokanecity.org](mailto:hbarnhart@spokanecity.org)

---

**From:** Brittany Jarvis <brittany.jarvis@kemira.com>  
**Sent:** Monday, January 4, 2021 11:36 AM  
**To:** Barnhart, Heather <hbarnhart@spokanecity.org>  
**Cc:** Nikolai Alexejew <nikolai.alexejew@kemira.com>  
**Subject:** Kemira ALUM 2021 2022

[CAUTION - EXTERNAL EMAIL - Verify Sender]

Good afternoon, Heather ~

Please send the contract to [kwsna.bids@kemira.com](mailto:kwsna.bids@kemira.com) for us to sign.

Thank you,

**Brittany Jarvis**

Commercial Support Coordinator  
Industry & Water; NA  
Kemira Water Solutions, Inc.



tel. 785-842-7424  
mobile 785-760-0375  
[brittany.jarvis@kemira.com](mailto:brittany.jarvis@kemira.com)

4321 W. 6<sup>th</sup> Street

Lawrence, KS 66049  
[www.kemira.com](http://www.kemira.com)  
[facebook](#) / [twitter](#) / [linkedin](#)



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

02/14/2022

**Date Rec'd**

2/1/2022

**Clerk's File #**

OPR 2022-0090

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

INNOVATION &amp; TECHNOLOGY

**Contact Name/Phone**

MICHAEL 625-6468

**Contact E-Mail**

MSLOON@SPOKANECITY.ORG

**Agenda Item Type**

Contract Item

**Agenda Item Name**

5300 COMPUNET CISCO SWITCH UPGRADE

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

CR# 23287

**Agenda Wording**

Contract purchase with Compunet for Cisco hardware and one year licensing, maintenance and support. Contract total is \$407,436.37 including tax and is fully covered by ITSD budgeted funds. Pricing utilizing WA State Contract# 05819, NASPO NVP# AR3227.

**Summary (Background)**

We have 46 switches across the City of Spokane infrastructure that will be at the end of vendor support in 2023 and will stop receiving hardware support, software upgrades and security updates. This project will bring all targeted hardware into compliance, is a requirement of the ongoing Re-architecture program, and will position the City for an increased security posture.

Lease? NO

Grant related? NO

Public Works? NO

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

Expense \$ 407,436.37

# 5310-73100-94180-56409

Select \$

#

Select \$

#

Select \$

#

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

SLOON, MICHAEL

**Study Session\Other**

1/31/2022 PIES

**Division Director**

SLOON, MICHAEL

**Council Sponsor**

CM Michael Cathcart

**Finance**

BUSTOS, KIM

**Distribution List****Legal**

ODLE, MARI

Accounting - ywang@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

Contract Accounting - aduffey@spokanecity.org

**Additional Approvals**

Legal - modle@spokanecity.org

**Purchasing**

WAHL, CONNIE

Purchasing - cwahl@spokanecity.org

IT - itadmin@spokanecity.org

Tax &amp; Licenses

Dominic Casey - dcasey@compunet.biz



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

**Agenda Wording**

Support and maintenance contract term is February 18, 2022 to February 17, 2023.

**Summary (Background)**

Also, Cisco will be raising their base pricing structure by an average of 10%, effective January 30, 2022. Because we received the quote before January 30, we can purchase at 2021 pricing.

**Fiscal Impact**

Select      \$

Select      \$

**Budget Account**

#

#

**Distribution List**


## Committee Agenda Sheet

### Public Infrastructure, Environment & Sustainability

<b>Submitting Department</b>	ITSD
<b>Contact Name &amp; Phone</b>	Michael Sloon, Interim CITO, ITSD
<b>Contact Email</b>	msloon@spokanecity.org
<b>Council Sponsor(s)</b>	CM Michael Cathcart
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion     Time Requested: <u>1/31/2022</u>
<b>Agenda Item Name</b>	Network Infrastructure Switch Upgrades
<b>Summary (Background)</b>	<p>We have 46 switches across the City of Spokane infrastructure that will be at the end of vendor support in 2023 and will stop receiving hardware support, software upgrades and security updates. This project will bring all targeted hardware into compliance, is a requirement of the ongoing Re-architecture program, and will position the City for an increased security posture. Also, Cisco will be raising their base pricing structure by an average of 10%, effective January 30, 2022. Because we received the quote before January 30, we can purchase at 2021 pricing.</p> <ul style="list-style-type: none"> <li>Hardware purchase, and one year licensing, maintenance and support</li> <li>Contract total is \$407,436.37 including tax, and is fully covered by ITSD budgeted funds. Pricing utilizes NASPO contract NVP #AR3227, WA addendum #05819</li> <li>Support and maintenance contract term is February 18, 2022 to February 17, 2023</li> </ul>
<b>Proposed Council Action &amp; Date:</b>	Final pass on February 14, 2022
<b>Fiscal Impact:</b> Total Cost: \$407,436.37 including tax Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source:  Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring  Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impacts</b>	
What impacts would the proposal have on historically excluded communities?  Not applicable	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?  Not applicable	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?	



All network infrastructure outages are routinely tracked and managed. ITSD also routinely evaluates the effectiveness of the incumbent vendor and analyzes other vendors' solutions for improvements and cost advantages over the current solution.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This service aligns with the Sustainable Resources strategic initiative based on sound financial objectives, and quality customer service by providing a stable, current, redundant and resilient network infrastructure.



**City of Spokane**

**CONTRACT**

Title: **CISCO SWITCH UPGRADE**

THIS CONTRACT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **COMPUNET, INC.**, whose address is 505 South Florence Street, Grangeville, Idaho 83530, as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE**. The Company will provide Cisco Hardware purchase, and one year licensing, maintenance and support, in accordance with Company's Quote No. MF181324, attached as Exhibit B. Licensing costs – if applicable – will be subject to terms and conditions of the Enterprise Agreement signed on October 29, 2019 (OPR 2019-0884). Company has been selected through Washington State Contract No. 05819. In the event of a discrepancy between the documents this City Contract controls.
2. **CONTRACT TERMS**. The Contract shall begin February 18, 2022, and run through February 17, 2023, unless amended by written agreement or terminated earlier under the provisions.
3. **COMPENSATION**. Total compensation under this Contract shall not exceed **FOUR HUNDRED SEVEN THOUSAND FOUR HUNDRED THIRTY-SIX AND 37/100 DOLLARS (\$407,436.37)**, including tax for everything furnished and done under this Contract. This is the maximum amount to be paid under this Contract for the work described in Section 3 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Contract.
4. **PAYMENT**. The Company shall send its application for payment to Innovation and Technology Services Division, Administration Office, Seventh Floor, City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Contractor's application except as provided by state law.
5. **COMPLIANCE WITH LAWS**. Each party shall comply with all applicable federal, state, and local laws and regulations.
6. **ASSIGNMENTS**. This Contract is binding on the parties and their heirs, successors, and assigns. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent.

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

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

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

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

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers; and
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its officers and employees are additional insureds, but only with respect to the Contractor's services to be provided under this contract;
  - i. Acceptable supplementary Umbrella insurance coverage, combined with the Company's General Liability insurance policy must be a *minimum* of \$1,000,000, in order to meet the insurance coverages required under this Contract;
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

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

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

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

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

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

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

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

16. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

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

18. CONFIDENTIALITY/PUBLIC RECORDS. 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, at its own expense, will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Company does not get a timely injunction preventing the release of the records, the City will comply with the Public Records Act and release the records.

19. DISPUTES. This Contract shall be performed under the laws of the State of Washington. Any litigation to enforce this Contract or any of its provisions shall be brought in Spokane County, Washington.

**COMPUNET, INC.**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

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

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

Attachments that are part of this Agreement:  
Exhibit A – Certificate Regarding Debarment  
Exhibit B - Company's Quote No. MF181324

22-036

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

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

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

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

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

## EXHIBIT B

**Bill To:**
**City of Spokane**

808 W Spokane Falls Blvd  
 Spokane, WA 99201-3301

**Ship To:**
**City of Spokane**

808 W Spokane Falls Blvd  
 Spokane, WA 99201-3301

**Quote Information:**
**Quote #: MF181324**

Version: 1  
 Delivery Date: 01/18/2022  
 Expiration Date: 02/18/2022

**Prepared by:**

Mark Friedman  
 509-795-8276  
 mfriedman@compunet.biz

**Prepared for:**

Chris McDonald  
 (509) 625-6734  
 cmcdonald@spokanecity.org

**Cisco 9300-48U-A**

Description		List Price	Price	Qty	Ext. Price
C9300-48U-A	Catalyst 9300 48-port UPOE, Network Advantage	\$11,992.77	\$5,216.85	46	\$239,975.10
CON-SNT-C93004UA	12 Months SNTC-8X5XNBD Catalyst 9300 48-port UPOE, Network Adva	\$823.23	\$675.05	46	\$31,052.30
C9300-NW-A-48	C9300 Network Advantage, 48-port license	\$0.00	\$0.00	46	\$0.00
SC9300UK9-175	Cisco Catalyst 9300 XE 17.5 UNIVERSAL UNIVERSAL	\$0.00	\$0.00	46	\$0.00
PWR-C1-1100WAC-P	1100W AC 80+ platinum Config 1 Power Supply	\$0.00	\$0.00	46	\$0.00
PWR-C1-1100WAC-P/2	1100W AC 80+ platinum Config 1 Secondary Power Supply	\$2,043.17	\$888.78	46	\$40,883.88
CAB-TA-NA	North America AC Type A Power Cable	\$0.00	\$0.00	92	\$0.00
C9300-SSD-NONE	No SSD Card Selected	\$0.00	\$0.00	46	\$0.00
C9300-STACK-NONE	No Stack Cable Selected	\$0.00	\$0.00	46	\$0.00
C9300-SPWR-NONE	No Stack Power Cable Selected	\$0.00	\$0.00	46	\$0.00
TE-C9K-SW	TE agent for IOSXE on C9K	\$0.00	\$0.00	46	\$0.00
C9300-DNA-A-48	C9300 DNA Advantage, 48-Port Term Licenses	\$0.00	\$0.00	46	\$0.00
C9300-DNA-A-48-3Y	C9300 DNA Advantage, 48-Port, 3 Year Term License	\$4,054.07	\$0.00	46	\$0.00
C1-ADD-OPTOUT	Cisco DNA Premier Add-On Session Opt Out (No Fulfillment)	\$0.00	\$0.00	46	\$0.00



## Cisco 9300-48U-A

Description		List Price	Price	Qty	Ext. Price
PI-LFAS-T	Prime Infrastructure Lifecycle & Assurance Term - Smart Lic	\$0.00	\$0.00	46	\$0.00
PI-LFAS-AP-T-3Y	PI Dev Lic for Lifecycle & Assurance Term 3Y	\$0.00	\$0.00	46	\$0.00
D-DNAS-EXT-S-T	Cisco DNA Spaces Extend Term License for Catalyst Switches	\$0.00	\$0.00	46	\$0.00
D-DNAS-EXT-S-3Y	Cisco DNA Spaces Extend for Catalyst Switching - 3Year	\$0.00	\$0.00	46	\$0.00
TE-EMBEDDED-T	Cisco ThousandEyes Enterprise Agent IBN Embedded	\$0.00	\$0.00	46	\$0.00
TE-EMBEDDED-T-3Y	ThousandEyes - Enterprise Agents	\$0.00	\$0.00	46	\$0.00
C9300-NM-8X	Catalyst 9300 8 x 10GE Network Module	\$2,742.14	\$1,192.83	46	\$54,870.18
NETWORK-PNP-LIC	Network Plug-n-Play Connect for zero-touch device deployment	\$0.00	\$0.00	46	\$0.00
Subtotal:					<b>\$366,781.46</b>

## Cisco 3560CX-8PC-S

Description		List Price	Price	Qty	Ext. Price
WS-C3560CX-8PC-S	Cisco Catalyst 3560-CX 8 Port PoE IP Base	\$2,293.69	\$997.76	1	\$997.76
CON-SNT-WSC38PCS	12 Months SNTC-8X5XNBD Cisco Catalyst 3560-CX 8 Port PoE IP Bas	\$121.51	\$99.64	1	\$99.64
CAB-TA-NA	North America AC Type A Power Cable	\$0.00	\$0.00	1	\$0.00
CMPCT-CBLE-GRD	Cable Guard for the 3560-CX and 2960-CX Compact Switches	\$48.39	\$21.05	1	\$21.05
PWR-CLP	Power Retainer Clip For 3560-C, 2960-L & C1000 Switches	\$0.00	\$0.00	1	\$0.00
C3560CX-DNA-E-8	C3560CX DNA Essentials, 8-port Term license	\$0.00	\$0.00	1	\$0.00
C3560CX-DNA-E-8-3	C3560CX DNA Essentials, 8-port, 3 Year Term license	\$236.58	\$102.91	1	\$102.91
Subtotal:					<b>\$1,221.36</b>

**Cisco SFP**

Description		List Price	Price	Qty	Ext. Price
SFP-10G-LR=	10GBASE-LR SFP Module	\$4,438.33	\$1,930.67	3	\$5,792.01
Subtotal:					<b>\$5,792.01</b>

**Cisco Learning Credits**

Description		List Price	Price	Qty	Ext. Price
TRN-CLC-001	100 Training credit. Expires in 1 yr. Team Captain required	\$10,000.00	\$0.00	1	\$0.00
Subtotal:					<b>\$0.00</b>

**Shipping**

Quantity	Short Description	Price	Ext. Price
1	Fixed Fee Shipping Charges	\$0.00	\$0.00

## Quote Summary

Description	Amount
Cisco 9300-48U-A	\$366,781.46
Cisco 3560CX-8PC-S	\$1,221.36
Cisco SFP	\$5,792.01
Cisco Learning Credits	\$0.00
Subtotal:	<b>\$373,794.83</b>
Estimated Tax:	<b>\$33,641.54</b>
Total:	<b>\$407,436.37</b>

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel any order arising from pricing or other errors. If Customer is purchasing a subscription-based product, Customer agrees to pay all charges for the complete term of the subscription. By signing below or issuing a Purchase Order, Customer agrees to CompuNet's standard terms and conditions, which can be reviewed [here](#), provided, that if Customer and CompuNet are parties to a currently effective Master Product Purchase and Services Agreement (MSA), the terms and conditions of such MSA shall control and shall supersede these standard terms and conditions. Your electronic signature, per the Electronic Signature Act, is considered equivalent to your signed and faxed signature, and allows you to accept and place your order. This Quote becomes binding and noncancelable upon Customer's return to CompuNet of acceptance. A copy of this acceptance and the attached proposal document will be sent to your email address to complete your order acceptance. You are NOT required to electronically sign your order, you may fax or email your signed proposal to your Account Executive.

### City of Spokane

Signature: \_\_\_\_\_

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

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

PO Number: \_\_\_\_\_



## License Information:

[New search](#) [Back to results](#)**Entity name:** COMPUNET, INC.**Business name:** COMPUNET, INC.**Entity type:** [Profit Corporation](#)**UBI #:** 602-742-439**Business ID:** 001**Location ID:** 0001**Location:** Active**Location address:** 505 S FLORENCE ST  
GRANGEVILLE ID 83530-2324**Mailing address:** 1111 S SILVERSTONE WAY  
STE 200  
MERIDIAN ID 83642-7381**Excise tax and reseller permit status:** [Click here](#)**Secretary of State status:** [Click here](#)

## Endorsements

Endorsements held at this location	License #	Count	Details	Status	Expiration date	First issuance date
<a href="#">Bonney Lake General Business - Non-Resident</a>				<a href="#">Pending</a>	Jan-31-2022	
<a href="#">Chehalis General Business - Non-Resident</a>	14-5298			<a href="#">Active</a>	Mar-31-2022	Sep-11-2014
<a href="#">Clarkston General Business - Non-Resident</a>				<a href="#">Active</a>	Sep-30-2021	Oct-02-2020
<a href="#">Grandview General Business - Non-Resident</a>				<a href="#">Active</a>	Jan-31-2022	Jan-08-2021
<a href="#">Kennewick General Business - Non-Resident</a>				<a href="#">Active</a>	Sep-30-2021	Oct-01-2020



Endorsements held at this location	License #	Count	Details	Status	Expiration date	First issuance
Liberty Lake General Business - Non-Resident				Active	Jan-31-2022	Jan-29-2021
Moses Lake General Business - Non-Resident	BUS2020-0645			Active	Sep-30-2021	Sep-28-2020
Pasco General Business - Non-Resident	36914			Active	Sep-30-2021	Oct-13-2020
Richland General Business - Non-Resident				Active	Sep-30-2021	Sep-30-2020
Spokane General Business - Non-Resident				Active	Mar-31-2022	Jan-08-2021
Sumner General Business - Non-Resident				Active	Jan-31-2022	Feb-01-2021
Vancouver General Business - Non-Resident				Active	Sep-30-2021	Sep-28-2020
Walla Walla General Business - Non-Resident				Active	Sep-30-2021	Oct-10-2020
Wenatchee General Business - Non-Resident				Active	Sep-30-2021	Sep-28-2020
West Richland General Business - NR				Active	Sep-30-2021	Sep-29-2020

Governing people	Title
SCHOO, DAWN	
SCHOO, NOLAN	▼



COMPINC-06

GFIETSCH

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/1/2021

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

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

<b>PRODUCER</b> License # 26480 HUB International Mountain States Limited 2600 Rose Hill Suite 101 Boise, ID 83705	<b>CONTACT NAME:</b> <b>PHONE</b> (A/C, No, Ext): (208) 433-1000 <b>FAX</b> (A/C, No): (866) 898-4905 <b>E-MAIL ADDRESS:</b>														
<b>INSURED</b>  CompuNet, Inc. 505 S Florence St. Grangeville, ID 83530	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A : Travelers Property Casualty Company of America</td><td>25674</td></tr><tr><td>INSURER B : Charter Oak Fire Insurance Company</td><td>25615</td></tr><tr><td>INSURER C :</td><td></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Travelers Property Casualty Company of America	25674	INSURER B : Charter Oak Fire Insurance Company	25615	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
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INSURER B : Charter Oak Fire Insurance Company	25615														
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	630-2F5732289	11/9/2021	11/9/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		BA0L66165A	11/9/2021	11/9/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		CUP3K100505	11/9/2021	11/9/2022	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	UB7J954544	11/9/2021	11/9/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

The city, its agents, officers and employees are additional insureds but only with respect to the company's services to be provided under written agreement.

## CERTIFICATE HOLDER

## CANCELLATION

City of Spokane  
Innovation and Technology Services Division  
808 W Spokane Falls Blvd.  
Spokane, WA 99201

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

AUTHORIZED REPRESENTATIVE

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- A. Reasonable Force Property Damage – Exception To Expected Or Intended Injury Exclusion
- B. Non-Owned Watercraft Less Than 75 Feet
- C. Aircraft Chartered With Pilot
- D. Damage To Premises Rented To You
- E. Increased Supplementary Payments
- F. Who Is An Insured – Employees And Volunteer Workers – First Aid
- G. Who Is An Insured – Employees – Supervisory Positions
- H. Who Is An Insured – Newly Acquired Or Formed Organizations
- I. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises
- J. Blanket Additional Insured – Lessors Of Leased Equipment
- K. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement
- L. Blanket Additional Insured – Broad Form Vendors
- M. Who Is An Insured – Unnamed Subsidiaries
- N. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures
- O. Medical Payments – Increased Limits
- P. Contractual Liability – Railroads
- Q. Knowledge And Notice Of Occurrence Or Offense
- R. Unintentional Omission
- S. Blanket Waiver Of Subrogation

### PROVISIONS

#### A. REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2., of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

##### a. Expected Or Intended Injury Or Damage

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

#### B. NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

- (a) Less than 75 feet long; and
- (b) Not being used to carry any person or property for a charge.

#### C. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION**



## COMMERCIAL GENERAL LIABILITY

### I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

### D. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion j., **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions c., g. and h., and Paragraphs (1), (3) and (4) of Exclusion j., do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by fire unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion - All Pollution Injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III – Limits Of Insurance.

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**:

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

The **Damage To Premises Rented To You Limit** will be:

- a. The amount shown for the **Damage To Premises Rented To You Limit** on the Declarations of this Coverage Part; or
- b. \$300,000 if no amount is shown for the **Damage To Premises Rented To You Limit** on the Declarations of this Coverage Part.

4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- (b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

### E. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

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



**F. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – FIRST AID**

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

**G. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS**

The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of

your "employees" who hold a supervisory position.

**H. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED** of the Commercial General Liability Coverage Form, and Paragraph 3. of **SECTION II – WHO IS AN INSURED** of the Global Companion Commercial General Liability Coverage Form, to the extent such coverage forms are part of your policy:

Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

**I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

## COMMERCIAL GENERAL LIABILITY

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

### J. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

### K. BLANKET ADDITIONAL INSURED – PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

### L. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
  - (1) Any express warranty not authorized by you;
  - (2) Any change in "your products" made by such vendor;
  - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
  - (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
  - (6) "Your products" which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

**M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

**N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES**

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

**O. MEDICAL PAYMENTS – INCREASED LIMITS**

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE**:

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:
  - (a) \$10,000; or

- (b) The amount shown on the Declarations of this Coverage Part for Medical Expense Limit.

**P. CONTRACTUAL LIABILITY – RAILROADS**

1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:
  - c. Any easement or license agreement;
2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

**Q. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:
  - (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.
  - (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
    - (a) Any individual who is:
      - (i) A partner or member of any partnership or joint venture;
      - (ii) A manager of any limited liability company;

## COMMERCIAL GENERAL LIABILITY

(iii) A trustee of any trust; or

(iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

(b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

(3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discover that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its

abrupt commencement, this Paragraph e. does not affect that requirement.

### R. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

### S. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.



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

02/14/2022

**Date Rec'd**

2/1/2022

**Clerk's File #**

OPR 2022-0091

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

OPR 2020-0694

**Submitting Dept**INTEGRATED CAPITAL  
MANAGEMENT**Contact Name/Phone**

KATHERINE MILLER 625-6338

**Contact E-Mail**

KEMILLER@SPOKANECITY.ORG

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

Contract Item

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

4250 – FLUORIDATION STUDY CONTRACT WITH MURRAYSMITH

**Agenda Wording**

Consultant Agreement with MurraySmith to provide Engineering study of Fluoridation of City of Spokane Water.

**Summary (Background)**

Council accepted a \$4,000,000 grant from Acora in September of 2020 to implement community water fluoridation. In August of 2021 the grant agreement was amended to provide up to \$600,000 to conduct a comprehensive engineering analysis to understand the full cost to implement a fluoridation system. Murraysmith was selected for this study.

Lease? NO

Grant related? NO

Public Works? NO

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

Expense \$ 599,300.00

# 0

Select \$

#

Select \$

#

Select \$

#

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

MILLER, KATHERINE E

**Study Session\Other**

PIES 1-31-22

**Division Director**

FEIST, MARLENE

**Council Sponsor**

Kinnear/Zappone

**Finance**

ALBIN-MOORE, ANGELA

**Distribution List****Legal**

SCHOEDEL, ELIZABETH

eraea@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

ddaniels@spokanecity.org

**Additional Approvals**

kemiller@spokanecity.org

**Purchasing**

icmaccounting@spokanecity.org

eschoedel@spokanecity.org

Signee: joe.foote@murraysmith.us

## Committee Agenda Sheet

### Public Infrastructure Environment and Sustainability Committee

<b>Submitting Department</b>	Integrated Capital Management
<b>Contact Name &amp; Phone</b>	Katherine Miller 625-6338
<b>Contact Email</b>	kemiller@spokanecity.org
<b>Council Sponsor(s)</b>	Councilmember Kinnear
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion     Time Requested: <u>10 min</u>
<b>Agenda Item Name</b>	Fluoridation Contract with Murraysmith
<b>Summary (Background)</b>	<p>Council accepted a \$4,000,000 grant from Acora in September of 2020 to implement community water fluoridation. The agreement required the City to pay back any funds if the City did not move forward with fluoridation.</p> <p>In August of 2021 the grant agreement was amended to provide up to \$600,000 to conduct a comprehensive engineering analysis to understand the full cost to implement a fluoridation system. The costs incurred to provide the analysis would not have to be repaid regardless of whether the City chooses to proceed with fluoridation. During this amendment process, Mayor and Council agreed to have a full public and transparent discussion to review the results of the analysis and determine next steps.</p> <p>With the passage of the amendment, a Request for Qualifications (RFQ) was released in early October 2021. Murraysmith was the only consulting team that submitted a response by the October 25<sup>th</sup> due date. The RFQ was reviewed by an internal team and found to be responsive on November 10<sup>th</sup> 2021. Since November the consultant and City staff have been developing the scope, schedule and budget.</p> <p>A final draft of the contract including the scope, schedule and budget is intended to be placed on Council's agenda for briefing on February 7<sup>th</sup> with Council action on February 14<sup>th</sup>.</p>
<b>Proposed Council Action &amp; Date:</b>	Council Briefing February 7 <sup>th</sup> with Council Action on February 14 <sup>th</sup>
<b>Fiscal Impact:</b> Total Cost: <u>\$599,300</u> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A  Funding Source <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source:  Expense Occurrence <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring  Other budget impacts: (revenue generating, match requirements, etc.)	

**Operations Impacts**

What impacts would the proposal have on historically excluded communities?

Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

N/A – Under this contract this analysis will assess which type of fluoridation process would be recommended if implemented, what the impacts would be to existing facilities and what the life cycle costs would be.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

Unknown at this time.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This proposed contract is consistent with the amended August 2021 agreement with Acora.



**City of Spokane**

**CONSULTANT AGREEMENT**

**Title: ENGINEERING STUDY  
FOR FLUORIDATION OF  
CITY OF SPOKANE WATER**

This Consultant Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **MURRAYSMITH**, whose address is 421 West Riverside Avenue, Suite 762, Spokane, Washington 99201 as ("Consultant"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the purpose of this Agreement is to provide ENGINEERING STUDY FOR FLUORIDATION OF CITY OF SPOKANE WATER; and*

*WHEREAS, the Consultant was selected through a Request for Qualifications (RFQ) process.*

*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 February 21<sup>th</sup>, 2022, and ends on August 31<sup>st</sup> 2023, unless amended by written agreement or terminated earlier under the provisions. This Agreement may be renewed by agreement of the parties not to exceed one (1) additional one (1) year contract period.

**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 shall acknowledge in writing when the Work is complete. Time limits established under this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Consultant's control.

**3. SCOPE OF WORK.**

The General Scope of Work for this Agreement is described in Exhibit B and made a part of this Agreement. In the event of a conflict or discrepancy in the contract documents, this City Agreement controls.

The Work is subject to City review and approval. The Consultant shall confer with the City periodically, and prepare and present information and materials (e.g. detailed outline of



completed Work) requested by the City to determine the adequacy of the Work or Consultant's progress.

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

Total annual compensation for Consultant's services under this As-Needed Agreement shall not exceed **FIVE HUNDRED NINETY-NINE THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$ 599,300.00)**, excluding tax, if applicable, unless modified by a written amendment to this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section 3 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Agreement.

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

The Consultant shall submit its applications for payment to Katherine Miller, Director of Integrated Capital Management, City of Spokane, 808 W Spokane Falls Blvd, Spokane, Washington 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Consultant's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Consultant 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 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 to the extent caused by the Consultant's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Consultant to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Consultant's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Consultant, its agents or employees. The Consultant specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Consultant's own employees against the City and, solely for the purpose of this indemnification and defense, the Consultant specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Consultant recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

#### **11. INSURANCE.**

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

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Consultant's services to be provided under this Agreement; and
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.
- D. Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for at least two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 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.**

Notwithstanding anything to the contrary, City will maintain the confidentiality of Consultant'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 Consultant's materials or information and the City determines there are exemptions only the Consultant can assert, City will endeavor to give Consultant notice. Consultant will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Consultant 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 thirty (30) business days prior to the effective date of termination.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.
- C. For Convenience: Either party may terminate this Agreement without cause, upon thirty (30) 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 Agreement, 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.

**MURRAYSMITH**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

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City Clerk

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Assistant City Attorney

**Attachments:**

Exhibit A – Certificate Regarding Debarment

Exhibit B – Scope of Services

22-024

## 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**  
**SCOPE OF SERVICES**  
**PRELIMINARY ENGINEERING STUDY FOR FLUORIDATION**  
**CITY OF SPOKANE**

**Background**

The City of Spokane (City) has entered into an agreement with Arcora Foundation in September 2020 that would provide funding for the fluoridation of the City's water system. In August 2021 the agreement was amended to allow the City to conduct a preliminary engineering study of fluoridation implementation using a portion of the provided funds without required repayment if fluoridation implementation did not proceed. In support of conducting a preliminary engineering study the City Mayor and Council have agreed to have a full public and transparent study process.

The City is committed to careful planning, asset management, continuing education, and effective implementation, and to develop a thorough understanding of the alternatives and implications for implementing fluoride chemical feed systems using the best alternative. To complete a Preliminary Engineering Study for Fluoridation (Study) and achieve the objectives previously stated, the City is entering in an agreement with Murraysmith and their team to lead this Study to provide a comprehensive understanding of the implications of implementing one recommended fluoridation system alternative.

**Project Understanding and Assumptions**

Fluoridation of the City's water system requires the retrofit of each of its seven existing well pump stations and a planned new well pump station to add necessary fluoridation chemical feed systems. Careful planning is required as the current City well facilities have limited space for new chemical feed systems. Additionally, the capacity of these well facilities range from 8 million gallons per day (MGD) to 90 MGD. The demand on the City's water system changes greatly throughout the year, from a winter average of about 35 MGD to a summer peak of over 147 MGD, requiring careful consideration for operational effectiveness of the implemented fluoride chemical feed systems. This requires development and evaluation of alternatives through a multi-objective decision analysis (MODA) that will facilitate an objective and transparent process to select the preferred alternative based on the City's long-term goals of balancing sustainability, social responsibility, and affordability (City's Triple Bottom Line).

