

CITY OF SPOKANE



REGARDING CITY COUNCIL MEETINGS

Notice is hereby given that City Council has resumed in-person meetings. City Council's standing committee meetings, Briefing Sessions, Legislative Sessions and study sessions are held in City Council Chambers – Lower Level of City Hall, 808 W. Spokane Falls Blvd.

City Council Members, City staff, presenters and members of the public will still have the option to participate virtually via WebEx during all meetings, with the exception of Executive Sessions which are closed to the public. Call in information for the September 18, 2023, meetings is below. All meetings will continue to be streamed live on Channel 5 and online at <https://my.spokanecity.org/citycable5/live> and <https://www.facebook.com/spokanecitycouncil>.

WebEx call in information for the week of September 18, 2023:

3:30 p.m. Briefing Session: 1-408-418-9388; access code: 2485 859 8861; password: 0320

6:00 p.m. Legislative Session: 1-408-418-9388; access code: 2493 111 2318; password: 0320

Thursday Study Session: 1-408-418-9388; access code: 2490 239 4174; password: 0320

To participate in public comment (including Open Forum):

Testimony sign up is open from 5:00-6:00 p.m. on Monday, September 18, 2023. You must sign up by 6:00 p.m. to be called on to testify. Those wishing to give testimony virtually can sign up between 5:00-6:00 p.m. at <https://forms.gle/Vd7n381x3seaL1NW6>. (If you are unable to access the form by clicking the hyperlink, please copy and paste the link address into your browser window.) 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 public testimony on legislative items (two minutes for open forum)!**

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 the 6:00 p.m. legislative session, prior to the consideration of consent or legislative items, the Council shall hold an open forum unless a majority of Council Members vote otherwise. The open forum shall have 15 (fifteen) spaces of two minutes each available and members of the public who have not spoken during open forum during that calendar month will be prioritized for spaces ahead of those who have spoken during that calendar month.
- B. Members of the public can sign up for open forum in the hour preceding the legislative session, or at the conclusion of the briefing session, whichever is later, via the virtual testimony form linked in the meeting packet or in person outside Council Chambers. Each speaker must sign themselves using their true first and last name. Members of the public who are unable to sign up during the sign up period or who attempt to sign up late will not be added to the list of speakers. The order of the speakers will be determined at the discretion of the chair. Each speaker shall be limited to no more than two minutes unless a majority of the Council Members in attendance vote on an alternate time limit.
- C. No action, other than a statement of Council Members' 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 and all matters discussed in the open forum shall relate to the affairs of the City. No person shall be permitted to speak in open forum regarding items on that week's current agenda or the next week's advanced agenda, pending hearing items, or initiatives or referenda in a pending election. Individuals speaking during open forum shall address their comments to the Council President and shall maintain decorum as laid out in Rule 2.15(E). Legal or personal matters between private parties that do not impact the governance of the City of Spokane are not a permissible topic of open forum testimony.

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 during the Council's legislative session: the consent agenda as a whole, all first reading ordinances together (with the exception of first reading ordinances associated with Hearings, which shall be taken separately), 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 on issues that are not part of the current or advanced agendas during 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 true first and last 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 obscene speech, physically pounding the dais or other furniture, yelling, or personal comments or verbal insults about any individual will be permitted.
- F. A speaker asserting a statement of fact may be asked by a Council Member 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 or any other individual, and shall confine remarks to the matters that are specifically before the Council at that time.
- H. City employees may participate in public comment, including open forum, providing they are in compliance with the City of Spokane Code of Ethics and they do the following:
 1. Announce at the beginning of their testimony that they are there in their personal capacity or their capacity as a member of a relevant board, commission, committee or community group;
 2. Protect confidential information, including, but not limited to, confidential financial information and attorney-client communications;
 3. Do not use, or be perceived to use, City funds, including giving testimony during paid work time or while in uniform; or City property, including using a City-issued computer or cell phone, in giving testimony.
- I. 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 and avoiding unlawful harassment 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 Director of Policy and Government Relations 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. All persons attending City Council Meetings or City Council sponsored meetings shall refrain from unlawfully harassing other attendees or risk being removed and/or prohibited from attending future meetings.