Further, impacts of the fluoride chemical feed systems on the facilities and for ongoing operations and maintenance as well as safety issues need to be determined for the City to fully assess the effects of fluoridation implementation. To determine the full cost of implementing the fluoride feed systems preliminary design for the fluoridation chemical feed system must be developed and incorporated into the capital and lifecycle cost analysis. A non-project (programmatic) State Environmental Policy Act (SEPA) evaluation will also be completed to identify potential impacts to the built and natural environment from implementing fluoridation.

Finally, the City is requesting support with building community awareness and understanding of the Study through a transparent process. The results of the Study will provide information for the Mayor and City Council to consider related to decisions on community water supply fluoridation. Public outreach communications tools will be developed to share information with the public at

each project milestone. Elected officials will also be provided the information they need to stay updated and answer questions from the public.

#### *General Project Assumptions*

1. Legal review is not included in this scope of services, only technical/policy review in support of the City's project objectives.
2. This Study focuses on fluoridation of City's seven (7) existing well facilities and the planned new Havana Well Station facility.
3. A financial analysis and review of the City's utility rates is not included in this scope of services.
4. City staff will provide review and input on deliverables and lead coordination with internal and external stakeholders.
5. Direct coordination with external stakeholders is not included in this scope of services, but support of the City's coordination activities as defined.

#### **Scope of Services**

Based on the City's objectives for the development of a Preliminary Engineering Study for Fluoridation (Study), Murraysmith teamed with Parametrix to develop the following scope of services. The scope of services is laid out with the following task objectives.

Task 1 – Project Management

Task 2 – Condition Assessments

Task 3 – Environmental and Permitting Review

Task 4 – Fluoride Regulatory and Planning Review

Task 5 – Fluoridation System Alternatives

Task 6 – Alternatives Evaluation

Task 7 – Preliminary Design

Task 8 – Outreach and Information

Task 1 – Project Management

#### *Objective*

Provide overall leadership and team strategic guidance aligned with the City objectives. Coordinate, monitor, and control the project resources to meet the technical, communication, and contractual obligations required for developing and implementing the project scope.

#### *Activities*

##### *1.1 Invoices/Status Reports*

Murraysmith will prepare monthly invoices, including expenditures by task, hours worked by project personnel, and other direct expenses with the associated backup documentation.

Monthly status reports will accompany each invoice and include comparisons of monthly expenditures and cumulative charges to budget by task, including cost-to-complete, earned value, cash flow, and certified firm participation.

### *1.2 Project and Team Management*

Murraysmith will manage and coordinate the technical and scope issues of the overall project. Task will include coordination with subconsultants on scope, schedule, and budget, including internal team meetings.

### *1.3 Project Meetings with City*

Meetings under this task include the following:

Kickoff meeting - Once NTP has been received, a virtual kick-off meeting will be held to officially start the project. Murraysmith will lead the kick-off meeting with City staff to introduce the project team, establish project objectives, review communication protocols, review the initial data request, review the details of the approved project scope, and confirm the project schedule.

Monthly check-in meetings with the City and Murraysmith team project and design task leads to review ongoing progress of project tasks and to discuss identified interim action items.

Other task-specific meetings will be defined as part of those tasks.

### *1.4 Reports to City Administration and Council*

The Murraysmith Team will meet with City Administration and/or City Council to report on elements of the Study at the proposed milestones:

Operations and Maintenance Review Meeting

MODA Analysis Report Review Meeting

Preliminary Design Report Review Meeting

Two (2) meetings on development and review of the Public Engagement Plan

Up to ten (10) total meetings are planned.

### *1.5 Quality Assurance/Quality Control (QA/QC)*

This subtask accounts for management of in-house QA/QC reviews of interim and final work products as outlined in the scope of work.

#### *Task Deliverables*

Agenda and Minutes from Project Kickoff meeting in electronic Portable Document Format (PDF) format.

Monthly invoice and status in electronic PDF format report covering:

Work on the project performed during the previous month

Meetings attended

Problems encountered and actions taken for their resolution

Potential impacts to submittal dates, budget shortfalls or optional services

## Budget Analysis

Issues requiring project team action

Agenda and Minutes from report meetings with the City Administration and Council in electronic PDF format.

### *Assumptions*

Meetings will be held online except for reports to City Administration and Council.

Kickoff meeting will be attended by three (3) Murraysmith staff, three (3) Parametrix staff, and one (1) B&W staff (B&W effort covered in Task 8).

Monthly check in meetings will be attended by up to two (2) Murraysmith staff and one (1) Parametrix staff. A total of fifteen (15) meetings are assumed.

City Administration and Council Meetings will be added by up to two (2) Murraysmith staff and one (1) Parametrix staff. A total of ten (10) meetings are assumed. B&W attendance at these meetings is included in Task 8.

Project duration is assumed to be 18 months; therefore, it is assumed that there will be up to 18 progress payments/status reports.

## Task 2 – Condition Assessments

### *Objective*

Conduct a condition assessment of existing facilities where fluoridation is proposed to be added to identify potential needs for implementation and design of facility improvements.

### *Activities*

#### *2.1 Requests for Information (RFIs)*

Prepare requests for information (RFIs) needed to complete preliminary design. Submit initial RFI to the City within two (2) weeks of NTP. Submit a second RFI after the condition assessments as needed. Additional RFIs may be submitted as needed.

#### *2.2 Review Data and Information*

Review data and information provided by the City and extract relevant information for the project.

#### *2.3 Condition Assessment Site Visits*

Conduct a site visit to each of the seven well facilities where fluoridation is proposed to be integrated. Additionally, review of the current design of the Havana Well Station facility the proposed eighth well facility will be included in this task. Obtain existing information including records drawings, plans, reports, maintenance records, and parcel information. Prepare and maintain a list of supplemental data needed for the project, submit the list to the City, and coordinate the data collection and evaluation.

Complete an assessment of each of the facilities for both condition assessment and capacity of site and existing facilities to integrate fluoridation systems:

Structural – Assess condition of existing buildings and available space, including building code review.

Electrical – Evaluate the existing electrical power feed and supply capacity, motor control centers and control panels, and emergency backup generators capacity.

Process Mechanical – Perform a site verification of facilities, taking field measurements to develop a plan view of each existing facility where fluoridation equipment may be incorporated. Assess condition and layout of existing piping and valves for injection points.

Building Mechanical - Assess condition and capacity of building HVAC systems. Includes fan testing to establish current room/facility air changes.

Instrumentation/Control (I/C) - Review existing hardware and software platforms, control strategies and telemetry. Coordinate with City staff on potential expansion options at each facility for additional controls from chemical injection and monitoring. Potential options include chemical volumes, flow monitoring and control, and leak detection.

Water Quality Monitoring – Review existing water quality monitoring procedures, instrumentation, and reporting.

It is anticipated that two site visits will be required. The first site visit will be to gather information and complete an initial assessment. A second site visit may be required to confirm an additional design information for the recommended alternative. Preliminary calculations to size large fluoride feed equipment for all three fluoridation chemical options will be completed before the first site visits to facilitate the initial assessment.

## *2.4 Site Surveys*

Based on anticipated required site improvements and review of access requirements, site surveys may be completed on up to five (5) of the existing well facility sites (Well Electric, Parkwater, Ray Street, Grace and Nevada). It is assumed that site topographic information for Central Ave, Hoffman, and Havana are available from recent design projects.

Site surveys will be performed for the purposes of developing existing conditions base maps. Site surveys will include utilities, access and existing facilities, including coordinating with a private utility locate service to mark underground utilities. Up to three (3) survey control points/benchmarks will be established on NAVD 88 vertical datum at each site for future use.

## *2.5 Condition Assessment Technical Memorandum (TM)*

The team will prepare a TM addressing the condition assessment for each site regarding fluoridation implementation, including photos, a site plan, and a facility layout for each site. Specific elements will be identified on what will need to be addressed to accommodate fluoridation implementation.

### *Task Deliverables*

Electronic copies of formal RFIs.



Site survey topographic CAD files and PDF site plan sheets. Up to a total of five (5) sites will be surveyed as required for the project.

Condition Assessment Technical Memorandum in electronic PDF format.

### *Assumptions*

Up to two (2) site visits are planned for each of the seven (7) existing well facilities.

Survey within well stations and buildings is not included in Task 2.4.

Right of way, boundary and easement determinations are not included in Task 2.4.

City staff will provide the following:

Respond to RFIs within two weeks of receipt.

Site survey information for Central Ave, Hoffman and Havana well facility sites, which includes utilities, access, and existing facilities.

Site access for site visits, with an operator familiar with each facility.

Review and comments on the Condition Assessment TM.

## Task 3 – Environmental and Permitting Review

### *Objective*

Identify the permits and other regulatory approvals required to implement drinking water fluoridation in Spokane, outline the process and timeline for approvals, and evaluate the risk of potential permitting fatal flaws. Additionally, assess any historic or archaeological cultural resources which may be adversely affected by the project.

This task also includes the development of SEPA documentation that would be required for implementation of the City's drinking water fluoridation program, if it were approved. This will be final step of the project, based on proposed preliminary design concepts in Task 7.

### *Activities*

#### *3.1 Environmental Permitting Strategy*

The following activities will be completed as part of this subtask:

Identify the permits and approvals that would be required to retrofit existing City pump stations for fluoridation, based on City-provided information about the existing facilities and conceptual design information developed under other tasks in this scope of services. Prepare a matrix that lists each permit and approval along with the responsible agency, submittal requirements, typical timeframe for approval, and appeal process. Identify any interdependencies among permits and approvals.

Evaluate whether any of the proposed fluoridation improvements could potentially be associated with environmental risks, including:

Groundwater or surface water contamination through chemical spills

Aquatic life

Adverse effects to historic or cultural resources protected under Governor's Order 21-02 or other applicable regulations protecting such resources (this evaluation will be conducted under Task 3.2)

Other impacts potentially requiring mitigation, such as conflicts with existing land use/zoning designations or the presence of critical areas that could be affected by the improvements

Based on the above information, qualitatively evaluate the risk of permit appeals and/or extensive and costly mitigation requirements for up to three fluoridation alternatives and summarize the results in a technical memorandum

Participate in project meetings and individual staff coordination meetings as needed

### *3.2 Cultural Resources Investigation*

This subtask includes a background search, field investigation of the project area to identify any cultural resources, research of public documents to help identify potential traditional cultural properties, and preparation of a report and all necessary inventories and related documentation.

Cultural resource investigation for the Study will include a review of the Washington Information System for Architectural and Archaeological Records Data (WISAARD) database maintained by the Department of Archaeology and Historic Preservation (DAHP) in Olympia, a background literature review, informal contact with the interested tribe(s), a pedestrian ground survey, and the preparation of a report. Any necessary fieldwork will be completed in a manner consistent with RCW 27.53.030 and may include inspection techniques to identify both surface and subsurface archaeological resources. The proper field methods will be completed, at the archaeologist's and historian's discretion, depending upon information obtained during the background review and fieldwork.

If cultural resources are located during this project, further work, investigation, or analysis may be required to evaluate whether the resource(s) is/are eligible for inclusion on the National Register of Historic Places. The investigation could result in a recommendation for professional archaeological monitoring during excavation activities at project execution or other additional work; any such additional work, investigation, evaluation, or analysis may be treated as a separate project or may require a change order.

### *3.3 Cultural Resources Subsurface Investigations (Optional)*

Subsurface inspections may be necessary if ground-disturbing work is anticipated, and could involve shovel excavations, or mechanical excavations, and screening of the fill to identify the nature and extent of any potential archaeological resources. This subtask provides an allowance to perform excavations, screening, and evaluation at one or more sites as deemed necessary by the project archaeologist and (if appropriate) DAHP. Expenditures under this subtask must be authorized in writing by the City and may not exceed the budgeted amount without prior written approval.

### *3.4 State Environmental Policy Act (SEPA) Checklist*

The consultant team will conduct an environmental review in compliance with SEPA requirements to assess the impacts of Spokane's drinking water fluoridation program to the natural and built environment. This includes evaluating the overall impacts of any capital improvements to drinking water facilities that may be required as part of this effort. This

environmental review will be provided in the form of a non-project (programmatic) SEPA checklist. Project-level SEPA review for the installation of fluoridation at individual pump stations would be completed later in the design process and therefore is not included in this scope of work.

This subtask will include the following activities:

Coordinate with project team and City staff as needed to gather necessary information on the potential environmental impacts of the proposal.

Evaluate the potential impacts to the natural environment and built environment of the City's drinking water fluoridation program. This will include a discussion of potential impacts to the natural and built environment from the storage and use of fluoride, as well as from any capital projects and upgrades to drinking water facilities needed to support the program. The evaluation will be done at a programmatic level and will consider the impacts of the general types of changes that may be proposed at each individual facility.

Consistent with the requirements of SEPA, including any necessary research and references, prepare a first draft SEPA checklist for review by City staff.

Following review and comment, incorporate changes and edits into a second draft SEPA checklist or write-up for review by City of Spokane staff to backcheck that all comments were addressed from the initial review.

Following backcheck review and comment by City staff, incorporate changes and edits into a final SEPA checklist or write-up suitable for eventual publication or support of future non-project and project SEPA compliance.

Participate in project meetings and individual staff coordination meetings as needed.

#### *Task Deliverables*

A draft and final TM summarizing permitting requirements and potential risks for up to three fluoridation alternatives. The permitting matrix described in Task 3.1 will be included in this TM.

An electronic draft copy of the cultural resources report and related documents in PDF will be provided to the City. The final report will be uploaded to the DAHP's WISAARD portal and will provide contact information to request a review of the documentation.

Draft programmatic SEPA checklist (PDF and Word format).

Second draft SEPA checklist (PDF and Word format).

Final SEPA checklist (electronic PDF and Word format).

Meeting notes and summaries.

#### *Assumptions*

The evaluation of potential permitting risks will be based on information readily available from the City or from public sources.

No meetings or formal correspondence with state/federal resource agencies or stakeholders is included in the proposed level of effort for this task.

The assessment of contamination potential will be based on publicly available information on groundwater and surface water resources in the project area and on information developed elsewhere in this scope of work regarding anticipated chemical types and usage. No field work or modeling will be conducted.

The draft TM will receive one (1) round of City review (assumed to be two (2) weeks in duration) before being finalized.

Up to two (2) consultant team members will participate in up to three (3) virtual one-hour meetings. Planned as part of the monthly meetings in Task 1.3.

The area of potential effects (APE) to be investigated is the physical location of the proposed disturbances required by the project.

This proposal includes the inventory of buildings or other structures that may be present in the APE to the DAHP's Historic Property Inventory (HPI) database. This proposal does not include the formal National Register of Historic Places (NRHP) evaluation of any such structures in or near the APE whose evaluation may be requested by interested or other parties.

Task 3.3 – Cultural Resources Subsurface Investigation has a placeholder budget of \$3,300 that will be approved by the City before use.

The appropriate mechanism for SEPA compliance will be a non-project checklist supporting a legislative action by the City.

The Environmental team will provide input on the MODA criteria for the three potential options.

The SEPA checklist will address a single preferred alternative for fluoridation, as identified in Task 6 of this scope of services.

An Environmental Impact Statement (EIS) will not be required for The City's drinking water fluoridation program.

Analysis and deliverables from previous subtasks will be used to develop the SEPA checklist content for relevant topics and (as appropriate) will be appended to the SEPA checklist.

There will be two (2) rounds of review by City staff; for each round, comments will be compiled by City staff into one document to be sent back.

City staff will have two (2) weeks to review during each round.

Up to two (2) consultant team members will participate in up to three (3) one-hour virtual meetings. Planned as part of the monthly meetings in Task 1.3.

#### Task 4 – Fluoride Regulatory and Planning Review

##### *Objective*

To identify/review code and industry recommendations for fluoride feed and monitoring systems and identify conflicts with existing City planning documents and agreements.

##### *Activities*

Murraysmith will review national, state, and local regulatory requirements, City Planning documents, and applicable City water service agreements as they pertain to fluoridation system implementation and design:

#### *4.1 Regulatory Review*

The Murraysmith team will review the following national, state, and local regulatory requirements:

Washington State Department of Health Guidance

Washington State Administrative Code (WAC) Section 246-290-460 - Fluoridation of Drinking Water and other applicable WAC sections

WAC 246-290-135 Source Water Protection Program associated with the requirements that all Group A water systems maintain a sanitary control area (SCA) surrounding all drinking water sources to protect them from contamination.

Consumer Confidence Report (CCR) requirements

Revised Code of Washington (RCW)

International Fire Code (IFC) and Fire Department

Current State Legislature Draft Bills (City staff will assist on monitoring)

#### *4.2 City Planning Documents Review*

The Murraysmith team will review the following City Planning Documents and Municipal Code associated with past fluoridation resolutions to determine impacts to City planning associated with the fluoridation of the water system:

City of Spokane Comprehensive Plan

City of Spokane Municipal Code and ordinance notification requirements

Search of Clerk's Office databases for past ordinances (City staff will assist with search request)

Additionally, any impacts to supply water outside of the urban growth area (UGA) will be reviewed. Further, this subtask will include research of previous Council Public Infrastructure, Environment, and Sustainability Committee meetings associated with fluoridation implementation decisions. Up to two (2) previous meetings will be researched.

#### *4.3 Wholesale/Direct Services Agreements Review*

The Murraysmith team will review the following City Water Service Agreements and agreements that fluoridated water systems have in place:

Water Wholesale Agreements

Direct Service Water Agreements

Research utility rate examples with utilities that fluoridate

Potential impacts to the City's water service agreements and utility rate impacts. Notification requirements for interties.

#### *4.4 Regulatory and Planning TM*

A TM will be prepared summarizing the current regulations and guidelines for water fluoridation systems. A summary of potential conflicts with existing City planning documents and agreements will be outlined. The Murraysmith team will provide a summary list of areas needing further (including legal) review and make recommendations for modification, if needed, for fluoride implementation.

##### *Task Deliverables*

Regulatory and Planning TM

##### *Assumptions*

The City will provide the Murraysmith team information not available to the public, such as agreements with customers and wholesale water users, as needed.

City will provide information on monitoring of current State Legislature Draft Bills and will provide support for Clerk's Office database search.

The Murraysmith team will provide technical and policy review.

The City will provide legal review.

The City will review and comment on the Regulatory Review and Planning TM, including by legal counsel.

#### *Task 5 – Fluoridation System Alternatives*

##### *Objective*

The Murraysmith team will provide a comprehensive review of the applicable fluoridation systems alternatives through a review of fluoride design standards. The review will include evaluation of dosing, mixing, and monitoring design requirements, and mitigation needed to protect against any impacts of fluoridation on existing water system infrastructure. This task will include site visits of operational facilities so the City can observe current industry operations and talk to operators of existing systems.

##### *Activities*

#### *5.1 Technical Standards Review and System Mitigation*

The Murraysmith team will review the following Technical Standards:

AWWA Standards

AWWA Manual of Practice M4

Ten States Standards

The Murraysmith team will implement technical standards recommendations (chemicals, dosing) into the WaterPro modeling tool to review potential impacts of fluoridation on water quality per Washington State DOH Drinking Water Standards. Identify any potential impacts to the City's WWTP, specifically recent Next Level of Treatment (NLT) upgrades and any impacts to the water quality (for aquatic life) in the Spokane River.

### *5.2 Regional Operational Fluoride Systems Site Visits*

A multi-site visit is planned to provide City staff the ability to see functioning fluoridation systems and ask managers and operators questions. The City desires to see facilities with multiple point injections. Systems similar in size to the City's will also be preferred. Murraysmith will develop a list of potential regional sites, discuss with the City, and up to two regional systems (for example, Pullman, WA and Vancouver, WA) will be selected for site visits.

### *5.3 Operations and Maintenance (O&M) Analysis*

The team will provide recommendations for the City's considerations in its O&M strategy for implementation of fluoridation. Review of Washington Industrial Safety and Health Act (WISHA) requirements will be included to determine specific operational safety requirements fluoride chemical handling and storage for the different fluoride chemicals. The following will be assessed as part of the O&M assessment:

Operation and maintenance procedures

Safety

Training

Certification

Staffing level assessment and recommendations

Chemical and operational costs

Monitoring, sampling, and reporting requirements

### *5.4 Non-Fluoridated Filling Stations Evaluation*

The Murraysmith team will evaluate the cost of packaged commercial units for non-fluoridated filling stations. This evaluation will be used in the MODA analysis to compare the potential cost differences for the non-fluoridated filling station equipment that would be required for each of the three potential fluoridation chemicals. Planning level cost range to install will be defined to assess impacts based on the potential needs for fill stations.

### *5.5 Fluoridation System Alternatives Development and Summary TM*

The Murraysmith team will develop tools to evaluate the implementation of up to three fluoridation chemical alternatives: fluorosilicic acid, sodium fluoride, and sodium fluorosilicate. Information will be used from the 2004 Spokane Fluoridation Study and the 2016 Spokane Fluoridation Study Update as a starting point to develop a conceptual (5 percent) design for the three fluoride chemical alternatives at all seven facilities. Equipment sizing, equipment list, general process flow diagram, and general site and mechanical plan layouts based on anticipated sizes will be developed. Preliminary sizing of the large chemical handling equipment will occur prior to the condition assessment site visits in Task 2 so that the team can conduct field investigations and measurements with potential equipment sizing in mind. A Class 5 Cost Estimate and Life-Cycle Cost will be developed based on equipment sizing using calculations from the 2016 City of Spokane Fluoridation Feasibility Study Update.

The Murraysmith team will incorporate information from the Regulatory and Planning TM, feedback from City, operational facility site visits, mitigation analysis, O&M review, and experience with fluoride treatment facilities into a comprehensive Fluoridation Alternatives TM. This TM will outline recommended design features for the three fluoridation chemical alternatives and will compare the alternative equipment, piping materials, containment, HVAC, and operator safety needs. This TM will summarize the Class 5 Cost Estimates and Life-Cycle Costs by alternative for use in the MODA. Results of WaterPro modeling will be included. Commercial systems available for non-fluoridated fill station treatment will be identified.

#### *Task Deliverables*

Fluoridation System Alternatives TM evaluating each of the three potential fluoridation chemicals.

#### *Assumptions*

City staff to attend operational facility site visits with Murraysmith team.

Identification of specific locations for non-fluoridated fill stations are not included this task.

The concept of having Grace and Nevada sites both be treated by a single fluoridation system will be explored as a possibility. Input from operations staff will help finalize this exploration.

This scope of services is based on conceptual design development of three (3) fluoridation chemical alternatives: fluorosilicic acid, sodium fluoride, and sodium fluorosilicate, at all seven facilities, for a total of 21-22 conceptual designs.

The City will review and comment on the Fluoride System Alternatives TM.

### **Task 6 – Alternatives Evaluation**

#### *Objective*

Conduct and document a rigorous, objective, and transparent process to analyze identified available alternatives for fluoridation implementation and support the City in making a decision regarding the preferred alternative.

#### *Activities*

##### *6.1 Ranking Criteria Development*

Develop criteria and a calibrated scoring system for each evaluation of alternatives identified in Task 5. This will include consideration of each of the eight facilities where fluoride is proposed to be installed, as well as any other locations that might be needed for future growth, or other needs. In addition, this will include alternatives for non-fluoridation filling stations. Facilitate a workshop for identification of scoring criteria, establishment of the calibrated scale for scoring, and weighting of the criteria. This workshop will occur early in the project so that the criteria can be considered as part of the earlier project tasks.

##### *6.2 MODA*

Conduct a multi-objective decision analysis (MODA) on the alternatives identified in Task 5. The objective of this activity is to facilitate an objective and transparent process to select the



preferred alternative based on the City's long-term goals of balancing sustainability, social responsibility, and affordability (City's Triple Bottom Line).

The Murraysmith team will provide scoring sheets using the non-monetary criteria identified in 6.1 to the individuals identified by the City to conduct the scoring of the alternatives. The Murraysmith team will collect the scoring sheets and prepare the MODA results.

The MODA results will combine the non-monetary criteria with the life cycle cost for each alternative (developed in Task 5) into an integrated analysis to provide information needed for the City to decide on a preferred alternative. This integrated analysis is a very important activity because it provides needed understanding of the cost to benefit trade-offs that may need to be made to find the best outcome for the stakeholders of the City. Sensitivity analysis will also be conducted as a tool to ensure robust, defensible results.

The Murraysmith team will facilitate a workshop to present and discuss results.

#### *Task Deliverables*

Listing of MODA criteria, calibrated scale, and criteria weights.

Business Case Evaluation summarizing the alternatives and containing the results of the analysis.

#### *Assumptions*

The "problem statement" for this MODA will be "The City of Spokane's water supply is not currently fluoridated and the City wishes to understand alternatives for providing fluoridation of the water supply."

Up to three alternatives will be selected for analysis.

The City will:

Be engaged with each activity and will make the final decision of the preferred alternative.

Select up to eight (8) individuals for scoring of the alternatives, and this may include members of the consultant team, City Administration and/or Council.

MODA team will incorporate Task 8 stakeholder input into the analysis but there will be no direct engagement with external stakeholders in this task.

Review deliverables and provide timely input to support each subsequent step.

### **Task 7 – Preliminary Design**

#### *Objective*

Once the preferred alternative has been selected, develop a preliminary (30 percent) design of eight (8) locations where fluoridation equipment and infrastructure would be installed.

#### *Activities*

##### *7.1 30% Plans*

For the alternative selected in Task 6 – Alternatives Evaluation, the team will develop 30 percent design of each location where fluoridation equipment and infrastructure would be installed. It is assumed that the Nevada and Grace sites can be treated as a single site for drawing development.

Approximately 43-47 preliminary design (30 percent) Plans will be required, including:

#### General

One (1) Design Criteria Sheet

Eight (8) Process Flow Diagrams (PFDs) – one per site

#### Civil

Seven (7) Demolition drawings - one per site

Seven to eight (7-8) Site layout drawings including development, access, and yard piping – one per site

#### Process Mechanical

Seven to eight (7-8) Mechanical plans including fluoridation equipment layout, water quality monitoring equipment, and process piping – one per site

#### Electrical

Seven to eight (7-8) One-line diagrams - one per site

Seven (7) Electrical site plans including electrical service and site plan – one per site

### *7.2 Preliminary Design Opinion of Probable Construction Cost (OPCC)*

For the alternative selected in Task 6 – Alternatives Evaluation, a Class 3 – Preliminary Design OPCC will be developed. The OPCC will include all phases of the fluoridation implementation including property purchase, with a cost breakdown for PE, ROW, CM, CN. Inflation factor will be included for a 2025 assumed project design start, based on phasing recommendations. There has been extreme cost volatility in the market over the past year, due to multiple factors including significant changes in materials costs due to tariffs, the COVID pandemic, and natural disasters. Based on this, our team will take a proactive approach to cost estimating, which increases the reliability of construction cost estimates for City capital planning.

### *7.3 Life Cycle Cost Estimate*

For the alternative selected in Task 6 – Alternatives Evaluation, the team will develop a life cycle cost estimate that incorporates capital costs, O&M costs, and renewal and replacement costs for the fluoridation treatment systems for a 20- and 50-year evaluation period. These evaluation periods will provide an assessment of equipment and chemicals for a 20-year period and major facility improvements for a 50-year period.

### *7.4 Non-Fluoridated Filling Stations (Optional Task)*

This optional subtask is for developing preliminary design drawings, OPCC, and life cycle costs for non-fluoridated filling stations if it is determined that non-fluoridated filling stations are

determined to be part of the City's proposed fluoridation implementation plan. Preliminary design will be based on the typical design for filling stations using a commercially available treatment system that would dispense non-fluoridated water developed in Task 5. A budget placeholder for up to 5 sites for \$15,000 is defined for this optional subtask.

### *7.5 Preliminary Design Report*

For the alternative selected in Task 6 – Alternatives Evaluation, the team will develop a Preliminary Design Report (PDR) providing explanation and documentation of the alternatives analysis, selected design criteria, preliminary design, OPCC, life cycle cost analysis and a construction phasing recommendation. TMs developed in Tasks 2 through 6 will be included as appendices. The PDR will be able to be used by the City as a DOH Project Report, if desired.

#### *Task Deliverables*

Preliminary plans at full size (22x34) in PDF format.

Preliminary plans- electronic CAD drawings.

Preliminary Design OPCC for each facility.

Life cycle cost estimate that incorporates capital costs, O&M costs, and renewal and replacement costs for the fluoridation treatment systems for a 20- and 50-year evaluation period.

Preliminary Design Report, draft and final.

#### *Assumptions*

Up to 43 preliminary design drawings will be required as outlined above.

The City will review and comment on the Preliminary Design Documents.

Cost estimates will be Class 3 – Preliminary Design for all phases (PE, CM, CN).

It is assumed that property acquisition is not required for the project.

A budget of \$15,000 is assumed for Task 7.4 and will be reviewed and confirmed based on City's direction and authorization.

The Murraysmith team will coordinate with the City on the definition of the Discount Rate, Inflation Rate, and evaluation periods.

It is assumed that there will be one round of comments on the preliminary (30 percent) design documents and PDR, and that no substantial design changes will be required.

### *Task 8 – Outreach and Information*

#### *Objective*

The Outreach and Information activities to deliver on the following goals:

Build community awareness and understanding of the Study.

Develop public outreach communications tools that engage the public.

Proactively manage media opportunities.

Ensure elected officials get the information they need at each stage of the project to stay updated and answer questions from the public.

Stakeholders include:

Mayor/Cabinet

City Council members

Utility Director/Water Director/Staff

Community Assembly/Neighborhood Councils/Homeowners Associations/Residents

Businesses/Greater Spokane Inc./Downtown Spokane Partners

Large water users

Agencies with Intertie Agreements (City of Airway Heights, Spokane County WD #3, Whitworth WD #2, Fairchild Air Force Base, Velview WD, North Spokane ID #8)

Health care providers

Tribes

Riverkeepers

Media

Others

*Activities*

### *8.1 Stakeholder Interviews and Public Opinion Research*

Murraysmith will conduct up to 20 interviews with the most interested community stakeholders, City staff, Mayor/cabinet, and City Council early in the process to better understand community awareness, important regional considerations and get feedback on potential public outreach and information activities. The stakeholder list will be developed with and approved by the City. The team will also review the January 2016 Spokane Oral Health Survey and other available opinion research documents.

### *8.2 Public Outreach and Information Plan*

Using the results of the stakeholder interviews and public opinion research review, along with input from the City, Murraysmith will draft a Public Outreach and Information Plan. The plan will include community values, recommended outreach materials and tools, a schedule to align with the study, and communication assignments.

### *8.3 Customer Communications Materials*

Communications materials and tools will be detailed and finalized in consultation with the City during the development of the Public Outreach and Information Plan. Anticipated activities include:

### *Project webpage*

Our team will create content for a project webpage (on the City of Spokane's website) that outlines the study phases and timeline, provides opportunities for the public to submit questions and will be launched as an initial phase after NTP. The webpage will be updated three times, at key project milestones to provide customers with the latest information about the study and highlight progress.

### *Fact sheet, FAQs, talking points*

As part of the Preliminary Engineering Study for Fluoridation of City of Spokane's Water, our team will draft key talking points and a fact sheet with answers to frequently asked questions (FAQs). These materials will be updated three times, at key project milestones and available on the project webpage and for use by staff and elected officials to support answering customer questions.

### *Mayor and City Council member briefings*

The Murraysmith team will support the technical team in developing presentations and graphics for briefings with the Mayor and City Administration as well as separate briefings for City Council. The briefings will ensure the City's elected officials and leadership team are well informed about the study and outcomes at each phase of the work. The briefing will also help City leaders share information and answer questions with the public.

### *News releases*

As detailed in the ARCORA Foundation and the City of Spokane Grant Agreement, the organizations "...will work together on mutually agreeable initial or formal press release or other formal general information intended for the media or the public...". Murraysmith will draft up to four news releases (as needed to communicate project progress to the public) for the City's use in coordinating with the ARCORA Foundation.

### *Social media*

The Murraysmith team will work with the City's communication team to provide up to four engaging and informative social media graphics including study infographics and captioned photos that will direct customers to the project webpage for updates on the study.

### *Task Deliverables*

Stakeholder Interview Discussion Guide; Summary Report

Draft and Final Public Outreach and Information Plan

Customer Communications Materials:

Content for webpage, and ongoing updates

Fact Sheet, FAQs, talking points, and ongoing updates

Communications support for elected official briefings

Up to four draft news releases

Graphics for use on social media platforms, and ongoing updates

### *Assumptions*

City of Spokane staff will select the stakeholder interviewees and up to 20 interviews are assumed.

Murraysmith will develop a discussion guide for review and input by the City and summarize the interview results in a memorandum.

Murraysmith staff will work with City of Spokane staff to implement the Public Outreach and Information Plan.

The scope does not anticipate the need for public meetings.

Need and location for non-fluoridated filling stations will be informed based input the City receives from the stakeholder interview process.

Public opinion research and an extensive media strategy are not included, with the focus of this scope of services on supporting a transparent process to build community awareness and understanding of the Study.

### **Budget**

Payment will be made at the Billing rates for personnel working directly on the project, which will be made at the Consultant's Hourly Rates, plus Direct Expenses incurred. Billing rate schedule is attached. Subconsultants, when required by the Consultant, will be charged at actual costs plus a 4 percent fee to cover administration and overhead. Direct expenses will be paid at the rates shown below.

Budget Estimate for Preliminary Engineering Study for Fluoridation

Task ID	Task Description	Without Optional Tasks			Optional Tasks			Total Estimated Budget
		Consulting Labor and Expenses	Outside Services	Estimated Total Budget	Consulting Labor and Expenses	Outside Services	Estimated Total Budget	
1	Project Management	\$58,403	\$26,811	\$85,314				\$85,314
2	Condition Assessments	\$31,626	\$51,594	\$83,221				\$83,221
3	Environmental and Permitting Review	\$3,947	\$46,145	\$50,092	\$243	\$3,058	\$3,300	\$53,392
4	Fluoride Regulatory and Planning Review	\$7,671	\$21,299	\$28,970				\$28,970
5	Fluoridation System Alternatives	\$77,128	\$16,099	\$93,227				\$93,227
6	Alternatives Evaluation	\$8,756	\$43,243	\$51,999				\$51,999
7	Preliminary Design	\$106,785	\$35,058	\$141,843	\$15,000		\$15,000	\$156,843
8	Outreach and Information	\$5,934	\$40,400	\$46,334				\$46,334
<b>Total</b>		<b>\$300,250</b>	<b>\$280,649</b>	<b>\$581,000</b>	<b>\$15,243</b>	<b>\$3,058</b>	<b>\$18,300</b>	<b>\$599,300</b>

## Direct Expenses

Expenses incurred in-house that are directly attributable to the project will be invoiced at actual cost. These expenses include the following.

Computer Aided Design and Drafting \$18.00/hour

GIS and Hydraulic Modeling \$10.00/hour

Mileage Current IRS Rate

Postage and Delivery Services At Cost

Printing and Reproduction At Cost

Travel, Lodging and Subsistence At Cost

## Project Schedule

Project schedule is attached based on a notice to proceed (NTP) of February 21, 2002.

Completion of project is estimated to be 18 months from NTP. A detailed project schedule will be provided at the Kick-Off Meeting.



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

02/14/2022

**Date Rec'd**

2/1/2022

**Clerk's File #**

OPR 2022-0092

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

WATER &amp; HYDROELECTRIC SERVICES

**Cross Ref #**

OPR 2019-0889

**Contact Name/Phone**

CADIE OLSEN 625-6968

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

COLSEN@SPOKANECITY.ORG

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

Contract Item

**Requisition #**

REVENUE

**Agenda Item Name**

4100-POWER PURCHASE AGREEMENT WITH AVISTA

**Agenda Wording**

Power Purchase Agreement (PPA) between the City of Spokane's Water Utility and Avista Utilities that defines the terms for the sale of surplus power from the City's Upriver Hydroelectric Project to Avista, effective upon signing through 12/31/2037.

**Summary (Background)**

The existing PPA between the City and Avista Utilities began January 1, 2020, and was scheduled to continue through December 31, 2024. This agreement provided significantly less revenue than previous power purchase agreements. As part of the joint Mayor-Council Strategic Energy initiative, the City sought to negotiate terms more favorable to both parties that would provide greater value to our citizens.

Lease? NO

Grant related? NO

Public Works? NO

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

Revenue \$ 3,000,000.00

# 4100-42460-33060-34330

Select \$

#

Select \$

#

Select \$

#

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

SEARL, LOREN

**Study Session\Other**

PIES 1/31/2022

**Division Director**

FEIST, MARLENE

**Council Sponsor**

CM Kinnear

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

**Agenda Wording**

**Summary (Background)**

These negotiations resulted in a 15-year contract term, creating greater stability and predictability for both parties. This agreement is the result of two years' worth of work. Through the PPA between the City of Spokane and Avista corporation, the City shall sell and deliver, and Avista shall purchase and receive, the total amount of electric power that is generated by the Project (less Facility Service Power), up to a maximum of 17.7 megawatts. Revenue from the agreement will total between \$2.6 - \$3.4 million annually. The terms will deliver about the same amount of revenue annually that the City had been receiving from earlier agreements and avoids losses anticipated in the contract that took effect in January 2020. This revenue helps the Water Utility provide the community with high-quality drinking water more affordably.

**Fiscal Impact**

Select      \$

Select      \$

**Budget Account**

#

#

**Distribution List**


## Committee Agenda Sheet

### PIES COMMITTEE

<b>Submitting Department</b>	Environmental Programs and Water & Hydroelectric Services
<b>Contact Name &amp; Phone</b>	Seth McIntosh, Water System and Hydroelectric Plant Manager Department Head: Raylene Gennett, Executive Sponsors: Marlene Feist, Cadie Olsen
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<b>Council Sponsor(s)</b>	Lori Kinnear
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested: <u>5 Minutes</u>
<b>Agenda Item Name</b>	Upriver Dam Power Purchase Agreement
<b>Summary (Background)</b>	<p>This Power Purchase Agreement (PPA) is a contract between the City of Spokane's Water Utility and Avista Utilities defining the terms for sales of surplus power from the City's Upriver Hydroelectric Project to Avista. The new agreement will take effect upon signature (Effective Date) and continue through 12/31/2037.</p> <p>The existing PPA between the City and Avista Utilities began January 1, 2020, and was scheduled to continue through December 31, 2024. This agreement provided significantly less revenue than previous power purchase agreements. As part of the joint Mayor-Council Strategic Energy initiative, the City sought to negotiate terms more favorable to both parties that would provide greater value to our citizens. These negotiations resulted in a 15-year contract term, creating greater stability and predictability for both parties. This agreement is the result of two years' worth of work.</p> <p>Through the PPA between the City of Spokane and Avista corporation, the City shall sell and deliver, and Avista shall purchase and receive, the total amount of electric power that is generated by the Project (less Facility Service Power), up to a maximum of 17.7 megawatts.</p> <p>Revenue from the agreement will total between \$2.6 - \$3.4 million annually. The terms will deliver about the same amount of revenue annually that the City had been receiving from earlier agreements and avoids losses anticipated in the contract that took effect in January 2020. This revenue helps the Water Utility provide the community with high-quality drinking water more affordably.</p>
<b>Proposed Council Action &amp; Date:</b>	Move to Consent Agenda for consideration at 3:30 briefing session on 2/7/22
<b>Fiscal Impact:</b> Total Cost: Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source:  Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring  Other budget impacts: This agreement is anticipated to generate revenue in support of operations.	

<b>Operations Impacts</b>
What impacts would the proposal have on historically excluded communities?  The Agreement will generate revenue to keep water service affordable for all customers and front line communities equally.
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?  The results of the agreement will benefit all water service customers equally, creating no measurable impact to racial, ethnic, gender identity, national origin, income level, disability, sexual orientation or other disparities.
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?  A financial model was created to evaluate various scenarios optimizing anticipated revenues.  Legal and content area experts were consulted and actively involved in developing and negotiating the optimal agreement.

POWER PURCHASE AGREEMENT  
BETWEEN  
AVISTA CORPORATION  
AND  
CITY OF SPOKANE  
(UPRIVER DAM HYDROELECTRIC PROJECT)

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This Power Purchase Agreement (this “**Agreement**”) is entered into as of the date (or, if such date is not the same, the latter date) set forth beneath the Parties’ signatures on the signature page to this Agreement (the “**Effective Date**”), by and between the CITY OF SPOKANE (the “**City**”), State of Washington, a Washington municipal corporation, and AVISTA CORPORATION (“**Avista**”) of Spokane, Washington, a corporation organized and existing under the laws of the State of Washington, hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

**WITNESSETH:**

**WHEREAS**, the City owns and operates a hydroelectric generating project located on the Spokane River in Spokane County, Washington, known as the Upriver Hydro Project, which has a nameplate capacity of 17.7 megawatts and has been issued hydroelectric license no. 3074-WA by FERC (the “**Primary Project**”); and

**WHEREAS**, the City and Avista have entered into a Small Generator Interconnection Agreement (the “**Interconnection Agreement**”) that provides for and governs the interconnection of the Primary Project with Avista’s electric system; and

**WHEREAS**, in October 2019, the City and Avista entered into a Power Purchase Agreement providing for the sale by the City and the purchase by Avista of electric power generated by the Primary Project (the “**2019 Agreement**”)

**WHEREAS**, the 2019 Agreement expires on December 31, 2024, unless terminated earlier pursuant to its terms;

**WHEREAS**, in accordance with its rights under Section 3(d) of the 2019 Agreement, the City intends to terminate the 2019 Agreement effective at 2400 PPT on December 31, 2022, and replace the 2019 Agreement in its entirety with this Agreement;

**WHEREAS**, the City desires to sell and Avista desires to purchase electric power from the Primary Project and any Secondary Project(s) (as hereinafter defined) for a Delivery Term commencing on January 1, 2023, and expiring on December 31, 2037, in accordance with the terms of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

**1. DEFINITIONS; INTERPRETATION**

(a) **Definitions.** In addition to words defined elsewhere in this Agreement as signified by initial capitalization, whenever used in this Agreement, exhibits, and attachments hereto, the terms below shall have the following meanings:

(i) “**Affiliate**” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control”

means the direct or indirect ownership of 50 percent or more of the outstanding capital stock or other equity interests having ordinary voting power.

(ii) **“Agreement”** means this power purchase agreement including all exhibits, attachments and modifications thereof.

(iii) **“Applicable Program”** means a domestic, international or foreign renewable portfolio standard or renewable energy standard, or renewable energy or emissions reduction program, scheme or organization, adopted by a Governmental Authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes.

(iv) **“Bankrupt”** means, with respect to a Party or other entity, that such Party or other entity: (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (B) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (C) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (D) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within thirty (30) days thereafter; (E) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (F) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (G) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (H) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (A) to (G) inclusive; or (I) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(v) **“Bankruptcy Code”** means Title 11 of the United States Code.

(vi) **“Business Day”** means any day except a Saturday, Sunday or a Federal Reserve Bank holiday.

(vii) **“City Site Load”** means any electric power requirements, other than Facility Service Power, of any City equipment or other facilities owned by the City on the Premises, including Secondary Project(s); *provided* that any City Site Load shall not have an aggregate electric demand in excess of five (5) MW; and *provided, further*, that if requested by Avista, any City Site Load shall be metered separately and distinctly from all other existing load at the sole expense of the City.

(viii) **“Defaulting Party”** shall have the meaning provided in Section 16(a) of this Agreement.



(ix) **“Delivered Net Output”** shall have the meaning provided in Section 4(a) of this Agreement.

(x) **“Delivery Term”** shall have the meaning provided in Section 3(b) of this Agreement.

(xi) **“Dispute Notice”** shall have the meaning provided in Section 12 of this Agreement.

(xii) **“Effective Date”** shall have the meaning set forth in the first paragraph of this Agreement.

(xiii) **“EIM Hourly Price”** means, for any applicable hour, the arithmetic average of the Western Energy Imbalance Market sub-hourly market prices applicable for such hour to the location of the Primary Project.

(xiv) **“Environmental Attributes”** means all certificates, credits, benefits, emissions reductions, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Primary Project or the generation of energy by the Primary Project, and the delivery of such energy to the electricity grid, and include any of the same arising out of any current or future legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view to the UNFCCC, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the “CAMD”), but specifically excluding investment tax credits, production tax credits, and cash grants associated with the construction or operation of the Primary Project and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the Primary Project that are applicable to a state or federal income tax obligation, if any. Environmental Attributes also include the reporting rights or Renewable Energy Certificates (“RECs”) associated with these Environmental Attributes. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes associated with one MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the Primary Project.

(xv) **“Event of Default”** shall have the meaning provided in Section 16(a) of this Agreement.

(xvi) **“Facility Service Power”** means electric energy generated by the Primary Project and any Secondary Project(s) that is used to operate equipment that is auxiliary to primary generation equipment of the Primary Project and such Secondary Project(s), including pumping, generator excitation, cooling or other operations related to the

production of electric energy by the Primary Project and any Secondary Project(s) and the City's underground water pumps (Well Electric and Parkwater) located at the Premises.

(xvii) **"FERC"** means the United States Department of Energy, Federal Energy Regulatory Commission, or any other successor agency with substantially similar jurisdiction over Avista Corporation.

(xviii) **"Force Majeure"** shall have the meaning provided in Section 8(a) of this Agreement.

(xix) **"Forced Outage"** means any outage that either fully or partially curtails the electrical output of the Primary Project or any Secondary Project caused by mechanical or electrical equipment failure, plant related structural failure, or unscheduled maintenance required to be performed to prevent equipment failure.

(xx) **"Good Industry Practice"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(xxi) **"Governmental Authority"** means any federal, state or local government, political subdivision thereof or other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or other entity with authority to bind a Party at law.

(xxii) **"Governmental Rules"** means any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect of law or regulation, *provided that* Governmental Rules shall not include any enactment or other action of the City undertaken for the purpose of abrogating, repudiating or unilaterally amending the Agreement, but this exception does not include any power of eminent domain that the City may lawfully exercise notwithstanding this Agreement.

(xxiii) **"Industrial Insurance Acts"** shall have the meaning provided in Section 10(b)(ii) of this Agreement.

(xxiv) **"Interconnection Agreement"** shall have the meaning provided in the recitals of this Agreement.

(xxv) **"Interest Rate"** means, for any date, the lesser of (a) one percent per month, and (b) the maximum rate permitted by applicable law.

(xxvi) **"Loss"** shall have the meaning provided in Section 9(a) of this Agreement.

(xxvii) **“Mid C Day-Ahead Index Price”** means, for any day other than a Sunday or a NERC Holiday, the weighted average of the Intercontinental Exchange (**“ICE”**) daily Mid-Columbia On-Peak Firm Power Price Bulletin for On-Peak Hours and the ICE daily Mid-Columbia Off-Peak Firm Power Price Bulletin for Off-Peak Hours. For Off-Peak days, including Sundays and NERC Holidays, the ICE daily Mid-Columbia Off-Peak Firm Power Price Bulletin shall apply.

(xxviii) **“Major Maintenance”** means maintenance work upon the Primary Project or any Secondary Project that results in more than one generating unit not operating.

(xxix) **“MW”** means megawatts.

(xxx) **“NERC”** means the North American Electric Reliability Corporation or its successor organization.

(xxxi) **“Off-Peak Hours”** mean HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT, Monday through Saturday, and HE 0100 through 2400 Sundays and NERC Holidays.

(xxxii) **“On-Peak Hours”** mean HE 0700 through HE 2200 PPT.

(xxxiii) **“Operating Year”** means the 12-month period from January 1 through December 31.

(xxxiv) **“Pacific Prevailing Time”** or **“PPT”** means the prevailing time (i.e., Standard Time or Daylight Savings Time) on any given day in the Pacific Time Zone.

(xxxv) **“Person”** means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

(xxxvi) **“Point of Delivery”** means the point at which the Primary Project and any Secondary Project, on the one hand, and Avista’s electric system, on the other hand, are interconnected, as set forth in the Interconnection Agreement.

(xxxvii) **“Power Meter”** shall have the meaning provided in Section 4(a) of this Agreement.

(xxxviii) **“Premises”** means the site owned and operated by the City as of the Effective Date at which the Primary Project is located and any additional adjacent parcel of land that the City may acquire for the purpose of operating the Primary Project or any Secondary Project(s) or City Site Load.

(xxxix) **“Primary Project”** means the existing hydroelectric generating facility which has a nameplate capacity of 17.7 megawatts and has been issued hydroelectric license no. 3074-WA by FERC, including all equipment and structures necessary to generate and supply electric power and the underground well water pump stations (Well Electric and Parkwater) located adjacent to the generating facility.

(xl) **“Qualifying Facility”** means a generating facility which meets the requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act of 1978 and part 292 of FERC’s Regulations, 18 C.F.R. Part 292, and which has self-certified or been granted certification of its QF status.

(xli) **“Representatives”** means, with respect to a Party, such Party’s directors, officers, partners, members, employees, consultants, agents, advisors, successors and assigns, in each case with respect to the transactions contemplated by this Agreement.

(xlii) **“Secondary Project”** means any City-owned energy generation or energy storage equipment or facilities, separate and apart from the Primary Project, that are constructed or installed on the Premises; *provided* that any Secondary Project(s) shall not have an aggregate electric nameplate capacity in excess of five (5) MW; and *provided, further*, that if required by Avista, any Secondary Project(s) will be separately metered at the sole cost of the City.

(xliii) **“Surplus Output”** means any generation from a Secondary Project that is not consumed as Facility Service Power or as City Site Load and that is included in Delivered Net Output.

(xliv) **“Term”** shall have the meaning provided in Section 3(a) of this Agreement.

(xlv) **“Termination Date”** means the date on which this Agreement terminates or expires.

(xlvi) **“WECC”** means the Western Electricity Coordinating Council or its successor organization.

(xlvii) **“WUTC”** means the Washington Utilities and Transportation Commission or any other successor agency with substantially similar jurisdiction over Avista.

(b) **Interpretation.** Unless the context otherwise requires:

(i) Words singular and plural in number will be deemed to include the other and pronouns having masculine or feminine gender will be deemed to include the other.

(ii) Subject to Section 1(b)(vii), any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

(iii) Any reference in this Agreement to any Section, Exhibit, Appendix or Annex means and refers to the Section contained in, or Exhibit, Appendix or Annex attached to, this Agreement.

(iv) Other grammatical forms of defined words or phrases have corresponding meanings.

(v) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

(vi) Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

(vii) A reference to a Party to this Agreement includes such Party's successors and permitted assigns.

(viii) Reference to any gender includes each other gender.

(ix) Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

(x) References in this Agreement to "or" will be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or").

(xi) If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next Business Day.

(xii) "Hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof.

(xiii) "Including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term.

(xiv) Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."

(c) **Technical Meanings.** Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

## **2. REPRESENTATIONS AND WARRANTIES; COVENANTS**

### **(a) Representations and Warranties.**

(i) The City represents that it is the sole owner of the Primary Project and will be the sole owner of any Secondary Project(s). The City warrants and represents that: (a) the City has investigated and determined that it has authority to and is capable of performing the obligations hereunder and has not relied upon the advice, experience or

expertise of Avista in connection with the transactions contemplated by this Agreement; and (b) the Primary Project is, and any Secondary Project(s) will be, a Qualifying Facility. The City further represents that this Agreement constitutes a legal, valid and binding obligation of the City enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, has been approved by the City Council, and that the City's signatory is authorized to execute the Agreement.

(ii) Avista represents that this Agreement constitutes a legal, valid and binding obligation of Avista enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, and that Avista's signatory is authorized to execute the Agreement. Avista makes no warranties, expressed or implied, regarding any aspect of the City's design, specifications, equipment or facilities, including safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review the City's design, specifications, equipment or the Primary Project or any Secondary Project(s) shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC or WECC reliability standard applicable to the Primary Project or any Secondary Project(s).

**(b) Covenants.**

(i) The City will comply with all applicable Governmental Rules and will obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Primary Project and any Secondary Project(s), and the Primary Project and each Secondary Project will, during the Term of this Agreement, remain a Qualifying Facility as that term is used in 18 C.F.R Part 292. Any failure of the Primary Project or any Secondary Project to maintain Qualifying Facility status during the Term will be a material breach by the City of this Agreement. Avista reserves the right to review the Qualifying Facility status and associated support and compliance documents of the Primary Project and any Secondary Project at any time during the Term.

(ii) Avista will use commercially reasonable efforts to obtain approval of the WUTC (without adverse amendment or adverse condition) of this Agreement, including preparation and filing all documentation to effect all necessary notices, reports and other filings and furnishing all information as may be required by any Governmental Authority in connection with the foregoing, in each case as promptly as practicable. The City will use its commercially reasonable efforts to assist Avista, as requested by Avista from time to time, in connection with obtaining such WUTC approval. Each of Avista and the City shall have the right to review in advance and, to the extent practicable, consult with the other on, and shall consider in good faith the views of the other in connection with, any filing to be made with, or written materials to be submitted to, any Governmental Authority in connection with the process of obtaining WUTC approval of this Agreement. In



exercising the foregoing rights, each of Avista and the City shall act reasonably and as promptly as practicable.

### **3. TERM OF AGREEMENT; DELIVERY TERM**

(a) The term of this Agreement (the “**Term**”) shall be effective on the Effective Date and shall terminate at 2400 PPT on December 31, 2037, unless terminated earlier in accordance with the terms and conditions of this Agreement; *provided, however*, that the City shall have no obligation to deliver or sell, and Avista shall have no obligation to accept or purchase, any Delivered Net Output or other output from the Primary Project or any Secondary Project prior to the commencement of the Delivery Term as defined in Section 3(b) below.

(b) The period during which the City will deliver Delivered Net Output to Avista under this Agreement (the “**Delivery Term**”) will commence at 00:00:01 PPT on January 1, 2023, and continue through hour ending 2400 PPT on December 31, 2037. The Delivery Term will terminate effective immediately upon termination of this Agreement for any reason. In accordance with its rights under Section 3(d) of the 2019 Agreement, the 2019 Agreement shall terminate effective at 2400 PPT on December 31, 2022, and the 2019 Agreement shall be replaced in its entirety with this Agreement.

(c) Avista shall have the right to terminate this Agreement within one hundred and twenty (120) days following any order of the WUTC that disapproves this Agreement or disallows recovery in Avista’s retail rates of costs arising from purchases of electric power pursuant to this Agreement. If the WUTC issues an order that approves this Agreement subject to conditions that adversely affect the financial benefit of the Agreement to either Avista or the City, and that is not in form and substance substantially the same as that requested by Avista in the applicable filing, then the adversely affected Party may terminate this Agreement by giving notice to the other Party within one hundred and twenty (120) days after the issuance of such order. Within thirty (30) days after receipt of an order from the WUTC setting forth a disapproval, disallowance or conditional approval of this Agreement, Avista shall notify the City of such order and the possible effects thereof.

(d) Effective as of the Termination Date, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement, and (b) that the obligations of the Parties under Sections 6(h), 9, 10, 13 and 22 will survive the expiration or termination for any reason of this Agreement; *provided that* such obligations with respect to indemnification will continue only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the Termination Date.

### **4. PURCHASE AND SALE OF DELIVERED NET OUTPUT**

(a) The City shall sell and deliver, and Avista shall purchase and receive, at the Point of Delivery the total amount of electric power (not including any Facility Service Power or City Site Load), up to a maximum of 17.7 megawatts in any hour, that is generated by the Primary Project and any Secondary Project(s) and delivered by the City to Avista at the Point of Delivery

during the Delivery Term (the “**Delivered Net Output**”). A power meter located at the Point of Delivery (the “**Power Meter**”) shall register the Delivered Net Output on an hourly basis. The City shall deliver to Avista, and Avista shall receive, at all times all the Delivered Net Output. Notwithstanding that the City is entitled to include Surplus Output in Delivered Net Output, at no time shall Delivered Net Output, whether or not including any Surplus Output, exceed 17.7 MW in any hour, and the City shall have no obligation to deliver or sell, and Avista shall have no obligation to accept or purchase, any output from the Primary Project or any Secondary Project other than Delivered Net Output in an amount up to a maximum of 17.7 MW in any hour. Furthermore, notwithstanding any other provision of this Agreement, the City shall have no obligation to generate or sell or deliver, and Avista shall have no right to purchase or receive, any specified minimum amount of Delivered Net Output at any time during the Term, and the City’s sole obligation with respect to the sale and delivery of any output of the Plant and any power supply whatsoever under this Agreement is to sell to Avista all Delivered Net Output on the terms and subject to the conditions of this Agreement.

(b) The Power Meter shall record electric power that flows from and to the Primary Project and (unless otherwise required by Avista in accordance with the provisions of this Agreement) any Secondary Project, and from and to Avista’s electric system. Avista and the City both shall have the right to read and receive readings from the Power Meter. To the extent possible, the City shall be granted access to real time data provided by Avista. Avista shall read the meter and record the readings at least once per month. The Delivered Net Output in any month shall be calculated based on information from such meter readings. Monthly meter readings may be adjusted by prorating metered amounts to the number of days in such month.

(c) The Parties agree that any additional amounts of electric power made available from the Primary Project or any Secondary Project as a result of any modifications, enhancements, or expansions of or additions to the Primary Project or such Secondary Project during the Term shall be purchased and sold pursuant to this Agreement, so long as such modifications, enhancements, or expansions do not (i) cause the Delivered Net Output to exceed 17.7 MW in any hour at any time during the Term or (ii) result in any breach or violation of the provisions of Section 2(b)(i). The City may indicate its agreement to the purchase and sale of such additional amounts of electric power by a written administrative approval, executed by a lawfully authorized city official. For the avoidance of doubt, the City may not sell any electric power from the Primary Project or any Secondary Project to any third party during the Delivery Term.

(d) Notwithstanding any other provision of this Agreement, the City will be entitled, at its sole option, to develop, construct, install, own, and operate energy storage or solar photovoltaic facilities at the Premises. Any such facilities shall be deemed one or more Secondary Projects, and the Surplus Output produced by any such facilities shall be included in Delivered Net Output for purposes of this Agreement if and to the extent that (i) such treatment would not (A) cause the Delivered Net Output to exceed 17.7 MW in any hour at any time during the Term or (B) result in any breach or violation of the provisions of Section 2(b)(i) and (ii) such facilities do not, without the prior written consent of Avista, use any portion of Avista’s distribution system for the delivery of electric power.



## **5. OPERATION OF PRIMARY PROJECT AND ANY SECONDARY PROJECT(S)**

(a) The City shall operate and maintain the Primary Project and any Secondary Project(s) in accordance with applicable Governmental Rules and Good Industry Practice.

(b) Interconnection of the Primary Project and any Secondary Project(s) with Avista's electrical system is (or will be) governed by a separate Interconnection Agreement between the Parties.

(c) Either Party may interrupt, suspend or curtail delivery, receipt or acceptance of delivery of electric power at the Point of Delivery, if either Party reasonably determines that it is required to do so in order to comply with any Governmental Rule or if the failure to do so:

(i) Is reasonably likely to endanger any Person or property, or either Party's facilities or customers, or any electric system with which Avista's system is interconnected;

(ii) Is reasonably likely to cause, or contribute to, an imminent significant disruption of utility service to either Party's customers;

(iii) Is reasonably likely to interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to either Party's facilities;

(iv) Is reasonably likely to cause, contribute to, or necessitate operation of any of Avista's hydroelectric projects in violation of any license or other regulatory requirements; or

(v) Is contrary to Good Industry Practice.

(d) The City and Avista have agreed that the City will use reasonable efforts to shift Facility Service Power related to pumping load to Off-Peak Hours when possible in an effort to increase the capacity available to Avista during On-Peak Hours.

(e) A Party shall promptly notify the other Party in accordance with Exhibit A of the reasons for any such disconnection, interruption, suspension or curtailment. Such Party shall use reasonable efforts to mitigate and limit the duration of any such disconnection, interruption, supervision or curtailment.

(f) Without the prior written consent of Avista, the City may not use any portion of Avista's distribution system for the delivery of output from the Primary Project or any Secondary Project to Facility Service Power or City Site Load.