Rule 2.16 PUBLIC TESTIMONY REGARDING LEGISLATIVE AGENDA ITEMS – TIME LIMITS

- A. Members of the public can sign up to give testimony in the hour preceding the legislative session, or at the conclusion of the briefing session, whichever is later, via the virtual testimony form linked in the meeting packet or in person outside Council Chambers. Each speaker must sign themselves using their true first and last name. Members of the public who are unable to sign up during the sign up period or who attempt to sign up late will not be added to the list of speakers. The order of the speakers shall be determined at the discretion of the chair.
- B. The City Council shall take public testimony on all matters included on its legislative agenda as described at Rule 2.15(A), with those exceptions stated in Rule 2.16(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 the time limit is adjusted by a majority vote of the Council. The chair may allow additional time if the speaker is asked to respond to questions from the Council. Public testimony and consideration of an item may be extended to a subsequent meeting by a majority vote of the Council.
- C. No public testimony shall be taken on amendments to consent or legislative agenda items, votes to override a Mayoral veto, or solely procedural, parliamentary, or administrative matters of the Council.
- D. Public testimony will be taken on consent and legislative items that are moved to Council's regular briefing session or study session unless a majority of Council votes otherwise during the meeting in which the items are moved.
- E. 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.
 4. In the event that the side for which individuals wish to speak is not identified, those wishing to give testimony shall be granted three (3) minutes to present their position after all sides have made their initial presentations and before each side's rebuttal period.
- F. 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.
- G. Testimony may also be submitted by mail to City Council Office, Spokane City Hall, 808 W. Spokane Falls Blvd., Spokane, WA, 99201, by email to all Council Members, or via the Contact form on the Council's website.

THE CITY OF SPOKANE



ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, SEPTEMBER 18, 2023

MISSION STATEMENT

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

MAYOR NADINE WOODWARD

COUNCIL PRESIDENT LORI KINNEAR

COUNCIL MEMBER JONATHAN BINGLE

COUNCIL MEMBER RYAN OELRICH

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

BRIEFING AND LEGISLATIVE SESSIONS

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. Pursuant to Council Rule 2.16.C, public testimony will be taken on consent and legislative items that are moved to Council's regular Briefing Session unless a majority of Council votes otherwise during the meeting in which the items are moved. The Legislative Session is also open to the public and public comment will be taken on Legislative Session items, except those that are adjudicatory or solely administrative in nature. Following the conclusion of the Legislative Agenda, an Open Forum will be held unless a majority of Council Members vote otherwise. Please see additional Open Forum information that appears at the end of the City Council agenda.

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.

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. Council Members must be recognized by the chair for the purpose of obtaining the floor.
- Each person speaking at the public microphone shall verbally identify themselves by their true first and last name, city of residency and, if appropriate, representative capacity.
- 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. (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.
- 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 or any other individual, and shall continue to the matters that are specifically before the Council at that time.
- City staff may participate in public comment, including open forum, providing they are in compliance with the City of Spokane Code of Ethics and they follow the steps outlined in the City Council Rules of Procedure.

SPEAKING TIME LIMITS: Unless the time limit is adjusted by a majority vote of the Council, each person addressing the Council shall be limited to a two-minute speaking time during Open Forum and a three-minute speaking time for other matters. The chair may allow additional time if the speaker is asked to respond to questions from the Council. Public testimony and consideration of an item may be extended to a subsequent meeting by a majority vote of the Council. Note: No public testimony shall be taken on amendments to consent or legislative agenda items, or solely procedural, parliamentary, or administrative matters of the Council, including veto overrides.

CITY COUNCIL AGENDA: The City Council Advance and Current Agendas may be obtained prior to Council Meetings by accessing the City website at <https://my.spokanecity.org>.

BRIEFING SESSION

(3:30 p.m.)

(Council Chambers Lower Level of City Hall)
(No Public Testimony Taken)

ROLL CALL OF COUNCIL

INTERVIEWS OF NOMINEES TO BOARDS AND COMMISSIONS

COUNCIL OR STAFF REPORTS OF MATTERS OF INTEREST

ADVANCE AGENDA REVIEW (Staff or Council Member briefings and discussion)

APPROVAL BY MOTION OF THE ADVANCE AGENDA

CURRENT AGENDA REVIEW (Presentation of any new background information and discussion of any adjustments)

EXECUTIVE SESSION

(Closed Session of Council)

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

TOWN HALL / LEGISLATIVE SESSION

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

PLEDGE OF ALLEGIANCE

WORDS OF INSPIRATION AND SPECIAL INTRODUCTIONS

ROLL CALL OF COUNCIL

COUNCIL AND COMMITTEE REPORTS

(Committee Reports for City Council Standing Committees and other Boards and Commissions)

PROCLAMATIONS AND SALUTATIONS

REPORTS FROM NEIGHBORHOOD COUNCILS AND/OR OTHER CITY-SPONSORED
COMMUNITY ORGANIZATIONS

ANNOUNCEMENTS

(Announcements regarding Changes to the City Council Agenda)

NO BOARDS AND COMMISSIONS APPOINTMENTS

ADMINISTRATIVE REPORTS

TOWN HALL FORUM

At each meeting before the consideration of the Consent Agenda, the Council shall hold an open public comment period for up to 15 (fifteen) speakers. Each speaker is limited to no more than two minutes. In order to participate in Open Forum, you must sign up by 6:00 p.m. If more than 15 (fifteen) speakers wish to participate in Open Forum, members of the public who have not spoken during that calendar month will be prioritized. A sign-up form will be available on the day of the meeting from 5:00-6:00 p.m. outside of Council Chambers for in-person attendees. Virtual sign up is open between 5:00-6:00 p.m. at <https://forms.gle/Vd7n381x3seaL1NW6>. (If you are unable to access the form by clicking the hyperlink, please copy and paste the link address into your browser window.) Instructions for virtual 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.

CONSENT AGENDA

REPORTS, CONTRACTS AND CLAIMS

RECOMMENDATION

- | | | | |
|----|---|----------------|------------------------------|
| 1. | Value Blanket Renewals with: | Approve
All | |
| | a. Western Systems Inc. for the purchase of traffic signal control cabinets—not to exceed \$542,000. | | OPR 2022-0617
ITB 5693-22 |
| | b. Valmont Industries to purchase signal standards—not to exceed \$255,000.
(Council Sponsor: Council President Kinnear)
Clint Harris | | OPR 2022-0618
ITB 5680-22 |
| 2. | Value Blanket with Atlas Boiler & Equipment, Co. (Spokane) for the as-needed purchase of Maxon gas valves for the Waste to Energy facility from September 15, 2023, to September 14, 2024—total cost not to exceed \$75,000 (plus tax). (Council Sponsors: Council President Kinnear and Council Member Bingle)
David Paine | Approve | OPR 2023-0895
RFQ 5950-23 |