## **6. PAYMENTS**

(a) Avista shall prepare and submit to the City monthly statements during the Term based upon Delivered Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the twentieth (20<sup>th</sup>) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of the applicable monthly

statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

**(b)** If the City is obligated to make any payment to Avista under the terms of this Agreement, Avista shall invoice the City for such payment. The price of electric power delivered to the City at the Point of Delivery at any time during this Agreement shall be determined in accordance with Avista's then-applicable retail tariff in effect at the time such electric power is delivered as such tariff may be changed or replaced from time to time. The applicable retail tariff in effect at the time of the execution of this Agreement is Avista's Rate Schedule 31 for the State of Washington.

**(c)** Either Party may, if such Party is obligated to make any payment or refund to the other Party, net and offset such payment or refund amount against any current or future payments due to the other Party under this Agreement. Avista shall prepare and present a single net bill reflecting the offset of sums owed between the Parties as a result of the sale and delivery of electric power during a month. The Party owing funds in accordance with the net bill shall pay the other Party no later than the twentieth (20<sup>th</sup>) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

**(d)** Avista shall pay the City monthly for Delivered Net Output from the Primary Project at the rates set forth in Exhibit B. Avista shall pay the City monthly for Delivered Net Output that is Surplus Output at the as-available rate calculated at the time of delivery pursuant to 18 C.F.R. § 292.304(d)(1)(i). The as-available rate shall be calculated as 85% of the lesser of (i) the Mid C Day-Ahead Index Price for the applicable period or (ii) the EIM Hourly Price for the applicable period. If the City delivers to Avista any Delivered Net Output that is Surplus Output during any period when the as-available rate is negative, Avista will receive a credit from the City for such Surplus Output, on the City's billing statement to Avista for the applicable monthly billing period, in an amount equal to 115% of the lesser of (i) the absolute value of the Mid C Day-Ahead Index Price for the applicable period or (ii) the absolute value of the EIM Hourly Price for the applicable period. Avista shall not have any obligation to pay any amount whatsoever for any Delivered Net Output in excess of 17.7 MW in any hour.

**(e)** If either Party is obligated to make any payment to the other Party under the terms of this Agreement for any reason other than the sale and delivery of electric power, the Party to which such payment is due shall bill the Party from which such payment is due. The Party from which such payment is due shall pay the other Party no later than the twentieth (20<sup>th</sup>) day of the month following the end of the applicable monthly billing period or five (5) Business Days after the receipt of the applicable monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day. Overdue payments will accrue interest in accordance with Section 6(i) from the due date to the date of payment.

**(f)** All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

**(g)** A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) rendered under this Agreement, or adjust any invoice for any arithmetic or

computational error, at any time within twelve (12) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof which are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, and to give notice of the objection to the other Party. Any dispute with respect to any invoice or invoice adjustment will be in writing and will state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment will be made within five (5) Business Days of such resolution, together with interest accrued at the Interest Rate from the due date to the date paid. Any Party receiving an inadvertent overpayment will return such overpayment upon request or will deduct such overpayment from subsequent payments, in each case together with interest accrued at the Interest Rate from the date of such overpayment to the date repaid or deducted by the Party receiving such overpayment. Each Party hereby waives any and all rights that it may have to dispute any invoice or invoice adjustment unless such Party notifies the other Party in accordance with this Section 6(g) within twelve (12) months after the invoice is rendered or the applicable adjustment to the invoice is made.

(h) Each Party (and its Representatives) will have the right, at such Party's sole expense, during normal working hours and upon reasonable prior written notice to the other Party, to examine or make copies of the records and data of the other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to either Party and including metering records of the amount of the Delivered Net Output) to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection will be deemed waived. This Section 6(h) will survive any termination of this Agreement for a period of one (1) year from the date of such termination for the purpose of such statement and payment objections.

(i) In addition to the remedies set forth in this Agreement, any amounts owing after the due date specified in this Agreement will be subject to interest at the Interest Rate.

## **7. METERING**

(a) Avista shall be responsible for any meter readings required by this Agreement.

(b) Avista shall own and maintain the Power Meter. The Power Meter shall be used to determine the billing hereunder, and the meter shall be located at the Point of Delivery. The City shall reimburse Avista's reasonable costs, if any for any replacement of such meter. For any planned replacement of the Power Meter by Avista for which the City bears cost responsibility pursuant to this Agreement, Avista shall, prior to commencing work on any such replacement, consult with the City regarding Avista's planning, design, operation, maintenance, repair and replacement of such Power Meter, including providing estimated costs, with the City. Avista shall

use its best efforts to minimize such costs. If requested by the City, Avista shall provide copies of applicable test and calibration records and calculations pertaining to the Power Meter. Avista shall permit a representative of the City to be present at all times the Power Meter is being tested.

(c) Avista agrees to test, at its expense, the Power Meter in accordance with, and at such intervals as are consistent with, Avista's normal procedures, and in any event not less than once every two years. Avista shall conduct additional tests of the Power Meter if requested by the City, and the City shall reimburse Avista reasonable costs not to exceed \$1,000 per test, *provided* that the City may request an additional meter test at Avista's expense if the last meter test occurred more than twelve (12) months prior to the City's request. In addition, Avista shall not charge for any meter test requested by the City if such test shows that Avista's meter operates outside of accepted tolerances as determined by Avista in accordance with Good Industry Practice.

(d) Adjustments shall be made in meter readings and billings for errors in a meter reading billing discovered within twelve (12) months of the error. For purposes of adjusting meter readings and billings, in the event that it cannot be determined when the Power Meter commenced to malfunction, it shall be assumed that the Power Meter commenced to malfunction on a date which is the most recent of: (i) twelve (12) months prior to the date of discovery of the malfunction; or (ii) one half of the interval of time that elapsed between the date of the last meter test and the date of the discovery of the malfunction.

(e) Notwithstanding any other provision of this Agreement, Avista shall be responsible, at its sole cost and expense, for installing, testing, calibrating, operating, and maintaining any Primary Project metering or communications equipment additions or enhancements that are required as a result of or in connection with any participation by Avista in the California Independent System Operator Energy Imbalance Market (CAISO EIM) or any other energy market; *provided, however*, that pursuant to Section 3(b) of this Agreement the City exercises its right under Section 3(d) of the 2019 Agreement to terminate the 2019 Agreement effective at 2400 PPT on December 31, 2022. Accordingly, if as a result of termination such Primary Project metering or communications equipment additions or enhancements are no longer used by or useful to Avista, the City will reimburse Avista for any direct out-of-pocket costs and expenses incurred by Avista prior to December 31, 2022, in installing, testing, calibrating, operating, and maintaining any such Primary Project metering or communications equipment additions or enhancements, and effective upon such reimbursement, Avista will transfer to the City all right, title, and interest of Avista in and to such metering or communications equipment additions or enhancements.

## **8. FORCE MAJEURE**

(a) Neither Party shall be liable to the other Party for, or be considered to be in breach of or default under this Agreement, on account of any failure to perform or delay in performance that is attributable to any of the following events, which event or circumstance was not anticipated or reasonably foreseeable as of the Effective Date ("**Force Majeure**"):

(i) Any cause or condition that is beyond such Party's reasonable control and that is not the result of such Party's negligence and that, by the exercise of due diligence, the Party claiming Force Majeure is unable to overcome or avoid or cause to be avoided,

including the following (*provided, however*, that the existence of the following factors will not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances that in the aggregate with such factors establish that a Force Majeure as defined in the foregoing clauses of this Section 8(a)(i) has occurred): fire, flood, earthquake, volcanic activity, wind, drought and other acts of the elements; court order and act of civil, military or Governmental Authority; strike, lockout and other labor dispute; riot, insurrection, sabotage or war; federal, state, or other governmental laws, orders, decrees, restraints, or regulations; Forced Outage; breakdown of or damage to facilities or equipment; or electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected ; or

(ii) Any action taken by such Party which is, in the reasonable good faith judgment of such Party, necessary or prudent in accordance with Good Industry Practice to protect the operation, performance, integrity, reliability or stability of such Party's facilities or any electric system with which such Party's electric system is interconnected, whether such actions occur automatically or manually.

(b) Nothing contained in this section shall require any Party to settle any strike, lockout or other labor dispute. In the event that any Force Majeure occurrence prevents performance by a Party under this Agreement, the non-performing Party shall provide the other Party written notice thereof within seven (7) days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence, assurances that suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure and that the nonperforming Party is using its commercially reasonable best efforts to remedy its inability to perform. The non-performing Party shall resume performance of the obligations prevented by the Force Majeure occurrence with all reasonable dispatch. The performing Party shall not be required to perform or resume performance of its obligations to the non-performing Party corresponding to the obligations of the performing Party excused by the Force Majeure occurrence.

(c) Force Majeure does not include changes in the ownership, occupancy, or operation of the Primary Project or any Secondary Project or in the operation of Avista that occur because of normal business occurrences which include but are not limited to: changes in business economic cycles; recessions; bankruptcies; tax law changes; sales of businesses; closure of businesses; changes in production levels; and changes in system operations.

(d) Force Majeure does not excuse any Party from making payments of money due and payable under this Agreement.

(e) Notwithstanding anything herein, the City shall not claim Force Majeure as a result of any Governmental Rules adopted by the City.

(f) Force Majeure will not be based on (i) the loss of Avista's markets, or (ii) Avista's inability economically to use or resell any Delivered Net Output purchased hereunder; *provided, however*, that notwithstanding anything herein, Avista may claim Force Majeure in the event that Avista ceases (for any reason that is beyond Avista's reasonable control and that is not the result of Avista's negligence and that, by the exercise of due diligence, Avista is unable to overcome or

avoid or cause to be avoided) providing electric power to a substantial portion of its retail electric load within the City of Spokane.

(g) The Party claiming Force Majeure shall use its commercially reasonable best efforts to mitigate and limit the duration of any Force Majeure event.

## **9. INDEMNITY**

(a) The City shall indemnify, defend and hold harmless Avista and its Representatives from and against any and all losses, expenses, liabilities, claims or actions (hereafter “**Loss**”) based upon or arising out of bodily injuries or damages to Persons, including death resulting therefrom, or physical damages to or losses of property caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of any City-owned equipment or facilities, including the Primary Project or any Secondary Project, (ii) the City’s negligence or intentional misconduct, or (iii) any breach of this Agreement by the City. Avista shall indemnify, defend and hold harmless the City and its Representatives from and against and from any Loss caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of Avista’s electrical system, (ii) Avista’s negligence or intentional misconduct, or (iii) any breach of this Agreement by Avista. In the event that any such Loss is caused by the negligence of both the City and Avista, including their employees, agents, suppliers and subcontractors, the Loss shall be borne by each of the City and Avista in the proportion that its respective negligence bears to the total negligence causing the Loss. To the extent that a Loss is caused by, results from or arises out of or in connection with any matter that is addressed in the Interconnection Agreement, each Party’s rights and obligations with respect to such Loss shall be subject to and governed exclusively by the terms and conditions of the Interconnection Agreement, including any and all limitations of liability, releases and waivers appearing in such agreement.

(b) THE CITY AND AVISTA REPRESENT AND WARRANT THAT THE TERMS AND CONDITIONS OF THE FOREGOING INDEMNITY PROVISIONS ARE THE SUBJECT OF MUTUAL NEGOTIATION BY THE PARTIES, AND ARE SPECIFICALLY AND EXPRESSLY AGREED TO IN CONSIDERATION OF THE MUTUAL BENEFITS DERIVED UNDER THE TERMS OF THE AGREEMENT.

## **10. LIMITATION OF LIABILITY**

(a) **Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, THE CITY AND AVISTA AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION AND THE LIKE), WHETHER BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; *PROVIDED, HOWEVER*, THAT THE FOREGOING WILL



NOT IN ANY EVENT LIMIT THE LIABILITY OF EITHER PARTY TO THE OTHER UNDER SECTION 9 FOR OR WITH RESPECT TO THIRD-PARTY CLAIMS.

**(b) Compliance with Express Negligence Rule; RCW 4.24.115 Acknowledgement and Waiver.**

(i) To the fullest extent permitted by applicable law, all releases, disclaimers, limitations on liability, and indemnities in this Agreement, including those in this Section 10, shall apply even in the event of the sole, joint, or concurrent negligence, strict liability, or fault of the party whose liability is released, disclaimed, limited, or indemnified.

(ii) Notwithstanding the foregoing, with respect to any and all claims against an indemnified Party by any Representative of an indemnifying Party, the indemnification obligations of the indemnifying Party herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the indemnifying Party under applicable law, including any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts (including the Washington State Industrial Insurance Act, RCW Title 51) (collectively, the “**Industrial Insurance Acts**”).

(iii) EACH OF THE PARTIES HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH SUCH PARTY MAY BE ENTITLED UNDER THE INDUSTRIAL INSURANCE ACTS (INCLUDING SUCH PARTY’S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND ANY EQUIVALENT LAWS), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW 4.24.115, AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND DAMAGES (INCLUDING ATTORNEYS’ FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY’S REPRESENTATIVES; *PROVIDED, HOWEVER*, THAT THE INDEMNIFYING PARTY’S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION 10 EXTENDS ONLY TO CLAIMS AGAINST THE INDEMNIFYING PARTY BY OR ON BEHALF OF THE INDEMNIFIED PARTY UNDER OR PURSUANT TO THIS AGREEMENT, AND DOES NOT INCLUDE ANY CLAIMS MADE BY THE INDEMNIFYING PARTY’S REPRESENTATIVES DIRECTLY AGAINST THE INDEMNIFYING PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY THE PARTIES TO THIS AGREEMENT AND EACH PARTY HAS HAD THE OPPORTUNITY, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

(iv) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Parties agree that if the provisions of RCW 4.24.115 apply to any claim by an indemnified Party against an indemnifying Party under this Agreement, then, with respect to such claim, (A) in no event shall the indemnifying Party be obligated to indemnify the indemnified Party for damages arising out of bodily injury to Persons or damage to property resulting from the sole negligence of the indemnified Party or its

Representatives, and (B) if indemnification is sought for damages arising out of bodily injury to Persons or damage to property resulting from the concurrent negligence of the indemnifying Party (or its Representatives) and the indemnified Party (or its Representatives), the indemnifying Party shall indemnify the indemnified Party for such damages only to the extent of the negligence of the indemnifying Party or its Representatives.

## **11. INSURANCE**

(a) **Business Insurance.** Prior to operating the Primary Project or any Secondary Project, the City, at his own cost, shall obtain and maintain the following insurance in force over the Term of this Agreement and shall provide certificates of all insurance policies. Avista's acceptance of the certificate of insurance is not intended to, and will not reduce, limit, affect, or modify the primary obligations and liabilities of the City under the provisions of this Agreement. The City must provide notice of cancellation or notice of change in policy terms at least thirty (30) days prior to any change or termination of the policies.

(b) **General Liability.** The City shall carry and maintain comprehensive general liability insurance in a form acceptable to Avista with coverage of not less than \$10,000,000 per occurrence, including coverage of bodily injury, property damage liability, and contractual liability specifically related to the indemnity provisions of this Agreement. The deductible will not exceed the City's financial ability to cover claims.

(c) **Property Insurance.** The City shall carry and maintain property insurance for the full replacement value of the Primary Project and each Secondary Project in a form acceptable to Avista, a deductible not to exceed the City's financial ability.

(d) **Qualifying Insurance Coverage from Third Party Insurers.** Any insurance coverage required by this Section 11 and not provided by the City through self-insurance must be obtained from an insurance carrier licensed to conduct business in the state of Washington, must be acceptable to Avista, such acceptance not to be unreasonably withheld, but in no event have, as of the date of placement of such coverage during each year during the Term, less than an A.M. Best Rating of A-, Class VIII. The policies required under this Agreement must include (i) provisions or endorsements naming Avista and its directors, officers and employees as additional insureds, (ii) Avista as a loss payee as applicable, (iii) a cross-liability and severability of interest clause, and (iv) provisions such that the policy is primary insurance with respect to the interests of Avista and that any other insurance maintained by Avista is excess and not contributory.

(e) **Right of City to Satisfy Insurance Requirements Through Self-Insurance.** The City shall be entitled, in its sole discretion, to satisfy any or all of the insurance requirements of this Agreement through self-insurance, including through a combination of self-insurance retention and excess liability coverage, and any such self-insurance shall be deemed to satisfy the applicable requirements of this Agreement with respect to coverage by a third party insurer.

## **12. ENVIRONMENTAL ATTRIBUTES**

Avista shall own all Environmental Attributes generated by the Primary Project during the Term. Except as may be otherwise agreed by the Parties, the City will have all right, title, and



interest in and to any and all Environmental Attributes generated by the Primary Project from and after the expiration or earlier termination of the Term.

### **13. DISPUTE RESOLUTION**

(a) **Informal Dispute Resolution.** The Parties agree that cooperation and communication are essential to resolving issues efficiently, and therefore agree that they will use reasonable efforts to attempt to resolve through informal dispute resolution any dispute (including any payment dispute) between them with respect to this Agreement. Should any such dispute arise, either Party may deliver to the other Party a written dispute notice identifying the disputed issue. Within ten (10) days after delivery of any such dispute notice, the City's Director of Water and Hydroelectric Department and Avista's representative will meet to attempt to resolve the dispute. If such representatives cannot resolve the dispute within ten (10) days after such meeting, the Parties will refer the dispute to the City's Director of Utilities and Avista's representative, who will then meet to attempt to resolve the dispute. If such representatives cannot resolve the dispute within fourteen (14) days after such meeting, then either Party may initiate mediation in accordance with the provisions of Section 13(b).

(b) **Mediation.** If the Parties have been unable to resolve the dispute through the informal dispute resolution procedures set forth in Section 13(a), then each Party will, within fifteen (15) days after completion of such informal dispute resolution process, propose to the other Party in writing not more than five (5) candidates to act as mediator with respect to the dispute. Within seven (7) days after the Parties exchange lists of mediator candidates, the Parties will meet and confer to choose one name from the list. If the Parties are unable to agree on a mediator within thirty (30) days after completion of the steps outlined above, the Parties will jointly petition the Presiding Judge of the Spokane County Superior Court to appoint a mediator. The Parties will, with the assistance of the mediator, use reasonable efforts to resolve the dispute within thirty (30) days after commencement of the mediation. The Parties will share the fees and expenses of the mediator equally. If mediation fails to resolve the dispute within thirty (30) days after commencement of the mediation, either Party may thereafter seek redress in court for resolution of the dispute. Except as otherwise provided in this Agreement, the Parties will continue to perform their respective obligations under this Agreement pending resolution of any dispute.

### **14. ASSIGNMENT**

(a) **Required Consent.** Neither Party shall assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that a Party may, without the consent of the other Party, and by providing prior reasonable notice under the circumstances to the other Party, assign, transfer, pledge or otherwise dispose of its rights and interests under this Agreement to: (i) any Person in connection with an assignment of the Agreement for financing or refinancing purposes; (ii) any entity created to operate the Primary Project or any Secondary Project; or (iii) any Affiliate of such Party, so long as the creditworthiness of such Affiliate is at least equal to that of the assigning Party.

(b) **Continuing Obligations.** Any assignments authorized as provided for in this Section 14 shall not operate to relieve the Party assigning this Agreement or any of its rights,

interests or obligations hereunder of the responsibility of full compliance with the requirements of this Agreement unless: (i) the other Party consents, such consent not to be unreasonably withheld; and (ii) the assignee agrees in writing to be bound by all of the obligations and duties of the assigning party provided for in this Agreement.

(c) **Reimbursement of Costs.** Either Party shall, upon request from the other Party, execute and deliver such documents as may be reasonably necessary to accomplish any assignment, transfer, pledge or disposition of rights permitted under this Section 14, so long as the rights of the non-assigning Party are not altered, amended, diminished or otherwise impaired, and so long as the requesting Party reimburses the other Party for all reasonable costs incurred in connection with the review, execution or delivery of such documents.

(d) **Approval by the City of Assignments.** The City may approve assignments under this Section 14 by written consent of the Mayor, in accordance with City Procedures and Policy.

(e) **Binding Agreement.** This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

## **15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES**

Except as specifically provided in Section 9, Section 10 or otherwise in this Agreement, there are no third party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, and their respective successors, heirs and assigns permitted under Section 14.

## **16. DEFAULT**

(a) An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after delivery of written notice;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respects when made or when deemed made or repeated;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied in accordance with Section 16(b), below;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or

its predecessor was a party by operation of law or pursuant to an agreement reasonable satisfactory to the other Party.

(b) In the Event of Default, the following shall apply:

(i) The non-defaulting Party shall give written notice to the Defaulting Party of the Event of Default in accordance with this Agreement.

(ii) Except for an Event of Default that arises from failure to make money payments or from a Party becoming Bankrupt, if, after twenty (20) days following receipt of such notice, the Defaulting Party has not cured the Event of Default, the non-defaulting Party may, at its option, terminate this Agreement; *provided, however*, if the defaulting Party, within such twenty (20)-day period, commences and thereafter proceeds with all due diligence to cure such default, such twenty (20)-day period shall be extended up to six (6) months after written notice to the defaulting Party, as may be necessary to cure the event of default with all due diligence. For an Event of Default that arises from the failure to make money payments, the non-defaulting Party may, at its option, terminate this Agreement if the Defaulting Party shall have failed to cure the failure to pay within three (3) Business Days following receipt of notice of such failure. For an Event of Default that arises from a Party becoming Bankrupt, the non-defaulting Party may, at its option, immediately terminate this Agreement upon notice to the Defaulting Party.

(iii) Upon the Event of Default and an expiration of any period to cure granted herein, the non-defaulting Party may, but has no obligation, to terminate this Agreement effective upon notice to the Defaulting Party and may exercise all other rights and remedies available to the non-defaulting Party under applicable law. On behalf of the City, such actions may be accomplished by the Mayor. Whether or not the non-defaulting Party elects to terminate this Agreement, it may, in addition to other remedies provided for herein, pursue such remedies as are available at law or in equity including suspension of its performance so long as the Event of Default is continuing and has not been cured.

(c) Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach or default by the other Party is in addition to, and not in lieu of, all other rights or remedies afforded to such Party under any other provisions of this Agreement, by law or otherwise on account of the breach or default.

## **17. GOVERNMENTAL AUTHORITY**

This Agreement is subject to all applicable Governmental Rules. All Governmental Rules now or hereafter in effect that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

## **18. SEVERAL OBLIGATIONS**

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Each Party shall be

individually and severally liable for its own obligations under this Agreement. Further, neither Party shall have any rights, power or authority to enter into any agreement or undertaking for or on behalf of, to act as to be an agent or representative of, or to otherwise bind the other Party.

**19. IMPLEMENTATION**

Each Party shall take such action (including the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

**20. NON-WAIVER**

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

**21. ENTIRE AGREEMENT AND AMENDMENT**

This Agreement together with its exhibits constitutes the entire agreement of the Parties hereto and supersedes and replaces any prior agreements or understandings between said Parties, entered into for the same or similar purposes. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

**22. GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, without reference to conflict of laws provisions that would result in the application of the laws of any other jurisdiction. Any action at law or in equity to enforce the terms and conditions of this Agreement shall, unless subject to the exclusive jurisdiction of the WUTC, be brought in Spokane County, Washington.

**23. COMPLIANCE WITH LAWS**

Both Parties shall comply with all applicable laws and regulations of governmental agencies having jurisdiction over such Party. The City shall obtain all required approvals or authorization from governmental agencies having jurisdiction over the sale of electric power from the Primary Project or any Secondary Project.

**24. FORWARD CONTRACT; FORWARD AGREEMENT**

The Parties acknowledge and intend that this Agreement, the transactions contemplated hereby, and any instruments that may be provided by either Party hereunder will each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, that Avista and the City are "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code, that all payments made or to be

made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code, and that this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, in any dispute or otherwise, or otherwise take any position to the effect that this Agreement, the transactions contemplated hereby, and any instrument(s) that may be provided by either Party hereunder do not each, and together, constitute one and the same “forward contract” and “forward agreement” within the meaning of the Bankruptcy Code, or that Avista and the City are not “forward contract merchants” and “swap participants” within the meaning of the Bankruptcy Code.

## **25. NOTICES**

All notices, requests, statements or payments will be made in writing except in the case of operational communications regarding pre-scheduling, scheduling, interruptions, curtailments, or outages, which will be made orally in accordance with the provisions of Exhibit A. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or facsimile. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received.

To Avista:                      Director, Energy Resources  
                                        Avista Corporation  
                                        P.O. Box 3727  
                                        MSC-7  
                                        Spokane, Washington 99220-3727  
                                        Facsimile No.: (509) 495-4272

To the City:                     Director  
                                        City of Spokane Water and Hydroelectric Services Department  
                                        914 East North Foothills Drive  
                                        Spokane, Washington 99207  
                                        Facsimile No.: (509) 625-7816

with a copy (which shall not constitute notice) to:

City Attorney  
Office of the City Attorney  
City of Spokane  
808 W. Spokane Falls Blvd.  
5th Floor, Municipal Bldg.  
Spokane, Washington 99201-3326  
Facsimile No.: (509) 625-6277

Changes in persons or addresses for submittal of written notices by a Party to this Agreement shall be made in writing to the other Party and delivered in accordance with this Section 25. Any oral notice required hereby, which affects the payments to be made hereunder shall be confirmed in writing as promptly as practicable after the oral notice is given. Exhibit A shall govern oral communications between the Parties.

**26. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute only one legal instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

**27. EXHIBITS**

This Power Purchase Agreement includes the following exhibits, which are attached and incorporated by reference herein:

- Exhibit A - Communications
- Exhibit B - Payment Schedule

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the first date herein-above set forth:

CITY OF SPOKANE

AVISTA CORPORATION

By:

By:



\_\_\_\_\_  
(Type Name)

\_\_\_\_\_  
Dennis Vermillion

(Type Name)

Title:

Title:

\_\_\_\_\_  
President and CEO

Date:

Date:

\_\_\_\_\_  
January 7, 2022

Attest:

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

Approved as to form:

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

## **Exhibit A**

### **Communications**

#### **A-1. Oral Communications**

All operational communications between the City and Avista regarding pre-scheduling, scheduling, interruptions, curtailments, or outages shall be made orally by notifying the following parties:

(a) Pre-Schedule (5:30 am to approximately 1:30 pm on normal Business Days):

Avista	Pre-Scheduler (509) 495-4911 Alternate Phone Number (509) 495-4073
--------	---

the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800
----------	--

(b) Real-Time Schedule (available 24 hours per day):

Avista	Real-Time Scheduler (509) 495-8534
--------	------------------------------------

the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800
----------	--

(c) During normal business hours, all oral communications relating to interruptions, curtailments, and outages:

Avista	System Operator (509) 495-4105 Alternate Phone Number (509) 495-4934
--------	---

the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800
----------	--

(d) Outside of normal business hours (nights, weekends, and holidays), all oral communications relating to interruptions, curtailments, and outages shall take place between the following personnel:

Avista	System Operator (509) 495-4105 Alternate Phone Number (509) 495-4934
--------	---

the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800
----------	--

**A-2.** The City shall notify Avista's system operator, as soon as is practical, whenever the Primary Project or any Secondary Project is or is expected to be brought on line, or taken off line.



- A-3.** Changes in persons or phone numbers for oral communications by a Party to this Agreement may be made orally to the other Party in accordance with this Exhibit but shall be confirmed in writing as an amended Exhibit A. A copy of said amended Exhibit A shall be mailed or delivered to the representatives of the Parties designated in Section 25.

## Exhibit B

### Power Purchase Payment Rates

For the period January 1, 2023 through December 31, 2037, Avista agrees to buy the Delivered Net Output from the City's Upriver Hydro Primary Project at the following monthly rates:

Year	Rate Jan-Feb (\$/MWh)	Rate Mar-Jun (\$/MWh)	Rate Jul-Dec (\$/MWh)
2023	\$ 57.48	\$ 44.71	\$ 57.48
2024	\$ 58.63	\$ 45.60	\$ 58.63
2025	\$ 59.81	\$ 46.52	\$ 59.81
2026	\$ 61.00	\$ 47.45	\$ 61.00
2027	\$ 62.22	\$ 48.39	\$ 62.22
2028	\$ 63.47	\$ 49.36	\$ 63.47
2029	\$ 64.74	\$ 50.35	\$ 64.74
2030	\$ 66.03	\$ 51.36	\$ 66.03
2031	\$ 67.35	\$ 52.38	\$ 67.35
2032	\$ 68.70	\$ 53.43	\$ 68.70
2033	\$ 70.07	\$ 54.50	\$ 70.07
2034	\$ 71.47	\$ 55.59	\$ 71.47
2035	\$ 72.90	\$ 56.70	\$ 72.90
2036	\$ 74.36	\$ 57.84	\$ 74.36
2037	\$ 75.85	\$ 58.99	\$ 75.85

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

02/14/2022

**Date Rec'd**

2/1/2022

**Clerk's File #**

OPR 2022-0093

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

SOLID WASTE DISPOSAL

**Cross Ref #**

OPR 2017-0793

**Contact Name/Phone**

CADIE OLSEN 625-6968

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

COLSEN@SPOKANECITY.ORG

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

Contract Item

**Requisition #**

REVENUE

**Agenda Item Name**

4490 POWER PURCHASE AGREEMENT WITH AVISTA

**Agenda Wording**

Power Purchase Agreement (PPA) between the City of Spokane's Solid Waste Utility and Avista Utilities that defines the terms for the sale of surplus power generated by the City's Waste to Energy Facility, effective upon signing through 12/30/2037.

**Summary (Background)**

The existing PPA between the City and Avista Utilities began January 1, 2018, and was scheduled to run through December 30, 2022. As part of the joint Mayor-Council Strategic Energy initiative, the City sought to negotiate terms more favorable to both parties that would provide greater value to our citizens. These negotiations resulted in a 15-year contract term, creating greater stability and predictability for both parties. This agreement is the result of two years' worth of work.

Lease? NO

Grant related? NO

Public Works? NO

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

Revenue \$ 6,000,000.00

# 4490-44110-37052-34330

Select \$

#

Select \$

#

Select \$

#

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

AVERYT, CHRIS

**Study Session\Other**

PIES 1/31/22

**Division Director**

FEIST, MARLENE

**Council Sponsor**

CM KINNEAR

**Finance**

ALBIN-MOORE, ANGELA

**Distribution List****Legal**

ODLE, MARI

mdorgan@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

jsalstrom@spokanecity.org

**Additional Approvals**

dpaine@spokanecity.org

**Purchasing**

PRINCE, THEA

eschoedel@spokanecity.org

colsen@spokanecity.org

kevin.holland@avistacorp.com



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

**Agenda Wording**

**Summary (Background)**

Through the PPA between the City of Spokane and Avista corporation, the City shall sell and deliver, and Avista shall purchase and receive, the total amount of electric power that is generated by the Project (less Facility Service Power), up to a maximum of 26 megawatts of power. Revenue generated from the agreement will total between \$5.6 - \$7.5 million annually, allowing the Solid Waste to maintain existing utility rates.

**Fiscal Impact**

Select \$

Select \$

**Budget Account**

#

#

**Distribution List**


## Committee Agenda Sheet

### PIES COMMITTEE

<b>Submitting Department</b>	Environmental Programs and Solid Waste Disposal
<b>Contact Name &amp; Phone</b>	Department Head: Chris Averyt, Executive Sponsors: Marlene Feist, Cadie Olsen
<b>Contact Email</b>	Chris Averyt: (509) 625-6540 caveryt@spokanecity.org
<b>Council Sponsor(s)</b>	Lori Kinnear
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion         Time Requested: <u>5 Minutes</u>
<b>Agenda Item Name</b>	Waste to Energy Plant Power Purchase Agreement
<b>Summary (Background)</b>	<p>This Power Purchase Agreement (PPA) is a contract between the City of Spokane's Solid Waste Utility and Avista Utilities defining the terms for sales of surplus power from the City's Waste to Energy Facility to Avista. The new agreement will take effect upon signature (Effective Date) and continue through 12/30/2037.</p> <p>The existing PPA between the City and Avista Utilities began January 1, 2018, and was scheduled to run through December 30, 2022. As part of the joint Mayor-Council Strategic Energy initiative, the City sought to negotiate terms more favorable to both parties that would provide greater value to our citizens. These negotiations resulted in a 15-year contract term, creating greater stability and predictability for both parties. This agreement is the result of two years' worth of work.</p> <p>Through the PPA between the City of Spokane and Avista corporation, the City shall sell and deliver, and Avista shall purchase and receive, the total amount of electric power that is generated by the Project (less Facility Service Power), up to a maximum of 26 megawatts of power.</p> <p>Revenue generated from the agreement will total between \$5.6 – \$7.5 million annually, allowing the Solid Waste to maintain existing utility rates.</p>
<b>Proposed Council Action &amp; Date:</b>	Move to Consent Agenda for consideration at 3:30 briefing session on 2/7/22
<b>Fiscal Impact:</b> Total Cost: Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source:  Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring  Other budget impacts: This agreement is anticipated to generate revenue in support of operations.	

<b>Operations Impacts</b>
What impacts would the proposal have on historically excluded communities?  The Agreement will generate revenue to keep solid waste disposal services affordable for all customers and front line communities equally.
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?  The results of the agreement will benefit all waste disposal service customers equally, creating no measurable impact to racial, ethnic, gender identity, national origin, income level, disability, sexual orientation or other disparities.
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?  A financial model was created to evaluate various scenarios optimizing anticipated revenues.  Legal and content area experts were consulted and actively involved in developing and negotiating the optimal agreement. The City sought and received a favorable ruling from The Washington State Utilities and Transportation Commission enabling the extension of the term of the agreement to 15 years.

POWER PURCHASE AGREEMENT  
BETWEEN  
AVISTA CORPORATION  
AND  
CITY OF SPOKANE  
(WASTE TO ENERGY FACILITY)

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This Power Purchase Agreement (this “**Agreement**”) is entered into as of the date (or, if such date is not the same, the latter date) set forth beneath the Parties’ signatures on the signature page to this Agreement (the “**Effective Date**”), by and between the CITY OF SPOKANE (the “**City**”), State of Washington, a Washington municipal corporation, and AVISTA CORPORATION (“**Avista**”) of Spokane, Washington, a corporation organized and existing under the laws of the State of Washington, hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

**WITNESSETH:**

**WHEREAS**, the City owns and operates a waste to energy electric generating project located on approximately thirty-seven (37) acres of real property leased from the Spokane International Airport Board, located at 2900 S. Geiger Boulevard, Spokane, Washington, 99224 in Spokane County, Washington, which project is known as the Waste to Energy Facility and has a nameplate capacity of 26 megawatts (the “**Primary Project**”); and

**WHEREAS**, the City and Avista have entered into a Large Generator Interconnection Agreement (the “**Interconnection Agreement**”) that provides for and governs the interconnection of the Facility with Avista’s electric system;

**WHEREAS**, in November 2017, the City and Avista entered into a power purchase agreement (the “**2017 Agreement**”) under which the City delivers and sells and Avista purchases electric power from the Facility for a delivery term beginning on January 1, 2018 and expiring on December 30, 3022; and

**WHEREAS**, the Washington Utilities and Transportation Commission issued an order in Docket No. UE-210247 declaring that the Primary Facility is not “baseload electric generation” under RCW 80.80.010(4) and WAC 480-100-405(2)(a).

**WHEREAS**, the City and Avista desire to enter into this Agreement to allow the City to deliver and sell, and Avista to purchase, electric power from the Facility for a Delivery Term beginning on December 31, 2022, and expiring on December 30, 2037, in accordance with the terms of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

**1. DEFINITIONS; INTERPRETATION**

(a) **Definitions.** In addition to words defined elsewhere in this Agreement as signified by initial capitalization, whenever used in this Agreement, exhibits, and attachments hereto, the terms below shall have the following meanings:

(i) “**Affiliate**” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of 50 percent or more of the outstanding capital stock or other equity interests having ordinary voting power.

(ii) **“Agreement”** means this power purchase agreement including all exhibits, attachments and modifications thereof.

(iii) **“Applicable Program”** means a domestic, international or foreign renewable portfolio standard or renewable energy standard, or renewable energy or emissions reduction program, scheme or organization, adopted by a Governmental Authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes.

(iv) **“Bankrupt”** means, with respect to a Party or other entity, that such Party or other entity: (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (B) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (C) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (D) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within thirty (30) days thereafter; (E) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (F) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (G) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (H) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (A) to (G) inclusive; or (I) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(v) **“Bankruptcy Code”** means Title 11 of the United States Code.

(vi) **“Business Day”** means any day except a Saturday, Sunday or a Federal Reserve Bank holiday.

(vii) **“Change in Carbon Law”** will include adoption, enactment, promulgation, modification, amendment or revocation of (A) any state or federal law, rule, regulation, policy or decision, and any interpretation, reinterpretation or administrative position with respect to any such law, rule, regulation policy or decision, that (B) occurs after the Effective Date, and (C) pertains to a carbon tax, a new or revised emission or performance standard, or any other new or revised operational or financial requirement or limitation directly addressing greenhouse gas emissions.

(viii) **“Change in Carbon Law Costs”** means any actual and verifiable change, as a result directly of a Change in Carbon Law, in the costs incurred by a Party directly in connection with the Primary Project, any Secondary Project or the purchase and sale of Delivered Net Output under this Agreement; *provided, however*, that “Change in Carbon

Law Costs” will not, in the case of either Party, include any costs or expenses caused by or resulting from any failure by such Party to comply, or delay by such Party in complying, with any Governmental Rule.

(ix) **“City Site Load”** means any electric power requirements, other than Facility Service Power, of any City equipment or other facilities owned by the City on the Premises, including Secondary Project(s); *provided* that any City Site Load shall not have an aggregate electric demand in excess of five (5) MW; and *provided, further*, that if requested by Avista, any City Site Load shall be metered separately and distinctly from all other existing load at the sole expense of the City.

(x) **“Defaulting Party”** shall have the meaning provided in Section 16(a) of this Agreement.

(xi) **“Delivered Net Output”** shall have the meaning provided in Section 4(a) of this Agreement.

(xii) **“Delivery Term”** shall have the meaning provided in Section 3(b) of this Agreement.

(xiii) **“Dispute Notice”** shall have the meaning provided in Section 12 of this Agreement.

(xiv) **“Effective Date”** shall have the meaning set forth in the first paragraph of this Agreement.

(xv) **“EIM Hourly Price”** means, for any applicable hour, the arithmetic average of the Western Energy Imbalance Market sub-hourly market prices applicable for such hour to the location of the Primary Project.

(xvi) **“Environmental Attributes”** means all certificates, credits, benefits, emissions reductions, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the the generation of energy and the delivery of such energy to the electricity grid, and include any of the same arising out of any current or future legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view to the UNFCCC, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the “CAMD”), but specifically excluding investment tax credits, production tax credits, and cash grants associated with the construction or operation of the power generation facilities at the City’s site and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the power generation facilities at the City’s site that are applicable to a state or federal income tax obligation, if any. Environmental Attributes also include the reporting rights or Renewable Energy Certificates (“RECs”)

associated with these Environmental Attributes. RECS are accumulated on a MWh basis and one REC represents the Environmental Attributes associated with one MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the Waste to Energy Facility.

(xvii) **“Event of Default”** shall have the meaning provided in Section 16(a) of this Agreement.

(xviii) **“Facility Service Power”** means electric energy generated by the Primary Project and any Secondary Project(s) that is used to operate equipment that is auxiliary to primary generation equipment of the Primary Project and such Secondary Project(s), including generator excitation, cooling or other operations related to the production of electric energy by the Primary Project and any Secondary Project(s) located at the Premises. The electrical output of any Secondary Project shall be deemed to be the first energy utilized to provide Facility Service Power.

(xix) **“FERC”** means the United States Department of Energy, Federal Energy Regulatory Commission, or any other successor agency with substantially similar jurisdiction over Avista Corporation.

(xx) **“Force Majeure”** shall have the meaning provided in Section 8(a) of this Agreement.

(xxi) **“Forced Outage”** means any outage that either fully or partially curtails the electrical output of the Primary Project or Secondary Project caused by mechanical or electrical equipment failure, plant related structural failure, or unscheduled maintenance required to be performed to prevent equipment failure.

(xxii) **“Good Industry Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(xxiii) **“Governmental Authority”** means any federal, state or local government, political subdivision thereof or other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or other entity with authority to bind a Party at law.

(xxiv) **“Governmental Rules”** means any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect of law or regulation, *provided that* Governmental Rules shall not include any enactment or other action of the City undertaken for the purpose of abrogating, repudiating or unilaterally amending the

Agreement, but this exception does not include any power of eminent domain that the City may lawfully exercise notwithstanding this Agreement.

(xxv) **“Industrial Insurance Acts”** shall have the meaning provided in Section 10(b)(ii) of this Agreement.

(xxvi) **“Interconnection Agreement”** shall have the meaning provided in the recitals of this Agreement.

(xxvii) **“Interest Rate”** means, for any date, the lesser of (a) one percent per month, and (b) the maximum rate permitted by applicable law.

(xxviii) **“Loss”** shall have the meaning provided in Section 9(a) of this Agreement.

(xxix) **“Mid C Day-Ahead Index Price”** means, for any day other than a Sunday or a NERC Holiday, the weighted average of the Intercontinental Exchange (**“ICE”**) daily Mid-Columbia On-Peak Firm Power Price Bulletin for On-Peak Hours and the ICE daily Mid-Columbia Off-Peak Firm Power Price Bulletin for Off-Peak Hours. For Off-Peak days, including Sundays and NERC Holidays, the ICE daily Mid-Columbia Off-Peak Firm Power Price Bulletin shall apply.

(xxx) **“Major Maintenance”** means maintenance work upon the Primary Project or any Secondary Project that results in more than one generating unit not operating.

(xxxi) **“MW”** means megawatts.

(xxxii) **“NERC”** means the North American Electric Reliability Corporation or its successor organization.

(xxxiii) **“Off-Peak Hours”** mean HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT, Monday through Saturday, and HE 0100 through 2400 Sundays and NERC Holidays.

(xxxiv) **“On-Peak Hours”** mean HE 0700 through HE 2200 PPT.

(xxxv) **“Operating Year”** means the 12-month period from January 1 through December 31.

(xxxvi) **“Pacific Prevailing Time”** or **“PPT”** means the prevailing time (i.e., Standard Time or Daylight Savings Time) on any given day in the Pacific Time Zone.

(xxxvii) **“Person”** means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

(xxxviii) **“Point of Delivery”** means the point at which the Primary Project and any Secondary Project, on the one hand, and Avista’s electric system, on the other hand, are interconnected, as set forth in the Interconnection Agreement.

(xxxix) **“Power Meter”** shall have the meaning provided in Section 4(a) of this Agreement.

(xl) **“Premises”** means the site owned and operated by the City as of the Effective Date at which the Primary Project is located and any additional adjacent parcel of land that the City may acquire for the purpose of operating the Primary Project or any Secondary Project(s) or City Site Load.

(xli) **“Primary Project”** shall have the meaning provided in the recitals to this Agreement.

(xlii) (xxxv) **“Qualifying Facility”** means a generating facility which meets the requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act of 1978 and part 292 of FERC’s Regulations, 18 C.F.R. Part 292, and which has self-certified or been granted certification of its QF status.

(xliii) **“Representatives”** means, with respect to a Party, such Party’s directors, officers, partners, members, employees, consultants, agents, advisors, successors and assigns, in each case with respect to the transactions contemplated by this Agreement.

(xliv) **“Secondary Project”** means any City-owned energy generation or energy storage equipment or facilities, separate and apart from the Primary Project, that are constructed or installed on the Premises; *provided* that any Secondary Project(s) shall not have an aggregate electric nameplate capacity in excess of five (5) MW; and *provided, further*, that if required by Avista, any Secondary Project(s) will be separately metered at the sole cost of the City.

(xlv) **“Surplus Output”** means any generation from a Secondary Project that is not consumed as Facility Service Power or as City Site Load and that is included in Delivered Net Output.

(xlvi) **“Term”** shall have the meaning provided in Section 3(a) of this Agreement.

(xlvii) **“Termination Date”** means the date on which this Agreement terminates or expires.

(xlviii) **“WECC”** means the Western Electricity Coordinating Council or its successor organization.

(xlix) **“WUTC”** means the Washington Utilities and Transportation Commission or any other successor agency with substantially similar jurisdiction over Avista.

(b) **Interpretation.** Unless the context otherwise requires:

(i) Words singular and plural in number will be deemed to include the other and pronouns having masculine or feminine gender will be deemed to include the other.



**(ii)** Subject to Section 1(b)(vii), any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

**(iii)** Any reference in this Agreement to any Section, Exhibit, Appendix or Annex means and refers to the Section contained in, or Exhibit, Appendix or Annex attached to, this Agreement.

**(iv)** Other grammatical forms of defined words or phrases have corresponding meanings.

**(v)** A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

**(vi)** Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

**(vii)** A reference to a Party to this Agreement includes such Party's successors and permitted assigns.

**(viii)** Reference to any gender includes each other gender.

**(ix)** Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

**(x)** References in this Agreement to "or" will be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or").

**(xi)** If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next Business Day.

**(xii)** "Hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof.

**(xiii)** "Including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term.

**(xiv)** Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."

(c) **Technical Meanings.** Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

## **2. REPRESENTATIONS AND WARRANTIES; COVENANTS**

### **(a) Representations and Warranties.**

(i) The City represents that it is the sole owner of the Primary Project and will be the sole owner of any Secondary Project(s). The City warrants and represents that: (a) the City has investigated and determined that it has authority to and is capable of performing the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; and (b) the Primary Project is, and any Secondary Project(s) will be, a Qualifying Facility. The City further represents that this Agreement constitutes a legal, valid and binding obligation of the City enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, has been approved by the City Council, and that the City's signatory is authorized to execute the Agreement.

(ii) Avista represents that this Agreement constitutes a legal, valid and binding obligation of Avista enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, and that Avista's signatory is authorized to execute the Agreement. Avista makes no warranties, expressed or implied, regarding any aspect of the City's design, specifications, equipment or facilities, including safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review the City's design, specifications, equipment or the Primary Project or any Secondary Project(s) shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC or WECC reliability standard applicable to the Primary Project or any Secondary Project(s).

### **(b) Covenants.**

(i) The City will comply with all applicable Governmental Rules and will obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Primary Project and any Secondary Project(s), and the Primary Project and each Secondary Project will, during the Term of this Agreement, remain a Qualifying Facility as that term is used in 18 C.F.R Part 292. Any failure of the Primary Project or any Secondary Project to maintain Qualifying Facility status during the Term will be a material breach by the City of this Agreement. Avista reserves the right to review the Qualifying Facility status and associated support and compliance documents of the Primary Project and any Secondary Project at any time during the Term.



(ii) Avista will use commercially reasonable efforts to obtain approval of the WUTC (without adverse amendment or adverse condition) of this Agreement, including preparation and filing all documentation to effect all necessary notices, reports and other filings and furnishing all information as may be required by any Governmental Authority in connection with the foregoing, in each case as promptly as practicable. The City will use its commercially reasonable efforts to assist Avista, as requested by Avista from time to time, in connection with obtaining such WUTC approval. Each of Avista and the City shall have the right to review in advance and, to the extent practicable, consult with the other on, and shall consider in good faith the views of the other in connection with, any filing to be made with, or written materials to be submitted to, any Governmental Authority in connection with the process of obtaining WUTC approval of this Agreement. In exercising the foregoing rights, each of Avista and the City shall act reasonably and as promptly as practicable.

### **3. TERM OF AGREEMENT; DELIVERY TERM**

(a) The term of this Agreement (the “**Term**”) shall be effective on the Effective Date and shall terminate at 2400 PPT on December 30, 2037, unless terminated earlier in accordance with the terms and conditions of this Agreement; *provided, however*, that the City shall have no obligation to deliver or sell, and Avista shall have no obligation to accept or purchase, any Delivered Net Output or other output from the Primary Project or any Secondary Project prior to the commencement of the Delivery Term as defined in Section 3(b) below.

(b) The period during which the City will deliver Delivered Net Output to Avista under this Agreement (the “**Delivery Term**”) will commence at 00:00:01 PPT on December 31, 2022, and continue through hour ending 2400 PPT on December 30, 2037.

(c) The Delivery Term will terminate effective immediately upon termination of this Agreement for any reason.

(d) Avista shall have the right to terminate this Agreement within one hundred and twenty (120) days following any order of the WUTC that disapproves this Agreement or disallows recovery in Avista’s retail rates of costs arising from purchases of electric power pursuant to this Agreement. If the WUTC issues an order that approves this Agreement subject to conditions that adversely affect the financial benefit of the Agreement to either Avista or the City, and that is not in form and substance substantially the same as that requested by Avista in the applicable filing, then the adversely affected Party may terminate this Agreement by giving notice to the other Party within one hundred and twenty (120) days after the issuance of such order. Within thirty (30) days after receipt of an order from the WUTC setting forth a disapproval, disallowance or conditional approval of this Agreement, Avista shall notify the City of such order and the possible effects thereof.

(e) Notwithstanding any other provision of this Agreement, in the event that at any time during the Term the City incurs any Change in Carbon Law Costs, the City will not, without the agreement of Avista, seek to pass through any such costs to Avista, or otherwise seek to recover or obtain reimbursement of any such costs from Avista, under or in connection with this Agreement. Notwithstanding the foregoing, if the City determines that such costs are reasonably

likely, on a cumulative basis during the remainder of the Delivery Term, to be materially adverse to the City, the City will be entitled to provide notice of such determination to Avista, and Avista will, not later than twenty (20) Business Days following any such notice, commence to negotiate in good faith with the City regarding a mutually acceptable amendment to or replacement for this Agreement to address such costs. In the event that (i) the Parties do not, within a period of ninety (90) days following such notice, reach agreement regarding such amendment or replacement agreement, or (ii) the Parties do reach such agreement but the WUTC fails to approve such amendment or replacement agreement, the City will be entitled at any time thereafter, in its sole and absolute discretion, to terminate this Agreement effective sixty (60) days following notice from the City to Avista, without any liability whatsoever on the part of the City to Avista or any other Person for or as a result of such termination.

(f) Notwithstanding any other provision of this Agreement, in the event that at any time during the Term Avista incurs any Change in Carbon Law Costs, the City will grant to Avista, on each monthly billing statement under this Agreement after Avista incurs such Change in Carbon Law Costs, a credit in an amount equal to the amount of such costs that is reasonably allocable to such month (determined, if any Change in Carbon Law Costs are incurred by Avista on other than a monthly basis, on the basis of a reasonable monthly amortization of such Change in Carbon Law Costs over the remainder of the Delivery Term). Notwithstanding the foregoing, if the City determines that the amount of such credits is reasonably likely, on a cumulative basis during the remainder of the Delivery Term, to be materially adverse to the City, the City will be entitled to provide notice of such determination to Avista, and Avista will, not later than twenty (20) Business Days following any such notice, commence to negotiate in good faith with the City regarding a mutually acceptable amendment to or replacement for this Agreement to address such Change in Carbon Law Costs. In the event that (i) the Parties do not, within a period of ninety (90) days following such notice, reach agreement regarding such amendment or replacement agreement, or (ii) the Parties do reach such agreement but the WUTC fails to approve such amendment or replacement agreement, the City will be entitled at any time thereafter, in its sole and absolute discretion, to terminate this Agreement effective sixty (60) days following notice from the City to Avista, without any liability whatsoever on the part of the City to Avista or any other Person for or as a result of such termination.

(g) Effective as of the Termination Date, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement, and (b) that the obligations of the Parties under Sections 6(h), 9, 10, 13 and 22 will survive the expiration or termination for any reason of this Agreement; *provided that* such obligations with respect to indemnification will continue only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the Termination Date.

#### **4. PURCHASE AND SALE OF DELIVERED NET OUTPUT**

(a) The City shall, for the Delivery Term, sell and deliver, and Avista shall purchase and receive, at the Point of Delivery the total amount of electric power (not including any Facility Service Power or City Site Load), up to a maximum of 26 megawatts per hour, that is generated by the Primary Project and any Secondary Project(s). The total amount of electric power generated

by the Primary Project and any Secondary Project(s) that is delivered by the City to Avista at the Point of Delivery during the Delivery Term is the **“Delivered Net Output”**. A power meter located at the Point of Delivery (the **“Power Meter”**) shall register the Delivered Net Output on an hourly basis. The City shall deliver to Avista, and Avista shall receive, at all times all the Delivered Net Output. Notwithstanding that the City is entitled to include Surplus Output in Delivered Net Output, at no time shall Delivered Net Output, whether or not including any Surplus Output, exceed 26 MW per hour, and the City shall have no obligation to deliver or sell, and Avista shall have no obligation to accept or purchase, any output from the Primary Project or any Secondary Project other than Delivered Net Output in an amount up to a maximum of 26 MW in any hour; *provided, however*, that in the event Delivered Net Output in any hour exceeds 26 MW, Avista shall retain any amount in excess of 26 MW at zero cost.. Furthermore, notwithstanding any other provision of this Agreement, the City shall have no obligation to generate or sell or deliver, and Avista shall have no right to purchase or receive, any specified minimum amount of Delivered Net Output at any time during the Term, and the City’s sole obligation with respect to the sale and delivery of any output of the Plant and any power supply whatsoever under this Agreement is to sell to Avista all Delivered Net Output on the terms and subject to the conditions of this Agreement.

(b) The Power Meter shall record electric power that flows from and to the Primary Project and (unless otherwise required by Avista in accordance with the provisions of this Agreement) any Secondary Project, and from and to Avista’s electric system. Avista and the City both shall have the right to read and receive readings from the Power Meter. To the extent possible, the City shall be granted access to real time data provided by Avista. Avista shall read the meter and record the readings at least once per month. The Delivered Net Output in any month shall be calculated based on information from such meter readings. Monthly meter readings may be adjusted by prorating metered amounts to the number of days in such month.

(c) The Parties agree that any additional amounts of electric power made available from the Primary Project or any Secondary Project as a result of any modifications, enhancements, or expansions of or additions to the Primary Project or such Secondary Project during the Term shall be purchased and sold pursuant to this Agreement, so long as such modifications, enhancements, or expansions do not (i) cause the Delivered Net Output to exceed 26 MW per hour at any time during the Term or (ii) result in any breach or violation of the provisions of Section 2(b)(i). The City may indicate its agreement to the purchase and sale of such additional amounts of electric power by a written administrative approval, executed by a lawfully authorized city official. For the avoidance of doubt, the City may not sell any electric power from the Primary Project or any Secondary Project to any third party during the Delivery Term.

(d) Notwithstanding any other provision of this Agreement, the City will be entitled, at its sole option, to develop, construct, install, own, and operate energy storage or solar photovoltaic facilities at the Premises. Any such facilities shall be deemed one or more Secondary Projects, and the Surplus Output produced by any such facilities shall be included in Delivered Net Output for purposes of this Agreement if and to the extent that (i) such treatment would not (A) cause the Delivered Net Output to exceed 26 MW per hour at any time during the Term or (B) result in any breach or violation of the provisions of Section 2(b)(i) and (ii) such facilities do not, without the prior written consent of Avista, use any portion of Avista’s distribution system for the delivery of electric power.

## **5. OPERATION OF PRIMARY PROJECT AND ANY SECONDARY PROJECT(S)**

(a) The City shall operate and maintain the Primary Project and any Secondary Project(s) in accordance with applicable Governmental Rules and Good Industry Practice.

(b) Interconnection of the Primary Project and any Secondary Project(s) with Avista's electrical system is (or will be) governed by a separate Interconnection Agreement between the Parties.

(c) Either Party may interrupt, suspend or curtail delivery, receipt or acceptance of delivery of electric power at the Point of Delivery, if either Party reasonably determines that it is required to do so in order to comply with any Governmental Rule or if the failure to do so:

(i) Is reasonably likely to endanger any Person or property, or either Party's facilities or customers, or any electric system with which Avista's system is interconnected;

(ii) Is reasonably likely to cause, or contribute to, an imminent significant disruption of utility service to either Party's customers;

(iii) Is reasonably likely to interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to either Party's facilities;

(iv) Is reasonably likely to cause, contribute to, or necessitate operation of any of Avista's hydroelectric projects in violation of any license or other regulatory requirements; or

(v) Is contrary to Good Industry Practice.

(d) A Party shall promptly notify the other Party in accordance with Exhibit A of the reasons for any such disconnection, interruption, suspension or curtailment. Such Party shall use reasonable efforts to mitigate and limit the duration of any such disconnection, interruption, supervision or curtailment.

(e) Without the prior written consent of Avista, the City may not use any portion of Avista's distribution system for the delivery of output from the Primary Project or a Secondary Project to Facility Service Power or City Site Load.

## **6. PAYMENTS**

(a) Avista shall prepare and submit to the City monthly statements during the Term based upon Delivered Net Output delivered to Avista during the previous month. If Avista is entitled to a credit on any such monthly statement for any Change in Carbon Law Costs incurred by Avista, Avista shall include with the applicable statement appropriate documentation to substantiate such credit and the amount thereof. Payments owed by Avista shall be paid no later than the twentieth (20<sup>th</sup>) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of the applicable monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

**(b)** If the City is obligated to make any payment to Avista under the terms of this Agreement, Avista shall invoice the City for such payment. The price of electric power delivered to the City at the Point of Delivery at any time during this Agreement shall be determined in accordance with Avista's then-applicable retail tariff in effect at the time such electric power is delivered as such tariff may be changed or replaced from time to time. The applicable retail tariff in effect at the time of the execution of this Agreement is Avista's Rate Schedule 31 for the State of Washington.

**(c)** Either Party may, if such Party is obligated to make any payment or refund to the other Party, net and set off such payment or refund amount against any current or future payments due to the other Party under this Agreement. Avista shall prepare and present a single net bill reflecting the offset of sums owed between the Parties as a result of the sale and delivery of electric power during a month. The Party owing funds in accordance with the net bill shall pay the other Party no later than the twentieth (20<sup>th</sup>) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

**(d)** Avista shall pay the City monthly for Delivered Net Output from the Primary Project at the rates set forth in Exhibit B. Avista shall pay the City monthly for Delivered Net Output that is Surplus Output at the as-available rate calculated at the time of delivery pursuant to 18 C.F.R. § 292.304(d)(1)(i). The as-available rate shall be calculated as 85% of the lesser of (i) the Mid C Day-Ahead Index Price for the applicable period or (ii) the EIM Hourly Price for the applicable period. If the City delivers to Avista any Delivered Net Output that is Surplus Output during any period when the as-available rate is negative, Avista will receive a credit from the City for such Surplus Output, on the City's billing statement to Avista for the applicable monthly billing period, in an amount equal to 115% of the lesser of (i) the absolute value of the Mid C Day-Ahead Index Price for the applicable period or (ii) the absolute value of the EIM Hourly Price for the applicable period. Avista shall not have any obligation to pay any amount whatsoever for any Delivered Net Output in excess of 26 MW in any hour.

**(e)** If either Party is obligated to make any payment to the other Party under the terms of this Agreement for any reason other than the sale and delivery of electric power, the Party to which such payment is due shall bill the Party from which such payment is due. The Party from which such payment is due shall pay the other Party no later than the twentieth (20<sup>th</sup>) day of the month following the end of the applicable monthly billing period or five (5) Business Days after the receipt of the applicable monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day. Overdue payments will accrue interest in accordance with Section 6(i) from the due date to the date of payment.

**(f)** All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

**(g)** A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, at any time within twelve (12) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice



or invoice adjustment (except any portions thereof which are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, and to give notice of the objection to the other Party. Any dispute with respect to any invoice or invoice adjustment will be in writing and will state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment will be made within five (5) Business Days of such resolution, together with interest accrued at the Interest Rate from the due date to the date paid. Any Party receiving an inadvertent overpayment will return such overpayment upon request or will deduct such overpayment from subsequent payments, in each case together with interest accrued at the Interest Rate from the date of such overpayment to the date repaid or deducted by the Party receiving such overpayment. Each Party hereby waives any and all rights that it may have to dispute any invoice or invoice adjustment unless such Party notifies the other Party in accordance with this Section 6(g) within twelve (12) months after the invoice is rendered or the applicable adjustment to the invoice is made.