- | | | | |
|----|---|---------|---------------------------------|
| 3. | <p>Contract Amendment and Extension with L&M Truck Sales, Inc. (Spokane) for the rental of a CAT 988 loader for the Waste to Energy Facility from April 17, 2023, through August 7, 2023—additional \$30,000 (incl. tax). Total contract amount: \$79,000. (Council Sponsors: Council President Kinnear and Council Member Bingle)
 David Paine</p> | Approve | OPR 2023-0451 |
| 4. | <p>Contract Amendment with Deeco, Inc. (Raleigh, NC) for air emissions compliance testing at the Waste to Energy Facility—additional \$40,000 (plus tax, if applicable). Total annual cost: \$175,728.00 (incl. tax). (Council Sponsors: Council President Kinnear and Council Member Bingle)
 David Paine</p> | Approve | OPR 2022-0709
IRFP 5616-22 |
| 5. | <p>Contract Amendment with BrandSafway Services, LLC (Pasco, WA) for removal and replacement of insulation and cladding at the Waste to Energy Facility from February 1, 2023, to January 1, 2024, due to unanticipated maintenance needs—additional \$50,000. Total annual cost: \$150,000 (incl. tax). (Council Sponsors: Council President Kinnear and Council Member Bingle)
 David Paine</p> | Approve | OPR 2019-1094
PW ITB 5130-19 |
| 6. | <p>Contract with Bender CCP, Inc. (Portland, OR) for as-needed boiler feedwater pump maintenance and repairs at the Waste to Energy Facility from September 1, 2023, through August 31, 2024—total cost not to exceed \$100,000 (incl. tax). (Council Sponsors: Council President Kinnear and Council Member Bingle)
 David Paine</p> | Approve | OPR 2023-0896
PW ITB 5918-23 |
| 7. | <p>Five-year Contract with Carahsoft Technology Group (Reston, VA) for Celebrite software and maintenance to be used for digital forensic investigations for the Spokane Police Department from May 1, 2023, through April 30, 2028, utilizing GSA Contract No. 47QSWA18D008F—\$166,825.24. (Council Sponsors: Council Members Cathcart and Bingle)
 Shawna Ernst</p> | Approve | OPR 2023-0897 |
| 8. | <p>Consultant Agreement with HDR Engineering, Inc. (Spokane) for NPDES permit studies and support services for the Riverside Park Water Reclamation Facility from September 1, 2023, through April 31, 2024—\$118,186. (Council Sponsor: Council President Kinnear)
 Jeff Donovan</p> | Approve | OPR 2023-0898
RFQu 5914-23 |
| 9. | <p>Personal Services Agreement with McKinstry Essention, LLC (Spokane Valley, WA) for an investment grade audit proposal regarding renewable natural gas utilizing Washington State’s Energy Savings</p> | Approve | OPR 2023-0899 |

Performance Contracting allowed under Washington RCW 39.35 and cooperative purchasing contract #220104 with The Interlocal Purchasing System from September 1, 2023, through December 31, 2024—not to exceed \$114,473. (Council Sponsor: Council President Kinnear)

Fred Brown

- | | | | |
|----------------------|--|------------------------------|---------------|
| 10. | Contract Amendment and Extension No. 1 with GeoEngineers, Inc. (Spokane) for Part 12D Comprehensive Assessment and Report for Upriver Dam Hydroelectric Project – Phase 1, adding a seismic hazard evaluation study analysis, and extending the contract through December 31, 2024—\$90,000. (Council Sponsor: Council Member Wilkerson) | Approve | OPR 2023-0426 |
| Seth McIntosh | | | |
| 11. | Report of the Mayor of pending claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2023, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____. | Approve & Authorize Payments | CPR 2023-0002 |
| 12. | City Council Meeting Minutes: _____, 2023. | Approve | CPR 2023-0013 |

LEGISLATIVE AGENDA

NO SPECIAL BUDGET ORDINANCES

NO EMERGENCY ORDINANCES

NO RESOLUTIONS

FINAL READING ORDINANCES

(Require Four Affirmative, Recorded Roll Call Votes)

- | | |
|----------------------|--|
| ORD C36439 | Providing an increase in City business registration fees; amending SMC Section 08.02.0206(A) and 08.02.0206(B) of the Spokane Municipal Code. (Council Sponsors: Council President Kinnear and Council Member Wilkerson) |
| Chris Johnson | |
| ORD C36440 | Relating to Noise Control, amending SMC section 13.02.0310, to chapter 13.02, and amending SMC section 10.70.040 to chapter 10.70 of the |

Spokane Municipal Code; and setting an effective date. (Council Sponsors: Council President Kinnear and Council Member Stratton)

Chris Averyt

FIRST READING ORDINANCES

ORD C35425
(As Amended)

Vacating a portion of Ross Court from the East line of re-aligned North Crescent to the West line of Granite Street. (Initial First Reading held August 15, 2016) (Council Sponsors: Council Members Bingle and Cathcart)