(h) Each Party (and its Representatives) will have the right, at such Party's sole expense, during normal working hours and upon reasonable prior written notice to the other Party, to examine or make copies of the records and data of the other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to either Party and including metering records of the amount of the Delivered Net Output) to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection will be deemed waived. This Section 6(h) will survive any termination of this Agreement for a period of one (1) year from the date of such termination for the purpose of such statement and payment objections.

(i) In addition to the remedies set forth in this Agreement, any amounts owing after the due date specified in this Agreement will be subject to interest at the Interest Rate.

## **7. METERING**

(a) Avista shall be responsible for any meter readings required by this Agreement.

(b) Avista shall own and maintain the Power Meter. The Power Meter shall be used to determine the billing hereunder, and the meter shall be located at the Point of Delivery. The City shall reimburse Avista's reasonable costs, if any for any replacement of such meter. For any planned replacement of the Power Meter by Avista for which the City bears cost responsibility pursuant to this Agreement, Avista shall, prior to commencing work on any such replacement, consult with the City regarding Avista's planning, design, operation, maintenance, repair and replacement of such Power Meter, including providing estimated costs, with the City. Avista shall use its best efforts to minimize such costs. If requested by the City, Avista shall provide copies of applicable test and calibration records and calculations pertaining to the Power Meter. Avista shall permit a representative of the City to be present at all times the Power Meter is being tested.

(c) Avista agrees to test, at its expense, the Power Meter in accordance with, and at such intervals as are consistent with, Avista's normal procedures, and in any event not less than once every two years. Avista shall conduct additional tests of the Power Meter if requested by the City, and the City shall reimburse Avista reasonable costs not to exceed \$1,000 per test, *provided* that the City may request an additional meter test at Avista's expense if the last meter test occurred more than twelve (12) months prior to the City's request. In addition, Avista shall not charge for any meter test requested by the City if such test shows that Avista's meter operates outside of accepted tolerances as determined by Avista in accordance with Good Industry Practice.

(d) Adjustments shall be made in meter readings and billings for errors in a meter reading billing discovered within twelve (12) months of the error. For purposes of adjusting meter readings and billings, in the event that it cannot be determined when the Power Meter commenced to malfunction, it shall be assumed that the Power Meter commenced to malfunction on a date which is the most recent of: (i) twelve (12) months prior to the date of discovery of the malfunction; or (ii) one half of the interval of time that elapsed between the date of the last meter test and the date of the discovery of the malfunction.

(e) Notwithstanding any other provision of this Agreement, Avista shall be responsible, at its sole cost and expense, for installing, testing, calibrating, operating, and maintaining any Primary Project metering or communications equipment additions or enhancements that are required as a result of or in connection with any participation by Avista in the California Independent System Operator Energy Imbalance Market (CAISO EIM) or any other energy market.

## 8. **FORCE MAJEURE**

(a) Neither Party shall be liable to the other Party for, or be considered to be in breach of or default under this Agreement, on account of any failure to perform or delay in performance that is attributable to any of the following events, which event or circumstance was not anticipated or reasonably foreseeable as of the Effective Date ("**Force Majeure**"):

(i) Any cause or condition that is beyond such Party's reasonable control and that is not the result of such Party's negligence and that, by the exercise of due diligence, the Party claiming Force Majeure is unable to overcome or avoid or cause to be avoided, including the following (*provided, however*, that the existence of the following factors will not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances that in the aggregate with such factors establish that a Force Majeure as defined in the foregoing clauses of this Section 8(a)(i) has occurred): fire, flood, earthquake, volcanic activity, wind, drought and other acts of the elements; court order and act of civil, military or Governmental Authority; strike, lockout and other labor dispute; riot, insurrection, sabotage or war; federal, state, or other governmental laws, orders, decrees, restraints, or regulations; Forced Outage; breakdown of or damage to facilities or equipment; or electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected ; or

(ii) Any action taken by such Party which is, in the reasonable good faith judgment of such Party, necessary or prudent in accordance with Good Industry Practice to protect the operation, performance, integrity, reliability or stability of such Party's facilities or any electric system with which such Party's electric system is interconnected, whether such actions occur automatically or manually.

(b) Nothing contained in this section shall require any Party to settle any strike, lockout or other labor dispute. In the event that any Force Majeure occurrence prevents performance by a Party under this Agreement, the non-performing Party shall provide the other Party written notice thereof within seven (7) days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence, assurances that suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure and that the nonperforming Party is using its commercially reasonable best efforts to remedy its inability to perform. The non-performing Party shall resume performance of the obligations prevented by the Force Majeure occurrence with all reasonable dispatch. The performing Party shall not be required to perform or resume performance of its obligations to the non-performing Party corresponding to the obligations of the performing Party excused by the Force Majeure occurrence.

(c) Force Majeure does not include changes in the ownership, occupancy, or operation of the Primary Project or any Secondary Project or in the operation of Avista that occur because of normal business occurrences which include but are not limited to: changes in business economic cycles; recessions; bankruptcies; tax law changes; sales of businesses; closure of businesses; changes in production levels; and changes in system operations.

(d) Force Majeure does not excuse any Party from making payments of money due and payable under this Agreement.

(e) Notwithstanding anything herein, the City shall not claim Force Majeure as a result of any Governmental Rules adopted by the City.

(f) Force Majeure will not be based on (i) the loss of Avista's markets, or (ii) Avista's inability economically to use or resell any Delivered Net Output purchased hereunder; *provided, however,* that notwithstanding anything herein, Avista may claim Force Majeure in the event that Avista ceases (for any reason that is beyond Avista's reasonable control and that is not the result of Avista's negligence and that, by the exercise of due diligence, Avista is unable to overcome or avoid or cause to be avoided) providing electric power to a substantial portion of its retail electric load within the City of Spokane.

(g) The Party claiming Force Majeure shall use its commercially reasonable best efforts to mitigate and limit the duration of any Force Majeure event.

## **9. INDEMNITY**

(a) The City shall indemnify, defend and hold harmless Avista and its Representatives from and against any and all losses, expenses, liabilities, claims or actions (hereafter "**Loss**") based upon or arising out of bodily injuries or damages to Persons, including death resulting therefrom, or physical damages to or losses of property caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of any City-owned equipment or facilities,



including the Primary Project or any Secondary Project, (ii) the City's negligence or intentional misconduct, or (iii) any breach of this Agreement by the City. Avista shall indemnify, defend and hold harmless the City and its Representatives from and against and from any Loss caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of Avista's electrical system, (ii) Avista's negligence or intentional misconduct, or (iii) any breach of this Agreement by Avista. In the event that any such Loss is caused by the negligence of both the City and Avista, including their employees, agents, suppliers and subcontractors, the Loss shall be borne by each of the City and Avista in the proportion that its respective negligence bears to the total negligence causing the Loss. To the extent that a Loss is caused by, results from or arises out of or in connection with any matter that is addressed in the Interconnection Agreement, each Party's rights and obligations with respect to such Loss shall be subject to and governed exclusively by the terms and conditions of the Interconnection Agreement, including any and all limitations of liability, releases and waivers appearing in such agreement.

**(b) THE CITY AND AVISTA REPRESENT AND WARRANT THAT THE TERMS AND CONDITIONS OF THE FOREGOING INDEMNITY PROVISIONS ARE THE SUBJECT OF MUTUAL NEGOTIATION BY THE PARTIES, AND ARE SPECIFICALLY AND EXPRESSLY AGREED TO IN CONSIDERATION OF THE MUTUAL BENEFITS DERIVED UNDER THE TERMS OF THE AGREEMENT.**

#### **10. LIMITATION OF LIABILITY**

**(a) Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, THE CITY AND AVISTA AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION AND THE LIKE), WHETHER BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; *PROVIDED, HOWEVER*, THAT THE FOREGOING WILL NOT IN ANY EVENT LIMIT THE LIABILITY OF EITHER PARTY TO THE OTHER UNDER SECTION 9 FOR OR WITH RESPECT TO THIRD-PARTY CLAIMS.

**(b) Compliance with Express Negligence Rule; RCW 4.24.115 Acknowledgement and Waiver.**

**(i)** To the fullest extent permitted by applicable law, all releases, disclaimers, limitations on liability, and indemnities in this Agreement, including those in this Section 10, shall apply even in the event of the sole, joint, or concurrent negligence, strict liability, or fault of the party whose liability is released, disclaimed, limited, or indemnified.

**(ii)** Notwithstanding the foregoing, with respect to any and all claims against an indemnified Party by any Representative of an indemnifying Party, the indemnification

obligations of the indemnifying Party herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the indemnifying Party under applicable law, including any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts (including the Washington State Industrial Insurance Act, RCW Title 51) (collectively, the “**Industrial Insurance Acts**”).

(iii) EACH OF THE PARTIES HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH SUCH PARTY MAY BE ENTITLED UNDER THE INDUSTRIAL INSURANCE ACTS (INCLUDING SUCH PARTY’S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND ANY EQUIVALENT LAWS), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW 4.24.115, AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND DAMAGES (INCLUDING ATTORNEYS’ FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY’S REPRESENTATIVES; *PROVIDED, HOWEVER*, THAT THE INDEMNIFYING PARTY’S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION 10 EXTENDS ONLY TO CLAIMS AGAINST THE INDEMNIFYING PARTY BY OR ON BEHALF OF THE INDEMNIFIED PARTY UNDER OR PURSUANT TO THIS AGREEMENT, AND DOES NOT INCLUDE ANY CLAIMS MADE BY THE INDEMNIFYING PARTY’S REPRESENTATIVES DIRECTLY AGAINST THE INDEMNIFYING PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY THE PARTIES TO THIS AGREEMENT AND EACH PARTY HAS HAD THE OPPORTUNITY, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

(iv) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Parties agree that if the provisions of RCW 4.24.115 apply to any claim by an indemnified Party against an indemnifying Party under this Agreement, then, with respect to such claim, (A) in no event shall the indemnifying Party be obligated to indemnify the indemnified Party for damages arising out of bodily injury to Persons or damage to property resulting from the sole negligence of the indemnified Party or its Representatives, and (B) if indemnification is sought for damages arising out of bodily injury to Persons or damage to property resulting from the concurrent negligence of the indemnifying Party (or its Representatives) and the indemnified Party (or its Representatives), the indemnifying Party shall indemnify the indemnified Party for such damages only to the extent of the negligence of the indemnifying Party or its Representatives.

## 11. **INSURANCE**

(a) **Business Insurance.** Prior to operating the Primary Project or any Secondary Project, the City, at his own cost, shall obtain and maintain the following insurance in force over the Term of this Agreement and shall provide certificates of all insurance policies. Avista’s acceptance of the certificate of insurance is not intended to, and will not reduce, limit, affect, or

modify the primary obligations and liabilities of the City under the provisions of this Agreement. The City must provide notice of cancellation or notice of change in policy terms at least thirty (30) days prior to any change or termination of the policies.

(b) **General Liability.** The City shall carry and maintain comprehensive general liability insurance in a form acceptable to Avista with coverage of not less than \$10,000,000 per occurrence, including coverage of bodily injury, property damage liability, and contractual liability specifically related to the indemnity provisions of this Agreement. The deductible will not exceed the City's financial ability to cover claims.

(c) **Property Insurance.** The City shall carry and maintain property insurance for the full replacement value of the Primary Project and each Secondary Project in a form acceptable to Avista, a deductible not to exceed the City's financial ability.

(d) **Qualifying Insurance Coverage from Third Party Insurers.** Any insurance coverage required by this Section 11 and not provided by the City through self-insurance must be obtained from an insurance carrier licensed to conduct business in the state of Washington, must be acceptable to Avista, such acceptance not to be unreasonably withheld, but in no event have, as of the date of placement of such coverage during each year during the Term, less than an A.M. Best Rating of A-, Class VIII. The policies required under this Agreement must include (i) provisions or endorsements naming Avista and its directors, officers and employees as additional insureds, (ii) Avista as a loss payee as applicable, (iii) a cross-liability and severability of interest clause, and (iv) provisions such that the policy is primary insurance with respect to the interests of Avista and that any other insurance maintained by Avista is excess and not contributory.

(e) **Right of City to Satisfy Insurance Requirements Through Self-Insurance.** The City shall be entitled, in its sole discretion, to satisfy any or all of the insurance requirements of this Agreement through self-insurance, including through a combination of self-insurance retention and excess liability coverage, and any such self-insurance shall be deemed to satisfy the applicable requirements of this Agreement with respect to coverage by a third party insurer.

## **12. ENVIRONMENTAL ATTRIBUTES**

Avista shall own all Environmental Attributes generated by the Primary Project during the Term. Except as may be otherwise agreed by the Parties, the City will have all right, title, and interest in and to any and all Environmental Attributes generated by the Primary Project from and after the expiration or earlier termination of the Term.

## **13. DISPUTE RESOLUTION**

(a) **Informal Dispute Resolution.** The Parties agree that cooperation and communication are essential to resolving issues efficiently, and therefore agree that they will use reasonable efforts to attempt to resolve through informal dispute resolution any dispute (including any payment dispute) between them with respect to this Agreement. Should any such dispute arise, either Party may deliver to the other Party a written dispute notice identifying the disputed issue. Within ten (10) days after delivery of any such dispute notice, the City's Director of Solid Waste Management and Avista's representative will meet to attempt to resolve the dispute. If such representatives cannot resolve the dispute within ten (10) days after such meeting, the Parties will

refer the dispute to the City's Director of Utilities and Avista's representative, who will then meet to attempt to resolve the dispute. If such representatives cannot resolve the dispute within fourteen (14) days after such meeting, then either Party may initiate mediation in accordance with the provisions of Section 13(b).

(b) **Mediation.** If the Parties have been unable to resolve the dispute through the informal dispute resolution procedures set forth in Section 13(a), then each Party will, within fifteen (15) days after completion of such informal dispute resolution process, propose to the other Party in writing not more than five (5) candidates to act as mediator with respect to the dispute. Within seven (7) days after the Parties exchange lists of mediator candidates, the Parties will meet and confer to choose one name from the list. If the Parties are unable to agree on a mediator within thirty (30) days after completion of the steps outlined above, the Parties will jointly petition the Presiding Judge of the Spokane County Superior Court to appoint a mediator. The Parties will, with the assistance of the mediator, use reasonable efforts to resolve the dispute within thirty (30) days after commencement of the mediation. The Parties will share the fees and expenses of the mediator equally. If mediation fails to resolve the dispute within thirty (30) days after commencement of the mediation, either Party may thereafter seek redress in court for resolution of the dispute. Except as otherwise provided in this Agreement, the Parties will continue to perform their respective obligations under this Agreement pending resolution of any dispute.

#### 14. **ASSIGNMENT**

(a) **Required Consent.** Neither Party shall assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that a Party may, without the consent of the other Party, and by providing prior reasonable notice under the circumstances to the other Party, assign, transfer, pledge or otherwise dispose of its rights and interests under this Agreement to: (i) any Person in connection with an assignment of the Agreement for financing or refinancing purposes; (ii) any entity created to operate the Primary Project or any Secondary Project; or (iii) any Affiliate of such Party, so long as the creditworthiness of such Affiliate is at least equal to that of the assigning Party.

(b) **Continuing Obligations.** Any assignments authorized as provided for in this Section 14 shall not operate to relieve the Party assigning this Agreement or any of its rights, interests or obligations hereunder of the responsibility of full compliance with the requirements of this Agreement unless: (i) the other Party consents, such consent not to be unreasonably withheld; and (ii) the assignee agrees in writing to be bound by all of the obligations and duties of the assigning party provided for in this Agreement.

(c) **Reimbursement of Costs.** Either Party shall, upon request from the other Party, execute and deliver such documents as may be reasonably necessary to accomplish any assignment, transfer, pledge or disposition of rights permitted under this Section 14, so long as the rights of the non-assigning Party are not altered, amended, diminished or otherwise impaired, and so long as the requesting Party reimburses the other Party for all reasonable costs incurred in connection with the review, execution or delivery of such documents.

(d) **Approval by the City of Assignments.** The City may approve assignments under this Section 14 by written consent of the Mayor, in accordance with City Procedures and Policy.

(e) **Binding Agreement.** This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

## **15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES**

Except as specifically provided in Section 9, Section 10 or otherwise in this Agreement, there are no third party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, and their respective successors, heirs and assigns permitted under Section 14.

## **16. DEFAULT**

(a) An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after delivery of written notice;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respects when made or when deemed made or repeated;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied in accordance with Section 16(b), below;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonable satisfactory to the other Party.

(b) In the Event of Default, the following shall apply:

(i) The non-defaulting Party shall give written notice to the Defaulting Party of the Event of Default in accordance with this Agreement.

(ii) Except for an Event of Default that arises from failure to make money payments or from a Party becoming Bankrupt, if, after twenty (20) days following receipt of such notice, the Defaulting Party has not cured the Event of Default, the non-defaulting Party may, at its option, terminate this Agreement; *provided, however*, if the defaulting Party, within such twenty (20)-day period, commences and thereafter proceeds with all due

diligence to cure such default, such twenty (20)-day period shall be extended up to six (6) months after written notice to the defaulting Party, as may be necessary to cure the event of default with all due diligence. For an Event of Default that arises from the failure to make money payments, the non-defaulting Party may, at its option, terminate this Agreement if the Defaulting Party shall have failed to cure the failure to pay within three (3) Business Days following receipt of notice of such failure. For an Event of Default that arises from a Party becoming Bankrupt, the non-defaulting Party may, at its option, immediately terminate this Agreement upon notice to the Defaulting Party.

(iii) Upon the Event of Default and an expiration of any period to cure granted herein, the non-defaulting Party may, but has no obligation, to terminate this Agreement effective upon notice to the Defaulting Party and may exercise all other rights and remedies available to the non-defaulting Party under applicable law. On behalf of the City, such actions may be accomplished by the Mayor. Whether or not the non-defaulting Party elects to terminate this Agreement, it may, in addition to other remedies provided for herein, pursue such remedies as are available at law or in equity including suspension of its performance so long as the Event of Default is continuing and has not been cured.

(c) Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach or default by the other Party is in addition to, and not in lieu of, all other rights or remedies afforded to such Party under any other provisions of this Agreement, by law or otherwise on account of the breach or default.

## **17. GOVERNMENTAL AUTHORITY**

This Agreement is subject to all applicable Governmental Rules. All Governmental Rules now or hereafter in effect that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

## **18. SEVERAL OBLIGATIONS**

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement. Further, neither Party shall have any rights, power or authority to enter into any agreement or undertaking for or on behalf of, to act as to be an agent or representative of, or to otherwise bind the other Party.

## **19. IMPLEMENTATION**

Each Party shall take such action (including the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.



**20. NON-WAIVER**

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

**21. ENTIRE AGREEMENT AND AMENDMENT**

This Agreement together with its exhibits constitutes the entire agreement of the Parties hereto and supersedes and replaces any prior agreements or understandings between said Parties, entered into for the same or similar purposes. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

**22. GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, without reference to conflict of laws provisions that would result in the application of the laws of any other jurisdiction. Any action at law or in equity to enforce the terms and conditions of this Agreement shall, unless subject to the exclusive jurisdiction of the WUTC, be brought in Spokane County, Washington.

**23. COMPLIANCE WITH LAWS**

Both Parties shall comply with all applicable laws and regulations of governmental agencies having jurisdiction over such Party. The City shall obtain all required approvals or authorization from governmental agencies having jurisdiction over the sale of electric power from the Primary Project or any Secondary Project.

**24. FORWARD CONTRACT; FORWARD AGREEMENT**

The Parties acknowledge and intend that this Agreement, the transactions contemplated hereby, and any instruments that may be provided by either Party hereunder will each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, that Avista and the City are "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code, that all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code, and that this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, in any dispute or otherwise, or otherwise take any position to the effect that this Agreement, the transactions contemplated hereby, and any instrument(s) that may be provided by either Party hereunder do not each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, or that Avista and the City are not "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code.

## **25. NOTICES**

All notices, requests, statements or payments will be made in writing except in the case of operational communications regarding pre-scheduling, scheduling, interruptions, curtailments, or outages, which will be made orally in accordance with the provisions of Exhibit A. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or facsimile. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received.

To Avista:                      Director, Energy Resources  
                                        Avista Corporation  
                                        P.O. Box 3727  
                                        MSC-7  
                                        Spokane, Washington 99220-3727  
                                        Facsimile No.: (509) 495-4272

To the City:                     Director  
                                        Spokane Waste to Energy Facility  
                                        2900 S. Geiger Blvd.  
                                        Spokane, WA 99224  
                                        Facsimile No.: (509) 625-6537

with a copy (which shall not constitute notice) to:

City Attorney  
Office of the City Attorney  
City of Spokane  
808 W. Spokane Falls Blvd.  
5th Floor, Municipal Bldg.  
Spokane, Washington 99201-3326  
Facsimile No.: (509) 625-6277

Changes in persons or addresses for submittal of written notices by a Party to this Agreement shall be made in writing to the other Party and delivered in accordance with this Section 25. Any oral notice required hereby, which affects the payments to be made hereunder shall be confirmed in writing as promptly as practicable after the oral notice is given. Exhibit A shall govern oral communications between the Parties.

## **26. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute only one legal instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.



**27. EXHIBITS**

This Power Purchase Agreement includes the following exhibits, which are attached and incorporated by reference herein:

- Exhibit A - Communications
- Exhibit B - Payment Schedule

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the first date herein-above set forth:

CITY OF SPOKANE

AVISTA CORPORATION

By:

By:



\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Type Name)

Dennis Vermillion

\_\_\_\_\_  
(Type Name)

Title:

Title:

President and CEO

Date:

Date:

January 7, 2022

Attest:

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

Approved as to form:

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

## **Exhibit A**

### **Communications**

#### **A-1. Oral Communications**

All operational communications between the City and Avista regarding pre-scheduling, scheduling, interruptions, curtailments, or outages shall be made orally by notifying the following parties:

(a) Pre-Schedule (5:30 am to approximately 1:30 pm on normal Business Days):

Avista                      Pre-Scheduler (509) 495-4911  
                                 Alternate Phone Number (509) 495-4073

the City                      Business Phone (509) 342-5820  
                                 Alternate Phone Number (509) 625-6516

(b) Real-Time Schedule (available 24 hours per day):

Avista                      Real-Time Scheduler (509) 495-8534

the City                      Business Phone (509) 342-5820  
                                 Alternate Phone Number (509) 625-6516

(c) During normal business hours, all oral communications relating to interruptions, curtailments, and outages:

Avista                      System Operator (509) 495-4105  
                                 Alternate Phone Number (509) 495-4934

the City                      Business Phone (509) 342-5820  
                                 Alternate Phone Number (509) 625-6516

(d) Outside of normal business hours (nights, weekends, and holidays), all oral communications relating to interruptions, curtailments, and outages shall take place between the following personnel:

Avista                      System Operator (509) 495-4105  
                                 Alternate Phone Number (509) 495-4934

the City                      Business Phone (509) 342-5820  
                                 Alternate Phone Number (509) 625-6516

**A-2.** The City shall notify Avista's system operator, as soon as is practical, whenever the Primary Project or Secondary Project is or is expected to be brought on line, or taken off line.

- A-3.** Changes in persons or phone numbers for oral communications by a Party to this Agreement may be made orally to the other Party in accordance with this Exhibit but shall be confirmed in writing as an amended Exhibit A. A copy of said amended Exhibit A shall be mailed or delivered to the representatives of the Parties designated in Section 25.

## Exhibit B

### Power Purchase Payment Rates

For the period December 31, 2022, through December 30, 2037, Avista agrees to buy the Delivered Net Output from the City's Waste to Energy Facility (the Primary Project) at the following monthly rates:

Year	Rate Jan-Feb (\$/MWh)	Rate Mar-Jun (\$/MWh)	Rate Jul-Dec (\$/MWh)
2023	\$ 51.07	\$ 39.72	\$ 51.07
2024	\$ 52.09	\$ 40.52	\$ 52.09
2025	\$ 53.14	\$ 41.33	\$ 53.14
2026	\$ 54.20	\$ 42.15	\$ 54.20
2027	\$ 55.28	\$ 43.00	\$ 55.28
2028	\$ 56.39	\$ 43.86	\$ 56.39
2029	\$ 57.52	\$ 44.73	\$ 57.52
2030	\$ 58.67	\$ 45.63	\$ 58.67
2031	\$ 59.84	\$ 46.54	\$ 59.84
2032	\$ 61.04	\$ 47.47	\$ 61.04
2033	\$ 62.26	\$ 48.42	\$ 62.26
2034	\$ 63.50	\$ 49.39	\$ 63.50
2035	\$ 64.77	\$ 50.38	\$ 64.77
2036	\$ 66.07	\$ 51.39	\$ 66.07
2037	\$ 67.39	\$ 52.41	\$ 67.39



**Agenda Sheet for City Council Meeting of:**  
02/14/2022

<b>Date Rec'd</b>	2/2/2022
<b>Clerk's File #</b>	ORD C36174
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	2021099
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	PUBLIC WORKS
<b>Contact Name/Phone</b>	MARLENE FEIST 625-6505
<b>Contact E-Mail</b>	MFEIST@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Special Budget Ordinance
<b>Agenda Item Name</b>	5200-SBO BUSINESS GRIND AND OVERLAY

**Agenda Wording**

SBO increasing the City Street Fund appropriation by \$3,980,000 solely for grind and overlay project costs in the Street Department and increasing revenue by \$262,000 for a contribution from Spokane Transit Authority for the Gardner Ave. grind and

**Summary (Background)**

This SBO will support a package of street maintenance that includes grind and overlay work on local access streets in commercial areas in all three Council Districts. The seven project locations are located in areas supporting multiple businesses, medical and regional facilities. STA has agreed to partner on costs for Gardner Ave. located adjacent to STA's facilities.

Lease? NO Grant related? NO Public Works? YES

**Fiscal Impact**

Expense	\$ 3,980,000.00	# 1100-21700-42300-54201-23009
Revenue	\$ 262,000.00	# 1100-21700-99999-34410-23009
Select	\$	#
Select	\$	#

**Approvals**

<b><u>Dept Head</u></b>	FEIST, MARLENE
<b><u>Division Director</u></b>	FEIST, MARLENE
<b><u>Finance</u></b>	ORLOB, KIMBERLY
<b><u>Legal</u></b>	SCHOEDEL, ELIZABETH
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL

**Council Notifications**

<b><u>Study Session\Other</u></b>	Finance 1/24/22
<b><u>Council Sponsor</u></b>	Kinnear/Wilkerson

**Distribution List**

eraea@spokanecity.org
kpicanco@spokanecity.org
publicworksaccounting@spokanecity.org

**Additional Approvals**

<b><u>Purchasing</u></b>	kemiller@spokanecity.org
<b><u>MANAGEMENT &amp; BUDGET</u></b>	pingiosi@spokanecity.org


# Committee Agenda Sheet

## Finance and Administration Committee

<b>Submitting Department</b>	Public Works Division – Street Department
<b>Contact Name &amp; Phone</b>	Marlene Feist, 625-6505
<b>Contact Email</b>	<a href="mailto:mfeist@spokanecity.org">mfeist@spokanecity.org</a>
<b>Council Sponsor(s)</b>	CM Kinnear
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: <u>10minutes</u>
<b>Agenda Item Name</b>	SBO for Additional Street Maintenance Supporting Economic Development
<b>Summary (Background)</b>	<p><u>Background/History:</u>  <i>This SBO will support a package of street maintenance that includes grind and overlay work on local access streets in commercial areas in all three Council Districts. These streets aren't arterials, and since they aren't in residential areas, such local access streets are often overlooked when maintenance needs are identified. The chosen locations were selected based on supporting at least 5 or more local businesses and/or where possible supporting regional facilities such as areas around community medical services. STA has agreed to partner on repairs near their facility adjacent to Gardner Ave. Design work is slated to proceed this spring with construction expected to be completed in fall 2022. Below is the list of streets included in the package. A map is attached.</i></p> <p><u>District 1</u></p> <ul style="list-style-type: none"> <li>• <b>Florida from Wellesley to Francis</b>, located within the Northeast Public Development Authority designed to encourage economic growth and development. 12 businesses are located along this section of road.</li> <li>• <b>Springfield from Napa to Trent</b>, In addition to the 6 businesses that are located along this section of roadway, the City's Nelson Service Center and Park Operations also access this roadway.</li> <li>• <b>Boone from Nelson to Greene</b>, 7 businesses are located along this section of Boone. It is also adjacent to the City's Nelson Service Center and Park Operations.</li> </ul> <p><u>District 2</u></p> <ul style="list-style-type: none"> <li>• <b>Rockwood Boulevard from Grand to Cowley</b>, adjacent to the Providence Sacred Heart Medical Center and related medical facilities that have been critical during the pandemic.</li> <li>• <b>8<sup>th</sup> from McClellan to Cowley</b>, adjacent to and passes through the core of Providence Sacred Heart medical facilities.</li> </ul> <p><u>District 3</u></p> <ul style="list-style-type: none"> <li>• <b>Gardner from Maple to Monroe</b>, adjacent to the new regional Mental Health Crisis Stabilization Center, jointly supported by the City and Spokane County. Gardner also is adjacent to the STA bus garage. STA is contributing to this section of work.</li> <li>• <b>Cataldo from Washington to Division</b>, 8 businesses are located along this section of roadway. Near-by improvements include the revitalized Riverfront Park, new Podium sports complex and the planned football and soccer stadium.</li> </ul>

	<p><u>Executive Summary:</u></p> <ul style="list-style-type: none"> <li>• <i>Perform grind &amp; overlay street maintenance of Local Commercial streets supporting economic development and regional medical facilities.</i></li> <li>• <i>Seven total project locations, two to three in each council district.</i></li> <li>• <i>Design to begin in 2022, construction to be complete by Fall, 2022</i></li> <li>• <i>Total project cost: \$3,980,000</i></li> <li>• <i>STA is partnering with the City and will fund half of the Gardner Ave. project, \$262,000</i></li> </ul>
<p><b>Proposed Council Action &amp; Date:</b>               <b>Feb. 7<sup>th</sup></b></p>	<p>Approve SBO for additional street pavement maintenance supporting economic development.</p>
<p><b>Fiscal Impact:</b>  Total Cost: \$3,980,000; net cost to City of \$3,718,000 after STA contribution of \$262,000.  Approved in current year budget?    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Funding Source        <input checked="" type="checkbox"/> One-time    <input type="checkbox"/> Recurring  Specify funding source:    Street Maintenance – Fund 1100</p> <p>Expense Occurrence    <input checked="" type="checkbox"/> One-time    <input type="checkbox"/> Recurring</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><b>Operations Impacts</b></p> <p>What impacts would the proposal have on historically excluded communities?  <i>Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.</i></p>	
<p>How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?  <i>N/A – This is an SBO to support a public works project to address pavement conditions in some commercial areas and should not impact racial, gender identity, national origin, income level, disability, sexual orientation or other existing disparity factors.</i></p>	
<p>How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?  <i>Public Works follows the City’s established procurement and public works bidding regulations and policies to bring items forward, and then uses contract management best practices to ensure desired outcomes and regulatory compliance.</i></p>	
<p>Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?  <i>This project is consistent with our adopted transportation maintenance project prioritization as well as the annual budget and strategic initiative to advance street maintenance activities.</i></p>	



ORDINANCE NO C36174

An ordinance amending Ordinance No. C-36161, passed by the City Council December 13, 2021, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2022, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2022, and providing it shall take effect immediately upon passage," and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2022 budget Ordinance No. C-36161, as above entitled, and which passed the City Council December 13, 2021, it is necessary to make changes in the appropriations of the City Street Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

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

The City of Spokane does ordain:

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

- 1) Increase revenue by \$262,000
  - A) Of the increased revenue, \$262,000 is a contribution from the Spokane Transit Authority for the Gardner Avenue project.
- 2) Increase appropriation by \$3,980,000
  - A) Of the increased appropriation, \$3,980,000 is provided solely for grind and overlay project costs in the Street Department.

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to fund the "Business Area Grind & Overlays" project, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

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

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

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

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

02/14/2022

**Date Rec'd**

2/1/2022

**Clerk's File #**

ORD C36175

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

FINANCE, TREASURY &amp; ADMIN

**Cross Ref #**

RES 2022-0015

**Contact Name/Phone**

TONYA WALLACE 509-844-4456

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

TWALLACE@SPOKANECITY.ORG

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

Emergency Ordinance

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

0410 - ORDINANCE IMPOSING ADDITIONAL REGULAR PROPERTY TAX LEVIES

**Agenda Wording**

An ordinance imposing additional regular property tax levies for Emergency Medical Services for the years 2023 through 2028; and submitting the proposition to a special municipal election to be held on April 26, 2022, and declaring an emergency.

**Summary (Background)**

An ordinance is necessary to call for a special municipal election to seek voter approval of this EMS regular property tax levy. This ordinance will continue the Emergency Medical Services levy, which is set to expire on December 31, 2022. As with prior levies, it will set the levy rate at fifty cents (\$0.50) per \$1,000 of assessed property value.

Lease? NO

Grant related? NO

Public Works? NO

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

Select \$

#

Select \$

#

Select \$

#

Select \$

#

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

MURRAY, MICHELLE

**Study Session\Other**Public Safety Committee  
- 2/7/22**Division Director**

WALLACE, TONYA

**Council Sponsor**Council President Beggs,  
Council Member Kinnear**Finance**

MURRAY, MICHELLE

**Distribution List****Legal**

PICCOLO, MIKE

bschaeffer@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

mmurray@spokanecity.org

**Additional Approvals**

pingiosi@spokanecity.org

**Purchasing**

## Committee Agenda Sheet

### Public Safety & Community Health

<b>Submitting Department</b>	Finance
<b>Contact Name &amp; Phone</b>	Paul Ingiosi – 509-625-6061
<b>Contact Email</b>	pingiosi@spokanecity.org
<b>Council Sponsor(s)</b>	Council President Beggs, Council Member Kinnear
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion     Time Requested: <u>10 minutes</u> (concurrent with EMS Levy resolution)
<b>Agenda Item Name</b>	Ordinance for EMS Levy Renewal
<b>Summary (Background)</b>	<p>Under RCW 82.52.069, local jurisdictions may impose an additional property tax levy in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles, and structures needed for the provision of emergency medical care or emergency medical services.</p> <p>EMS levies may be approved for six consecutive years, ten consecutive years, or permanently. The City of Spokane utilizes six-year levies which must be periodically reapproved by the voters of the City. City of Spokane voters have approved six-year EMS levies since 1980. In 2016, the last time the EMS levy was reauthorized, the proposition was approved with 65.77% of the vote.</p> <p>The current six-year EMS levy, set to expire December 31, 2022, provides \$9.4 million annually in revenue for emergency medical services. Voter approval to reauthorize the EMS levy for 2023-2028 is expected to generate approximately \$13.1 million annually for the next six years.</p> <p>An ordinance is necessary to call for a special municipal election to seek voter approval of the EMS regular property tax levy. This ordinance will continue the EMS levy for the years 2023 through 2028 and, as with prior levies, will set the levy rate at fifty cents (\$0.50) per \$1,000 of assessed property value. The levy will renew January 1, 2023 and run through December 31, 2028 if the voters approve the levy at a special election to be held April 26, 2022.</p>
<b>Proposed Council Action &amp; Date:</b>	Adoption of Emergency Ordinance to call for a special municipal election on April 26, 2022 / Council Action – February 14, 2022
<b>Fiscal Impact:</b> Total Cost: Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: Six-Year Property Tax Levy  Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring	

Other budget impacts: The EMS levy provides approximately \$9.4 million per year for the operations of the Spokane Fire Department, or 16.4% of the EMS Fund revenues.

### **Operations Impacts**

What impacts would the proposal have on historically excluded communities?

The Spokane Fire Department will continue to provide emergency medical services throughout the City.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

n/a

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

n/a

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

The ordinance authorizes the special election to decide the reauthorization of the EMS levy which has been in place since the early 1980s.

## ORDINANCE NO C36175

An ordinance imposing additional regular property tax levies for emergency medical services for the years 2023 through 2028; and submitting the proposition to a special municipal election to be held on April 26, 2022, and declaring an emergency.

WHEREAS, the last six-year levy for emergency medical services, authorized by the voters in April 2016 will expire at the end of 2022; and

WHEREAS, under RCW 29A.04.330 (3), a city must request the Spokane County Auditor to call a special election for the placement of a local measure before the electors; and

WHEREAS, to the extent an emergency must be declared to hold such election, the levy authorized by RCW 84.52.069 is necessary to provide adequate emergency medical care and services for the protection of the public health and the levy is urgently needed and, therefore the City Council determines that an emergency exists to call for a special election; -- NOW, THEREFORE,

### THE CITY OF SPOKANE DOES ORDAIN:

Section 1. That the Spokane County Auditor be requested pursuant to RCW 29A.04.330 to call a special municipal election, to be held April 26, 2022, for submission to the electors of the City a proposition to approve a property tax levy for emergency medical services for the years 2023 through 2028.

Section 2. That the proposition be submitted in the following form:

### PROPOSITION NO. 1

#### CITY OF SPOKANE

#### EMS – EMERGENCY MEDICAL SERVICES LEVY

The City of Spokane approved Resolution No. 2022 - \_\_\_\_,  
authorizing a ballot proposition imposing additional regular property  
tax levies to be used exclusively for EMS - Emergency Medical  
Services for the years 2023 through 2028 in the sum of \$0.50 per  
\$1,000 of 2022 assessed value as set forth in Ordinance No. C-  
\_\_\_\_\_.

Shall the City of Spokane be authorized to impose regular property  
tax levies in the sum of \$0.50 per \$1,000 of 2022 assessed  
valuation for the continued provision of EMS - Emergency Medical  
Services for each year for six consecutive years to be collected in  
2023 through 2028 inclusive?

[ ] YES  
[ ] NO

Section 3. That the City Clerk is directed to deliver a certified copy of Resolution 2022-\_\_\_\_\_ to the Spokane County Auditor by February 25, 2022.

Section 4. That if the proposition is approved by a sufficient majority of voters, as provided in RCW 84.52.069, then, for six consecutive years beginning in 2023, there shall be levied an additional regular property tax of fifty cents per thousand dollars of assessed valuation. The proceeds of the tax shall be used exclusively for the provision of emergency medical services, including but not limited to personnel costs for paramedics and emergency medical technicians, structures, vehicles and other equipment and apparatus, supplies, training for staff and the public in CPR, education, and support services.

Section 5. EMERGENCY CLAUSE. To the extent a may be required by law, the City Council hereby declares that an emergency and urgency exists for the enactment of this ordinance as an emergency ordinance due to the reasons set forth in the above preamble. This ordinance shall therefore take effect immediately upon adoption.

Passed by the City Council on \_\_\_\_\_, 2022.

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

Attest:

Approved as to form:

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

02/14/2022

**Date Rec'd**

2/1/2022

**Clerk's File #**

RES 2022-0015

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

FINANCE, TREASURY &amp; ADMIN

**Cross Ref #**

ORD C36175

**Contact Name/Phone**

TONYA WALLACE 509-844-4456

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

TWALLACE@SPOKANECITY.ORG

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

Resolutions

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

0410 REQUESTING SPECIAL ELECTION FOR EMS LEVY

**Agenda Wording**

A resolution requesting the Spokane County Auditor to hold a special election on April 26, 2022 to submit a proposition regarding additional regular property tax levies for Emergency Medical Services.

**Summary (Background)**

In 2022, the City Council passed Ordinance No. C36175 regarding placing a ballot proposition to the electors on the April 26, 2022 special election for the authorization to impose a regular property tax levy for Emergency Medical Services for the years 2023 through 2028. This resolution will request the Spokane County Auditor to call for a special municipal election on April 26, 2022 and to place the EMS levy proposition on that election ballot.

Lease? NO

Grant related? NO

Public Works? NO

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

Select \$

#

Select \$

#

Select \$

#

Select \$

#

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

MURRAY, MICHELLE

**Study Session\Other**Public Safety Committee  
- 2/7/22**Division Director**

WALLACE, TONYA

**Council Sponsor**Council President Beggs,  
Council Member Kinnear**Finance**

MURRAY, MICHELLE

**Distribution List****Legal**

PICCOLO, MIKE

bschaeffer@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

mmurray@spokanecity.org

**Additional Approvals**

pingiosi@spokanecity.org

**Purchasing**

## Committee Agenda Sheet

### Public Safety & Community Health

<b>Submitting Department</b>	Finance
<b>Contact Name &amp; Phone</b>	Paul Ingiosi – 509-625-6061
<b>Contact Email</b>	pingiosi@spokanecity.org
<b>Council Sponsor(s)</b>	Council President Beggs, Council Member Kinnear
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion     Time Requested: <u>10 minutes</u> (concurrent with EMS Levy ordinance)
<b>Agenda Item Name</b>	Resolution Requesting Special Election for EMS Levy
<b>Summary (Background)</b>	<p>Under RCW 29A.04.330(2), local jurisdictions may request, in the form of a resolution, the county auditor to call a special election. A special election is any election that is not a general election and may be held in conjunction with a general election or primary. State RCW also lays out the specific dates for special elections to be held and the deadline for the resolution by the local jurisdiction to be presented to the county auditor to request the special election.</p> <p>The City of Spokane is requesting the Spokane County Auditor to hold a special election on April 26, 2022 to submit a proposition regarding additional regular property tax levies for emergency medical services. The City must present the resolution to the Spokane County Auditor at least 60 days prior to the election date, or February 25, 2022.</p> <p>This resolution will request the Spokane County Auditor to call for a special municipal election on April 26, 2022 and to place the EMS levy proposition on that election ballot.</p>
<b>Proposed Council Action &amp; Date:</b>	Approval of Resolution and present to Spokane County Auditor / Council Action – February 14, 2022
<b>Fiscal Impact:</b> Total Cost: Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A  Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source:  Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring  Other budget impacts:	
<b>Operations Impacts</b>	
What impacts would the proposal have on historically excluded communities?  n/a	



How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

n/a

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

n/a

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

n/a

RESOLUTION NO. 2022-0015

A RESOLUTION REQUESTING THE SPOKANE COUNTY AUDITOR TO HOLD A SPECIAL ELECTION ON APRIL 26, 2022 TO SUBMIT A PROPOSITION REGARDING ADDITIONAL REGULAR PROPERTY TAX LEVIES FOR EMERGENCY MEDICAL SERVICES FOR THE YEARS 2023 THROUGH 2028 TO THE ELECTORS OF THE CITY OF SPOKANE AND DECLARING AN EMERGENCY

WHEREAS, the last six-year levy for Emergency Medical Services, authorized by the voters in 2016, will expire at the end of 2022; and

WHEREAS, pursuant to Section 84 (A) of the City Charter, the City Council, of its own motion, may submit to popular vote for adoption or rejection at any election, any proposed ordinance or measure, in the same manner and with the same force and effect as provided for submission on petition;

WHEREAS, RCW 29A.04.330 (3) requires the City to transmit to the Spokane County Auditor at least sixty days prior to the election date a resolution calling for a special election; and

WHEREAS, on February 14, 2022, the Spokane City Council enacted Ordinance No. C-\_\_\_\_\_ calling for the Spokane County Auditor to schedule a special election to be held on April 26, 2022 for submission to the electors of the City a proposition to approve a regular property tax levy for emergency medical services; and

WHEREAS, to the extent an emergency must be declared to hold such election, the levy authorized by RCW 84.52.069 is necessary to provide adequate emergency medical care and services for the protection of the public health and the levy is urgently needed and, therefore, the City Council determines that an emergency exists to call for a special election.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Spokane:

Section 1. That the Spokane County Auditor be requested pursuant to RCW 29A.04.330 to call a special municipal election to be held on April 26, 2022 for submission to the electors of the City a proposition to approve a property tax levy for emergency medical services for the years 2023 through 2028.

Section 2. That the proposition be submitted in the following form:

PROPOSITION NO. 1

CITY OF SPOKANE

EMS – EMERGENCY MEDICAL SERVICES LEVY

The City of Spokane approved Resolution No. 2022 - \_\_\_\_,  
authorizing a ballot proposition imposing additional regular property  
tax levies to be used exclusively for EMS - Emergency Medical  
Services for the years 2023 through 2028 in the sum of \$0.50 per  
\$1,000 of 2022 assessed value as set forth in Ordinance No. C-  
\_\_\_\_\_.

Shall the City of Spokane be authorized to impose regular property  
tax levies in the sum of \$0.50 per \$1,000 of 2022 assessed  
valuation for the continued provision of EMS - Emergency Medical  
Services for each year for six consecutive years to be collected in  
2023 through 2028 inclusive?

[ ] YES  
[ ] NO

Section 3. For reasons stated above, an emergency exists to submit  
this measure and obtain voter approval for the funds.

Section 4. That the City Clerk is directed to deliver a certified copy of this  
resolution with the Spokane County Auditor by February 25, 2022.

Adopted \_\_\_\_\_, 2022.

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

Approved as to form:

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



**Agenda Sheet for City Council Meeting of:**  
02/14/2022

<b><u>Date Rec'd</u></b>	2/2/2022
<b><u>Clerk's File #</u></b>	RES 2022-0016
<b><u>Renews #</u></b>	
<b><u>Cross Ref #</u></b>	OPR 2022-0091
<b><u>Project #</u></b>	
<b><u>Bid #</u></b>	
<b><u>Requisition #</u></b>	

<b><u>Submitting Dept</u></b>	CITY COUNCIL
<b><u>Contact Name/Phone</u></b>	CP BEGGS X6714
<b><u>Contact E-Mail</u></b>	BBEGGS@SPOKANECITY.ORG
<b><u>Agenda Item Type</u></b>	Resolutions
<b><u>Agenda Item Name</u></b>	0320 - RESOLUTION COMMITTING TO A PUBLIC COMMENT PROCESS ON FLUORIDATION

**Agenda Wording**

A resolution concerning moving forward on community water fluoridation into the 30% design feasibility phase.

**Summary (Background)**

This resolution commits Council to a prompt public review and public comment process upon receiving the completed 30% design feasibility study on community water fluoridation. This is being filed for consideration on 2/14 to align with Council's consideration of the feasibility study contract.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Neutral	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

**Budget Account**

**Approvals**

<b><u>Dept Head</u></b>	ALLERS, HANNAHLEE
<b><u>Division Director</u></b>	
<b><u>Finance</u></b>	
<b><u>Legal</u></b>	
<b><u>For the Mayor</u></b>	

**Council Notifications**

<b><u>Study Session\Other</u></b>	UE - 2/14/22
<b><u>Council Sponsor</u></b>	CP Beggs/CM Wilkerson
<b><u>Distribution List</u></b>	

**Additional Approvals**

**Purchasing**


## Committee Agenda Sheet

### Urban Experience

<b>Submitting Department</b>	City Council
<b>Contact Name &amp; Phone</b>	CP Beggs – 625-6714
<b>Contact Email</b>	<a href="mailto:bbeggs@spokanecity.org">bbeggs@spokanecity.org</a>
<b>Council Sponsor(s)</b>	CP Beggs/CM Wilkerson
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion     Time Requested: 10 minutes
<b>Agenda Item Name</b>	Resolution Committing to a Public Comment Process on Community Water Fluoridation
<b>Summary (Background)</b>	<p>This resolution commits Council to a prompt public review and public comment process upon receiving the completed 30% design feasibility study on community water fluoridation.</p>
<b>Proposed Council Action &amp; Date:</b>	Filed for consideration on 2/14 to align with consideration of the feasibility study contract.
<p><b>Fiscal Impact:</b>     N/A – this resolution does not have a direct cost association.</p> <p>Total Cost:</p> <p>Approved in current year budget?     <input type="checkbox"/> Yes   <input type="checkbox"/> No   <input checked="" type="checkbox"/> N/A</p> <p>Funding Source     <input type="checkbox"/> One-time   <input type="checkbox"/> Recurring</p> <p>Specify funding source:</p> <p>Expense Occurrence   <input type="checkbox"/> One-time   <input type="checkbox"/> Recurring</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	

**Operations Impacts**

What impacts would the proposal have on historically excluded communities?

This resolution commits to further public comment regarding community water fluoridation after receiving the results of the feasibility study. Additional public comment time allows for more interaction with a broad range of community stakeholders and Spokane residents.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

Not applicable – this action would provide time and process for community engagement – the form of that engagement will be decided by Council Members at a later date.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

NA – see above.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This resolution and future public engagement process aligns with Council's previously-passed legislative items related to community water fluoridation. It also furthers many Council Members' goals of engaging more members of the public in decision making.

## RESOLUTION NO. 2022-0016

A resolution concerning moving forward on community water fluoridation into the 30% design feasibility phase.

**WHEREAS**, The City of Spokane entered into a grant contract with the Arcora Foundation (“Foundation”) approved by City Council and signed by the Mayor to study, build, and then implement community water fluoridation in Spokane with up to \$4 million of the cost of this work to be provided by the Foundation and numerous other community funding partners; and

**WHEREAS**, the grant contract allows the City to take a phased approach toward community water fluoridation, with inherent status updates at each phase; and

**WHEREAS**, the Foundation has agreed, at the City’s request, to waive the repayment obligation of up to \$600,000 for the up to 30% design feasibility phase, even if the City decides not to implement community water fluoridation; and

**WHEREAS**, allowing the City to incur expenses to complete an up to 30% design feasibility study, without the repayment obligation will ensure that the City Council, the Mayor, and community members are fully informed at a greater level of detail on the feasibility and likely cost of a community fluoridation system without financial risk to the City; and

**WHEREAS**, the City has published a Request for Qualifications to perform the 30% design feasibility study of a community fluoridation system in Spokane and received qualified responses; and

**WHEREAS**, the Mayor has agreed to fund with Foundation grant proceeds a 30% design feasibility study of a community fluoridation system in Spokane; and the Council has agreed to a full review of the details of the 30% design feasibility study, including public comment, prior to commencing the build-out of the community water fluoridation system.

**NOW THEREFORE, BE IT RESOLVED** that upon receiving the completed 30% design feasibility study, the City Council shall promptly publicly review the study’s findings and solicit public comment prior to a decision to proceed with full design and construction of a fluoridation system.

**ADOPTED** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2022.

---

City Clerk

Approved as to form:

---

Assistant City Attorney



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

02/14/2022

**Date Rec'd**

1/21/2022

**Clerk's File #**

ORD C36037

**Renews #****Submitting Dept**DSC, CODE ENFORCEMENT &  
PARKING SERVICES**Cross Ref #****Contact Name/Phone**

ELDON BROWN X6305

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

EBROWN@SPOKANECITY.ORG

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

First Reading Ordinance

**Requisition #****Agenda Item Name**4700 – STREET VACATION OF THE ALLEY BETWEEN COLUMBIA AVE AND  
JOSEPH AVE**Agenda Wording**

Vacation of the alley between Columbia Ave and Joseph Ave, from Julia St. to Myrtle St. as requested by Dan Cantu.

**Summary (Background)**

At its legislative session held on April 12, 2021, City Council approved the vacation of this alley subject to conditions and the ordinance was read for the first time. Since that time the applicant has moved Comcast's utilities in the vacation area causing the need for a new first reading ordinance with an easement covering only the west 35' for Avista's existing utilities.

Lease? NO

Grant related? NO

Public Works? NO

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

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

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

BECKER, KRIS

**Study Session\Other**

UE 2/28/21

**Division Director**

MACDONALD, STEVEN

**Council Sponsor**

CM Michael Cathcart

**Finance**

ORLOB, KIMBERLY

**Distribution List****Legal**

RICHMAN, JAMES

ebrown@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

edjohnson@spokanecity.org

**Additional Approvals**

rbenzie@spokanecity.org

**Purchasing**

kbecker@spokanecity.org

City of Spokane  
Development Services Center  
808 West Spokane Falls Blvd.  
Spokane, WA 99201-3343  
(509) 625-6700

## ORDINANCE NO. C36037

An ordinance vacating the alley between Columbia Avenue and Joseph Avenue, from the east line of Julia Street to the west line of Myrtle Street

WHEREAS, a petition for the vacation of alley between Columbia Avenue and Joseph Avenue, from the east line of Julia Street to the west line of Myrtle Street has been filed with the City Clerk representing 100% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, the City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That alley between Columbia Avenue and Joseph Avenue, from the east line of Julia Street to the west line of Myrtle Street and located within the Northeast Quarter of Section 34, Township 26 North, Range 43 East, Willamette Meridian, is hereby vacated. Parcel number not assigned.

Section 2. An easement is reserved and retained over and through ~~((the entire vacated area))~~ the west 35 feet for the utility services of Avista Utilities ~~((and Comcast))~~ to protect existing and future utilities.

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

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

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

Approved as to Form:

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

\_\_\_\_\_  
Mayor

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

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

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

01/24/2022

**Date Rec'd**

1/11/2022

**Clerk's File #**

RES 2022-0011

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

PLANNING &amp; ECONOMIC

**Contact Name/Phone**

TERI STRIPES 625-6597

**Contact E-Mail**

TSTRIPES@SPOKANECITY.ORG

**Agenda Item Type**

Resolutions

**Agenda Item Name**

0650-SETTING A PUBLIC HEARING TO DESIGNATE A RESIDENTIAL TARGET

**Agenda Wording**

RESOLUTION EXPRESSING THE INTENTION OF THE CITY COUNCIL TO DESIGNATE A MULTI-FAMILY TAX EXEMPTION (MFTE) RESIDENTIAL TARGETED AREA

**Summary (Background)**

Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council desires to modify the boundary of the existing designated residential targeted area listed in SMC 8.15.030 as set forth in Ordinance No. C36168, amending SMC 8.15.030; and, RCW 84.14.040 requires public notice and a hearing before the City designates residential targeted areas.

Lease? NO

Grant related? NO

Public Works? NO

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

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

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

MEULER, LOUIS

**Study Session\Other**

UE 9/13/21

**Division Director**

MACDONALD, STEVEN

**Council Sponsor**

CP Beggs &amp; CM Stratton

**Finance**

ORLOB, KIMBERLY

**Distribution List****Legal**

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tstripes@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

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**Additional Approvals**

lmeuler@spokanecity.org

**Purchasing**

sbishop@spokanecity.org

smacdonald@spokanecity.org

mpiccolo@spokanecity.org



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

**Agenda Wording**

**Summary (Background)**

It is the intent of the City of Spokane to designate a revised residential targeted area as set forth in Ordinance No. C36168 and as generally identified in Attachment A to the ordinance. \*\* The ordinance is attached for reference - the agenda sheet request for the ORD to be submitted Jan 25 for the first reading 2/7 Terri's team will assign the ORD # \*\*

**Fiscal Impact**

Select \$

Select \$

**Budget Account**

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**Distribution List**


# Briefing Paper

## Urban Experience Committee

<b>Division &amp; Department:</b>	Planning & Economic Development
<b>Subject:</b>	MFTE Designating Residential Targeted Areas (Garland & University District)
<b>Date:</b>	January 10, 2022
<b>Contact (email &amp; phone):</b>	Teri Stripes ( <a href="mailto:tstripes@spokanecity.org">tstripes@spokanecity.org</a> , x6597)
<b>City Council Sponsor:</b>	Council President Beggs and Council Member Stratton
<b>Executive Sponsor:</b>	Steve MacDonald ( <a href="mailto:smacdonald@spokanecity.org">smacdonald@spokanecity.org</a> x6835)
<b>Committee(s) Impacted:</b>	Urban Experience
<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)	<p><b>SMC 08.15 Multi- Family Housing Property Tax Exemption</b></p> <p>A. The purposes of this chapter are to:</p> <ol style="list-style-type: none"> <li>1. encourage more multi-family housing opportunities, including affordable housing opportunities, within the City;</li> <li>2. stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing;</li> <li>3. increase the supply of mixed-income multifamily housing opportunities within the City;</li> <li>4. accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans;</li> <li>5. promote community development, neighborhood revitalization, and availability of affordable housing;</li> <li>6. preserve and protect buildings, objects, sites and neighborhoods with historic, cultural, architectural, engineering or geographic significance located within the City; and</li> <li>7. encourage additional housing in areas that are consistent with planning for public transit systems.</li> </ol> <p><b>Comprehensive Plan Land Use Policies:</b></p> <ul style="list-style-type: none"> <li>LU 1.4 Higher Density Residential Uses</li> <li>LU 3.5 Mix of Uses in Centers</li> <li>LU 4.2 Land Uses That Support Travel Options and Active Transportation</li> <li>LU 4.6 Transit-Supported Development</li> </ul> <p><b>Comprehensive Plan Housing Policies:</b></p> <ul style="list-style-type: none"> <li>H 1.9 Mixed-Income Housing</li> <li>H 1.4 Use of Existing Infrastructure</li> <li>H 1.10 Lower-Income Housing Development Incentives</li> <li>H 1.11 Access to Transportation</li> <li>H 1.18 Distribution of Housing Options</li> </ul> <p><b>Comprehensive Plan Economic Development Policies:</b></p> <ul style="list-style-type: none"> <li>ED 2.4 Mixed-Use</li> <li>ED 7.4 Tax Incentives for Land Improvement</li> </ul>
<b>Strategic Initiative:</b>	Housing
<b>Deadline:</b>	Will file for Council consideration following committee meeting

<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Approval of Multi-Family Tax Exemption Target Area/Boundary changes in the Garland District and the South University District.
<p><b>Background/History:</b></p> <p>In response to the housing shortage in Spokane, it is the desire of the City to expand the MFTE boundary to again incentivizes the creation of multifamily housing in the Garland target area and to expand the MFTE boundary in the south University District following notice and public hearings as prescribed in RCW 81.14.040, the Council may designate one or more residential targeted areas, upon a finding by the Council in its sole discretion.</p> <p><b>Attachments:</b></p> <ul style="list-style-type: none"> <li>• Attachment B: zoomed in Spokane’s Multi-Family Tax Exemption Target Area for presentations</li> <li>• Res of Intent to Designate RTA</li> <li>• Ord Amending MFTE SMC Section 8.15.030</li> </ul> <p><b>Tentative Process and Timeline:</b></p> <ul style="list-style-type: none"> <li>• Jan. 10, 2022 – Urban Experience Committee Briefing</li> <li>• Jan. 24, 2022 - Council Agenda Briefing and action to occur on the same day (post-holiday) on Resolution of intention/setting hearing for Feb 14, 2022</li> <li>• Jan. 31, 2022 – Briefing of first reading ordinance on February 7 Advance Agenda</li> <li>• February 7 – Briefing of “hearing on final reading ordinance” during 3:30 p.m. Briefing Session and First Reading of Ordinance held during 6:00 p.m. Session</li> <li>• Feb 14, 2022 – Hearing and 2nd reading of Ordinance</li> <li>• Ordinance replacing the Boundary Map goes into effect 30 days later</li> </ul>	
<p><b>Executive Summary:</b></p> <ul style="list-style-type: none"> <li>• Adding the Garland District back into the MFTE Target Area/Boundary</li> <li>• Adding a small portion of the south University District into the MFTE Target Area/Boundary</li> </ul>	
<p><b>Budget Impact:</b></p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><b>Operations Impact:</b></p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	

RESOLUTION NO. 2022-0011

A RESOLUTION EXPRESSING THE INTENTION OF THE CITY COUNCIL TO DESIGNATE A RESIDENTIAL TARGETED AREA, AMEND SMC 8.15.030 AND SET A PUBLIC HEARING.