Eldon Brown

ORD C36441

Relating to shoreline regulations to accommodate aquaculture amending Spokane Municipal Code Section 17C.190.500 Agriculture; Section 17E.060.470 Aquaculture; and Section 17E.060.690 Shoreline Primary Use. (Council Sponsors: Council President Kinnear and Council Member Stratton)

Tyler Kimbrell

NO SPECIAL CONSIDERATIONS

NO HEARINGS

NEIGHBORHOOD REPORTS

Motion to Approve Advance Agenda for September 18, 2023
(per Council Rule 2.1.2)

ADJOURNMENT

The Spokane 18, 2023, Regular Legislative Session of the City Council is adjourned to September 25, 2023.

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Risk Management at 509.625.6221, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or mlovmaster@spokanecity.org. Persons who are deaf or hard of hearing may contact risk Management through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

NOTES

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

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2022-0617
Renews #	
Cross Ref #	
Project #	
Bid #	ITB 5693-22
Requisition #	

Submitting Dept	STREETS
Contact Name/Phone	CLINT HARRIS 625-7744
Contact E-Mail	CEHARRIS@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	1100 - TRAFFIC CONTROL CABINETS VALUE BLANKET RENEWAL

Agenda Wording

The Street Department is requesting approval for the purchasing of traffic signal control cabinets at a cost not to exceed \$542,000.00

Summary (Background)

This Value Blanket (301399-000) renewal, awarded via bid, provides a streamlined means of ordering traffic signal cabinets for street projects and/or maintenance replacements. This Value Blanket is contracted with Western Systems Inc. and covers both Federally funded and not-federally funded projects. Traffic signal cabinets are paid for by project dollars or street maintenance dollars already budgeted.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense \$ 542,000.00

Select \$

Select \$

Select \$

Budget Account

Various

#

#

#

Approvals**Dept Head** HARRIS, CLINT E.**Division Director** FEIST, MARLENE**Finance** ORLOB, KIMBERLY**Legal** HARRINGTON, MARGARET**For the Mayor** JONES, GARRETT**Council Notifications****Study Session\Other** PIES 8/28/2023**Council Sponsor** Kinnear**Distribution List**

ceharris@spokanecity.org

jwthomas@spokanecity.org

gokihara@spokanecity.org

tprince@spokanecity.org

jklapp@spokanecity.org

bvasecka@spokanecity.org

tbrazington@spokanecity.org

Additional Approvals**Purchasing** NECHANICKY, JASON

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Streets
Contact Name	Clint Harris
Contact Email & Phone	ceharris@spokanecity.org 509-625-7744
Council Sponsor(s)	Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	1100 – Traffic Control Cabinets Value Blanket Renewal
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>This Value Blanket provides a streamlined means of ordering traffic signal cabinets for street projects and/or maintenance replacements.</p> <p>-This Value Blanket with Western Systems Inc. covers both Federally funded and not-federally funded projects</p> <p>-Allows the ordering of signal cabinets not to exceed \$542,000 (tax included)</p> <p>-Traffic signal cabinets are paid for by project dollars or street maintenance dollars already budgeted.</p>
Proposed Council Action	Consent Approval for Renewal – Pies 8/28/2023
<p>Fiscal Impact \$542,000.00 Total Cost - \$542,000.00 Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: Street Dept. Budget</p> <p>Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities?	
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?	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right 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?	



**CITY OF SPOKANE
PURCHASING**
808 W. SPOKANE FALLS BLVD.
SPOKANE, WA 99201-3316
TELEPHONE (509) 625-6400
FAX (509) 625-6413

Purchase Order Number

VB-301399-000

This number must appear on all invoices, papers and shipments

Vendor: WESTERN SYSTEMS INC
1122 INDUSTRY ST BLDG B
EVERETT WA 98203

Ship To: STREET MAINTENANCE
CITY OF SPOKANE
915 N NELSON STREET
SPOKANE WA 99202

BUYER		BUYER PHONE #	TERMS	F.O.B.	DELIVERY DATE
THEA PRINCE		509-625-6403	NET 30 DAYS	DESTINATION	--
Quantity	U/M	Part Number/ Description		Unit Price	Total
		TRAFFIC CONTROL CABINETS - PER BID #5693-22 - APPROVED BY CITY COUNCIL ON 9/12/22 (OPR #2022-0617) THIS COVERS FEDERALLY FUNDED AND NON-FEDERALLY FUNDED PURCHASES. DEPARTMENT WILL PLACE ORDER AS NEEDED. THIS VALUE BLANKET ORDER EXPIRES 10/3/2023 NEMA P TRAFFIC SIGNAL CABINET & CONTROLLER - \$52,508.85 NEMA P-PLUS TRAFFIC SIGNAL CABINET & CONTROLLER - \$61,359.77 NEMA M TRAFFIC SIGNAL CABINET & CONTROLLER - \$47,412.18 NEMA M PEDESTRIAN HYBRID BEACON TRAFFIC SIGNAL CABINET - \$46,681.05			
ORDER TO INCLUDE "MATERIAL SAFETY DATA SHEETS" IF REQUIRED				Total	542,000.00

AUTHORIZED SIGNATURE

STANDARD TERMS & CONDITIONS

1. **TAXES:** Unless otherwise indicated, the City agrees to pay all State of Washington sales taxes or use taxes. The City is exempt from federal excise taxes. Business, occupational and personal property taxes are the sole responsibility of the Seller.
2. **CHANGES:**
 - A. No alteration in any of the terms, conditions, delivery, price, quantity or specifications of items ordered will be effective without the written consent of the Purchasing Director or above-named buyer.
 - B. In no event will the City agree to any disclaimer of warranties.
 - C. Any response to the City's order which does not contain the words "counteroffer and not acceptance" prominently will be treated as an acceptance of this purchase order on its terms.
3. **FREIGHT TERMS:**
 - A. Unless otherwise specified, all items are to be shipped prepaid F.O.B. Destination.
 - B. Packing lists shall be enclosed in every box or package.
 - C. Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury or destruction of items ordered while in transit.
4. **ORDERING POLICY:**
 - A. Items shall not be shipped to the City unless a purchase order is received or an authorized purchase order number is given over the phone.
 - B. Items received without an authorized purchase order number will be returned to the Seller at the Seller's expense.

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

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2022-0618
Renews #	
Cross Ref #	
Project #	
Bid #	5680-22
Requisition #	

Submitting Dept	STREETS
Contact Name/Phone	CLINT HARRIS 625-7744
Contact E-Mail	CEHARRIS@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	1100 - TRAFFIC SIGNAL STANDARDS VALUE BLANKET RENEWAL

Agenda Wording
 The Street Department is requesting approval to purchase signal standards at a cost not to exceed \$255,000.00

Summary (Background)
 This value blanket (301400-000) renewal provides a streamlined means of ordering signal standards for street projects and/or maintenance replacements where vehicles damage or displace signal standards. - This Value Blanket is with Valmont Industries, and was awarded via bid in 2022. Signal Standards are paid for by project dollars or street maintenance dollars already budgeted.

Lease? NO	Grant related? NO	Public Works? NO
Fiscal Impact		Budget Account
Expense	\$ 255,000.00	# Various
Select	\$	#
Select	\$	#
Select	\$	#

Approvals		Council Notifications	
Dept Head	HARRIS, CLINT E.	Study Session\Other	PIES 8/28/2023
Division Director	FEIST, MARLENE	Council Sponsor	Kinnear
Finance	ORLOB, KIMBERLY	Distribution List	
Legal	HARRINGTON, MARGARET	ceharris@spokanecity.org	
For the Mayor	JONES, GARRETT	jwthomas@spokanecity.org	
Additional Approvals		tprince@spokanecity.org	
Purchasing	NECHANICKY, JASON	jklapp@spokanecity.org	
		gokihara@spokanecity.org	
		tbrazington@spokanecity.org	
		bvasecka@spokanecity.org	