WHEREAS, Chapter 84.14 RCW authorizes cities to enact multifamily housing property tax incentive programs by designating residential targeted areas within urban centers; and

WHEREAS, the City of Spokane exercised its authority under Chapter 84.14 RCW by enacting Ordinance No. 32575, as codified and amended in Chapter 8.15 SMC, which provides a property tax incentive for multifamily housing in urban centers by establishing a methodology for granting such incentives and designating the urban centers and residential targeted areas; and

WHEREAS, the City Council has subsequently revised the designated residential targeted areas; and

WHEREAS, the City Council, along with the City Administration has performed a review of the designation of the residential targeted areas; and

WHEREAS, the City Council desires to modify the boundary of the existing designated residential targeted areas listed in SMC 8.15.030 as set forth in Ordinance No. C36168, amending SMC 8.15.030; and

WHEREAS, RCW 84.14.040 requires public notice and a hearing before the City designates residential targeted areas.

NOW, THEREFORE, it is resolved by the City Council that it is the intent of the City of Spokane to designate a revised residential targeted area as set forth in Ordinance No. C36168 and as generally identified in Attachment A to the ordinance.

IT IS FURTHER RESOLVED that the City of Spokane shall conduct a public hearing on February 14, 2022 beginning at 6:00 pm at the City Council Chambers at City Hall, West 808 Spokane Falls Blvd., Spokane, Washington, to take public testimony and consider the designation of the targeted area as set forth above.

**\*\*\* The format of the February 14, 2022 hearing and the method for public testimony may be held in a virtual format depending on the status of Governor Inslee's Proclamations and other COVID – 19 related directives regarding the conduct of open public meetings. Individuals wishing to attend the hearing or provide public testimony will need to review the City Council's February 14, 2022 agenda packet for meeting notice updates regarding a possible virtual meeting format and how to provide public testimony telephonically through instructions set out in the City Council**



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

02/07/2022

**Date Rec'd**

1/25/2022

**Clerk's File #**

ORD C36168

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

PLANNING &amp; ECONOMIC

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

TERI STRIPES 625-6597

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

TSTRIPES@SPOKANECITY.ORG

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

First Reading Ordinance

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

0650 - MFTE ORDINANCE AMENDING SMC SECTION 8.15.030 D

**Agenda Wording**

Multiple family housing property tax exemption (MFTE); amending SMC section 8.15.030 D, by amending the map Attachment A

**Summary (Background)**

Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council desires to modify the boundary of the existing designated residential targeted area listed in SMC 8.15.030 as set forth in Ordinance No. 36168, amending SMC 8.15.030; and, RCW 84.14.040 requires public notice and a hearing before the City designates residential targeted areas.

Lease? NO

Grant related? NO

Public Works? NO

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

Neutral

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

BLACK, TIRRELL

**Study Session\Other**

UE 1/10/22

**Division Director**

MACDONALD, STEVEN

**Council Sponsor**

CP Beggs and CM

**Finance**

ORLOB, KIMBERLY

**Distribution List****Legal**

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tstripes@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

sbishop@spokanecity.org

**Additional Approvals**

tblack@spokanecity.org

**Purchasing**

smacdonald@spokanecity.org

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lmeuler@spokanecity.org



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

**Agenda Wording**

**Summary (Background)**

It is the intent of the City of Spokane to designate a revised residential targeted area as set forth in Ordinance No. 36168 and as generally identified in Attachment A to the ordinance.

**Fiscal Impact**

Select      \$

Select      \$

**Budget Account**

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**Distribution List**


## Briefing Paper

### Urban Experience Committee

<b>Division &amp; Department:</b>	Planning & Economic Development
<b>Subject:</b>	MFTE Designating Residential Targeted Areas (Garland & University District)
<b>Date:</b>	January 10, 2022
<b>Contact (email &amp; phone):</b>	Teri Stripes ( <a href="mailto:tstripes@spokanecity.org">tstripes@spokanecity.org</a> , x6597)
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<b>Committee(s) Impacted:</b>	Urban Experience
<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)	<p><b>SMC 08.15 Multi- Family Housing Property Tax Exemption</b></p> <p>A. The purposes of this chapter are to:</p> <ol style="list-style-type: none"> <li>1. encourage more multi-family housing opportunities, including affordable housing opportunities, within the City;</li> <li>2. stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing;</li> <li>3. increase the supply of mixed-income multifamily housing opportunities within the City;</li> <li>4. accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans;</li> <li>5. promote community development, neighborhood revitalization, and availability of affordable housing;</li> <li>6. preserve and protect buildings, objects, sites and neighborhoods with historic, cultural, architectural, engineering or geographic significance located within the City; and</li> <li>7. encourage additional housing in areas that are consistent with planning for public transit systems.</li> </ol> <p><b>Comprehensive Plan Land Use Policies:</b></p> <ul style="list-style-type: none"> <li>LU 1.4 Higher Density Residential Uses</li> <li>LU 3.5 Mix of Uses in Centers</li> <li>LU 4.2 Land Uses That Support Travel Options and Active Transportation</li> <li>LU 4.6 Transit-Supported Development</li> </ul> <p><b>Comprehensive Plan Housing Policies:</b></p> <ul style="list-style-type: none"> <li>H 1.9 Mixed-Income Housing</li> <li>H 1.4 Use of Existing Infrastructure</li> <li>H 1.10 Lower-Income Housing Development Incentives</li> <li>H 1.11 Access to Transportation</li> <li>H 1.18 Distribution of Housing Options</li> </ul> <p><b>Comprehensive Plan Economic Development Policies:</b></p> <ul style="list-style-type: none"> <li>ED 2.4 Mixed-Use</li> <li>ED 7.4 Tax Incentives for Land Improvement</li> </ul>
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<b>Deadline:</b>	Will file for Council consideration following committee meeting

<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Approval of Multi-Family Tax Exemption Target Area/Boundary changes in the Garland District and the South University District.
<p><b>Background/History:</b></p> <p>In response to the housing shortage in Spokane, it is the desire of the City to expand the MFTE boundary to again incentivizes the creation of multifamily housing in the Garland target area and to expand the MFTE boundary in the south University District following notice and public hearings as prescribed in RCW 81.14.040, the Council may designate one or more residential targeted areas, upon a finding by the Council in its sole discretion.</p> <p><b>Attachments:</b></p> <ul style="list-style-type: none"> <li>• Attachment B: zoomed in Spokane’s Multi-Family Tax Exemption Target Area for presentations</li> <li>• Res of Intent to Designate RTA</li> <li>• Ord Amending MFTE SMC Section 8.15.030</li> </ul> <p><b>Tentative Process and Timeline:</b></p> <ul style="list-style-type: none"> <li>• Jan. 10, 2022 – Urban Experience Committee Briefing</li> <li>• Jan. 24, 2022 - Council Agenda Briefing and action to occur on the same day (post-holiday) on Resolution of intention/setting hearing for Feb 14, 2022</li> <li>• Jan. 31, 2022 – Briefing of first reading ordinance on February 7 Advance Agenda</li> <li>• February 7 – Briefing of “hearing on final reading ordinance” during 3:30 p.m. Briefing Session and First Reading of Ordinance held during 6:00 p.m. Session</li> <li>• Feb 14, 2022 – Hearing and 2nd reading of Ordinance</li> <li>• Ordinance replacing the Boundary Map goes into effect 30 days later</li> </ul>	
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<p><b>Operations Impact:</b></p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	

## ORDINANCE NO. C36168

An ordinance relating to multiple family housing property tax exemption; amending SMC section 8.15.030 D, by amending the map Attachment A: Spokane MFTE Target Area through expansion of the target area boundary.

WHEREAS, the expansion of Spokane's multi-family tax exemption (MFTE) Target Area in the Garland and the south University District urban centers will provide additional housing opportunity within the City, including affordable housing within the targeted area assisting in achieving one or more of the following purposes:

1. encouraging more multi-family housing opportunities, including affordable housing opportunities, within the City;
2. stimulating the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing;
3. increasing the supply of mixed-income multifamily housing opportunities within the City;
4. accomplishing the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans;
5. promoting community development, neighborhood revitalization, and availability of affordable housing;
6. preserving and protecting buildings, objects, sites and neighborhoods with historic, cultural, architectural, engineering or geographic significance located within the City; and
7. encouraging additional housing in areas that are consistent with planning for public transit systems.

Now, Therefore, the City of Spokane does ordain:

Section 1. That SMC section 8.15.030 is amended to read as follows:

### **8.15.030 Residential Targeted Areas – Criteria – Designation**

- A. Following notice and public hearing as prescribed in RCW 84.14.040, the council may designate one or more residential targeted areas, upon a finding by the

council in its sole discretion that the residential targeted area meets the following criteria:

1. The residential targeted area is within an urban center.
  2. The residential targeted area lacks sufficient available, desirable, and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center if affordable, desirable, attractive, and livable residences were available; and
  3. Providing additional housing opportunity, including affordable housing, in the residential targeted area will assist in achieving one or more of the following purposes:
    - a. Encourage increased residential opportunities within the City, including mixed-income and affordable housing opportunities; or
    - b. Stimulate the construction of new multifamily housing; or
    - c. Encourage the rehabilitation of existing vacant and underutilized buildings for multifamily housing.
- B. In designating a residential targeted area, the council may also consider other factors, including whether:
1. additional housing, including affordable housing units, in the residential targeted area will attract and maintain an increase in the number of permanent residents;
  2. an increased permanent residential population in the residential targeted area will help to achieve the planning goals mandated by the Growth Management Act under chapter 36.70A RCW, as implemented through the City's current and future comprehensive plans;
  3. encouraging additional housing in the residential targeted area is consistent with public transportation plans; or
  4. additional housing may contribute to revitalization of a distressed neighborhood or area within the City.
- C. At any time the council may, by ordinance, in its sole discretion, amend or rescind the designation of a residential targeted area pursuant to the same procedural requirements as set forth in this chapter for original designation.

D. The following area, as shown in [Attachment A](#) , is designated as a residential targeted area under this chapter:

1. Spokane's MFTE

E. If a part of any legal lot is within a designated residential targeted area with zoning allowing for construction of multifamily housing, Centers and Corridors Zones: CC1, CC2, CC3 overlay, and CC4, Residential Zones: RMF, RHD and Commercial Zones: DTG, DTU, DTS, DTC, CA1, CA2, CA3, CA4, O, OR, NR, NMU, CB, GC and where multi-family housing is allowed in LI as shown in [Attachment A](#), then the entire lot shall be deemed to lie within such residential targeted area. The area designated as a residential targeted area is bound by the streets described in Attachment A. Property located outside of, but adjacent to, the described area is not designated as a residential targeted area.

PASSED BY THE CITY COUNCIL ON \_\_\_\_\_, 2022.

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

Attest:

Approved as to form:

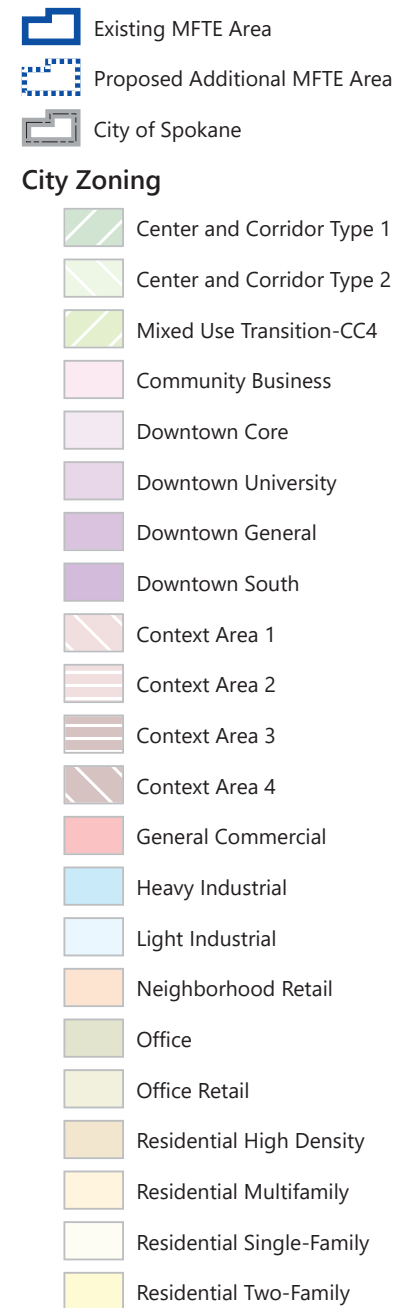
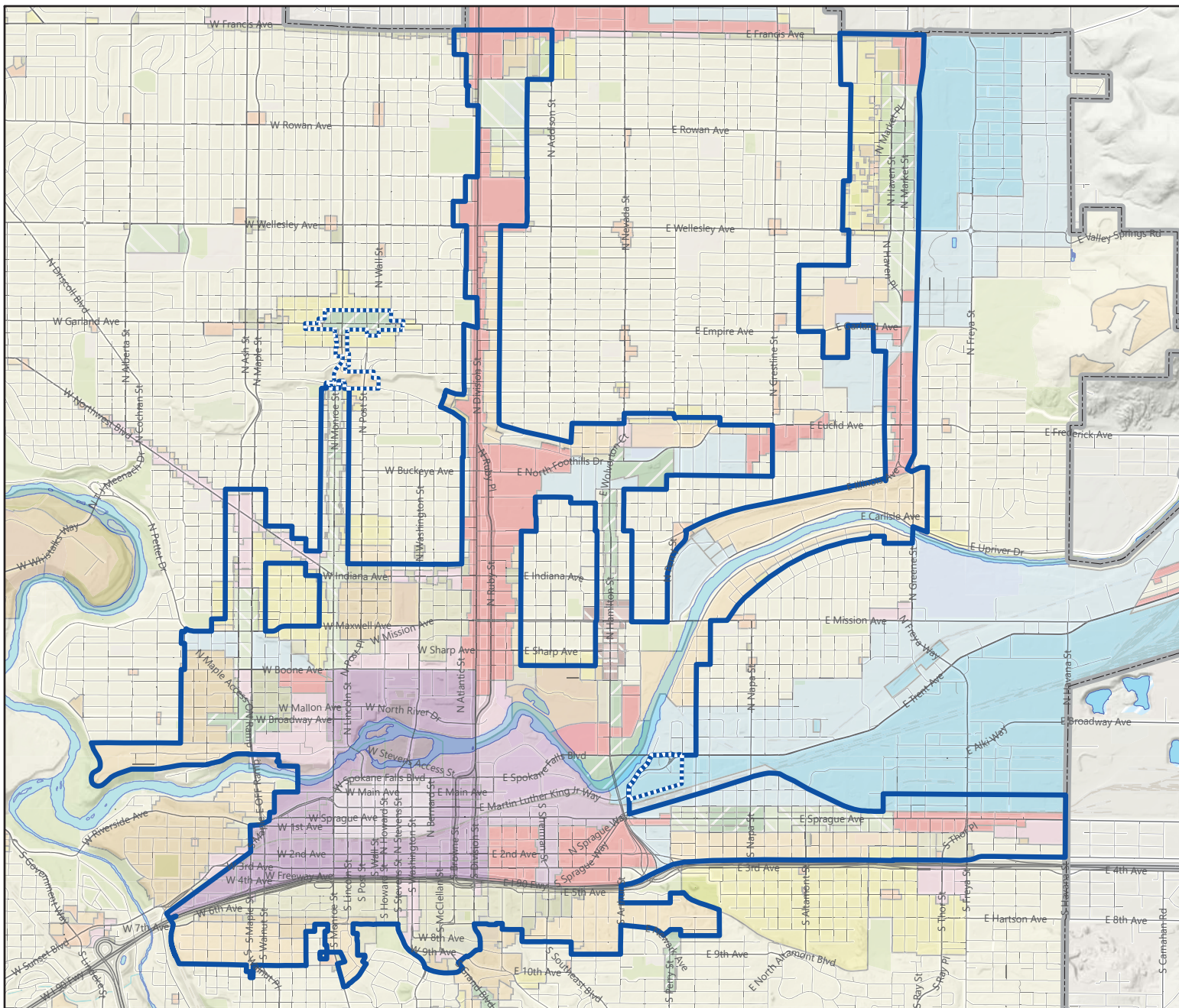
\_\_\_\_\_  
City Clerk

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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



## Attachment A: Spokane's Multi-Family Tax Exemption Target Area

December 2021

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.



Drawn By: Kevin Freibott, Planning Department Date Saved: 12/13/2021 11:40 AM  
Path: H:\Planning\Projects-Current\EDS TIPS\Multi-Family Tax Exemption and City Zoning Map\MFTE Boundary\MFTE Boundary.aprx





## **MFTE Residential Target Area Changes**

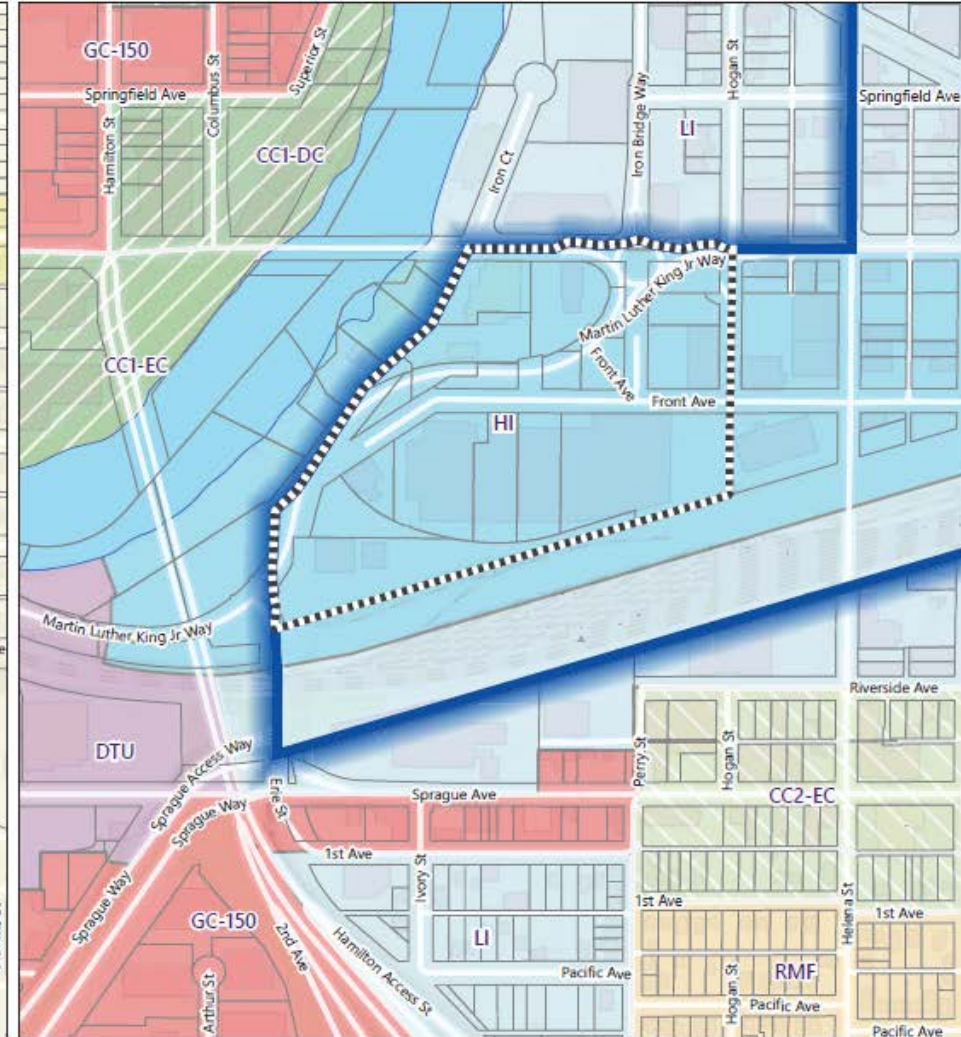
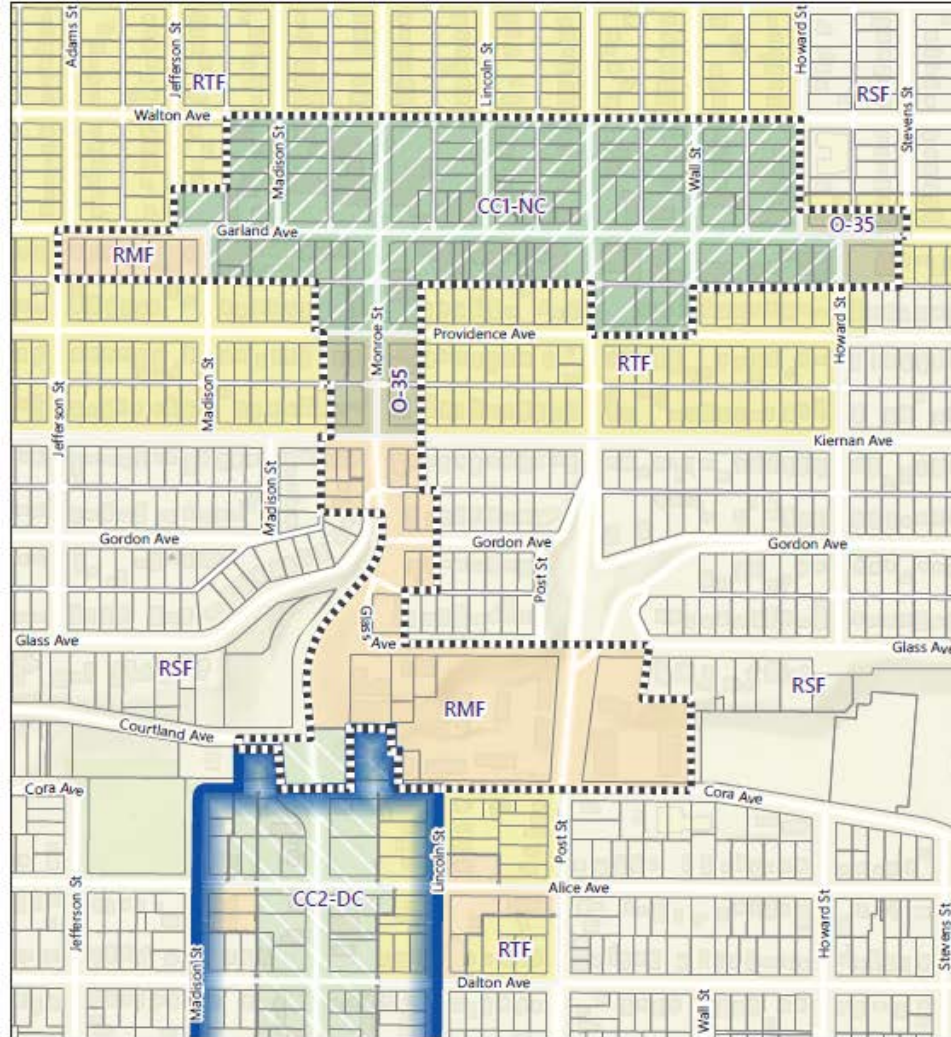
In response to the housing shortage in Spokane, it is the desire of the City to expand the MFTE boundary to incentivizes the creation of multifamily housing in the Garland district and to expand the boundary in the south University District.

# **SMC 08.15 Multi-Family Housing Property Tax Exemption (MFTE)**

A. The purposes of this chapter are to:




1. encourage more multi-family housing opportunities, including affordable housing opportunities, within the City;
2. stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing;
3. increase the supply of mixed-income multifamily housing opportunities within the City;
4. accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans;
5. promote community development, neighborhood revitalization, and availability of affordable housing;
6. preserve and protect buildings, objects, sites and neighborhoods with historic, cultural, architectural, engineering or geographic significance located within the City; and
7. encourage additional housing in areas that are consistent with planning for public transit systems.





## Attachment B: Spokane's Multi-Family Tax Exemption Target Area

December, 2021

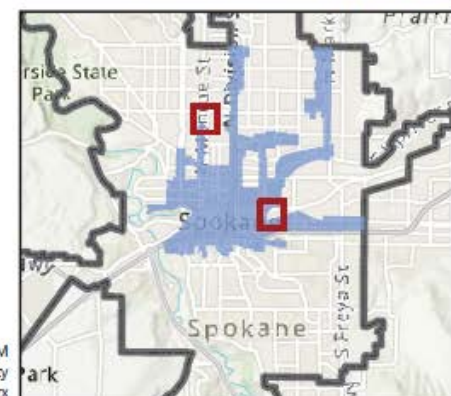
-  Proposed Additional MFTE Area
-  Existing MFTE Area
-  Parcel

0 50 100 200 300 400 Yards

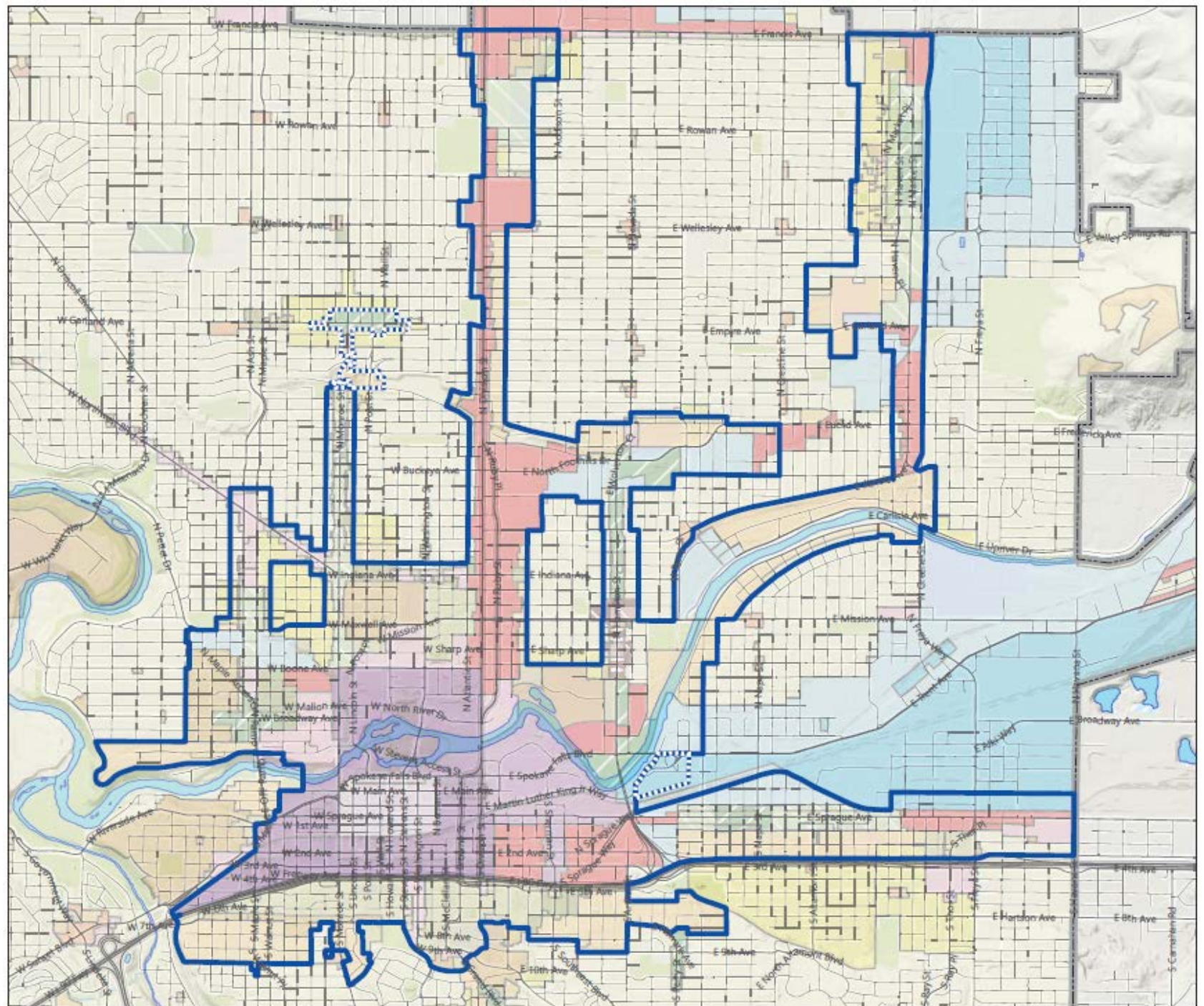
THIS IS NOT A LEGAL DOCUMENT The information shown on this map is compiled from various sources and is subject to constant revision. Information shown on this map should not be used to determine the location of facilities in relationship to property lines, section lines, streets, etc.

Drawn By: Kevin Freibott, Planning Department Date Saved: 12/13/2021 11:40 AM

Path: H:\Planning\Projects-Current\EDS TIPS\Multi-Family Tax Exemption and City Zoning Map\MFTE Boundaries\MFTE Boundary.aprx







# Residential Target Area Size

Spokane's MFTE Residential Target Area is 4,926.8 acres

Garland district will add	45.27 acres
University District will add	25.95 acres

The new revised Spokane MFTE Residential Target Area would then be 4,998.02 acres.

# Tentative Process and Timeline

- Jan. 10, 2022 – Urban Experience Committee Briefing
- Jan. 24, 2022 - Council Agenda Briefing and action to occur on the same day (post-holiday) on **Resolution** of intention/setting hearing for Feb 14, 2022
- Jan. 31, 2022 – Briefing of first reading **Ordinance** on February 7 Advance Agenda
- Feb. 7, 2022 – Briefing of “hearing on final reading ordinance” during 3:30 p.m. Briefing Session and First Reading of Ordinance held during 6:00 p.m. Session
- Feb. 14, 2022 – **Hearing** and 2nd reading of Ordinance
- Ordinance replacing the Residential Target Area Map goes into effect 30 days later

**agenda packet for the February 14, 2022 City Council meeting posted on the City Council's website at:**

**<https://my.spokanecity.org/citycouncil/documents/>.**

IT IS FURTHER RESOLVED that the City Council shall also consider adoption of Ordinance No C36168 to amend SMC 8.15.030 to designate, in its sole discretion, all or a portion of the revised residential targeted area as set forth in Attachment A subsequent to the hearing called for in this resolution.

PASSED BY THE CITY COUNCIL ON \_\_\_\_\_, 2022.

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

Attest:

Approved as to form:

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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