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Streets
Contact Name	Clint Harris
Contact Email & Phone	ceharris@spokanecity.org 509-625-7744
Council Sponsor(s)	Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	1100 – Signal Standards Value Blanket Renewal
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>This value blanket provides a streamlined means of ordering signal standards for street projects and/or maintenance replacements where vehicles damage or displace signal standards.</p> <p>-Allows the ordering of signal standards up to a cumulative amount of \$255,000.00 including tax for 2/22-2/23.</p> <p>- This Value Blanket is with Valmont Industries, awarded via bid in 2022</p> <p>- Signal Standards are paid for by project dollars or street Maintenance dollars already budgeted.</p>
Proposed Council Action	Consent Approval for Renewal – Pies 8/28/2023
Fiscal Impact 255,000.00 Total Cost: <u>255,000.00</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: Street Dept. Budget Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities?	
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?	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right 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?	



**CITY OF SPOKANE
PURCHASING**
808 W. SPOKANE FALLS BLVD.
SPOKANE, WA 99201-3316
TELEPHONE (509) 625-6400
FAX (509) 625-6413

Purchase Order Number

VB-301400-000

This number must appear on all invoices, papers and shipments

Vendor: VALMONT INDUSTRIES INC
ONE VALMONT PLAZA
OMAHA NE 68154-5215

Ship To: STREET MAINTENANCE
CITY OF SPOKANE
915 N NELSON STREET
SPOKANE WA 99202

BUYER		BUYER PHONE #	TERMS	F.O.B.	DELIVERY DATE
THEA PRINCE		509-625-6403	NET 30 DAYS	DESTINATION	--
Quantity	U/M	Part Number/ Description		Unit Price	Total
		SIGNAL STANDARDS PER BID #5680-22 APPROVED BY CITY COUNCIL ON 7/12/22 (OPR 2022-0618) THIS COVERS FEDERALLY FUNDED AND NON-FEDERALLY FUNDED PURCHASES. DEPARTMENT WILL ORDER PRODUCT "AS NEEDED" PRICING IS ATTACHED THIS VB EXPIRES 10/3/2023			
ORDER TO INCLUDE "MATERIAL SAFETY DATA SHEETS" IF REQUIRED				Total	255,000.00

AUTHORIZED SIGNATURE

STANDARD TERMS & CONDITIONS

1. **TAXES:** Unless otherwise indicated, the City agrees to pay all State of Washington sales taxes or use taxes. The City is exempt from federal excise taxes. Business, occupational and personal property taxes are the sole responsibility of the Seller.
2. **CHANGES:**
 - A. No alteration in any of the terms, conditions, delivery, price, quantity or specifications of items ordered will be effective without the written consent of the Purchasing Director or above-named buyer.
 - B. In no event will the City agree to any disclaimer of warranties.
 - C. Any response to the City's order which does not contain the words "counteroffer and not acceptance" prominently will be treated as an acceptance of this purchase order on its terms.
3. **FREIGHT TERMS:**
 - A. Unless otherwise specified, all items are to be shipped prepaid F.O.B. Destination.
 - B. Packing lists shall be enclosed in every box or package.
 - C. Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury or destruction of items ordered while in transit.
4. **ORDERING POLICY:**
 - A. Items shall not be shipped to the City unless a purchase order is received or an authorized purchase order number is given over the phone.
 - B. Items received without an authorized purchase order number will be returned to the Seller at the Seller's expense.



Agenda Sheet for City Council Meeting of:
09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2023-0895
Renews #	

Submitting Dept	SOLID WASTE DISPOSAL	Cross Ref #	
Contact Name/Phone	DAVID PAINE 625-6878	Project #	
Contact E-Mail	DPAINE@SPOKANECITY.ORG	Bid #	RFQ 5950-23
Agenda Item Type	Purchase w/o Contract	Requisition #	VALUE BLANKET
Agenda Item Name	4490 VALUE BLANKET FOR THE PURCHASE OF MAXON GAS VALVES AT THE WTE		

Agenda Wording

Value blanket award to Atlas Boiler & Equipment, co. (Spokane, WA) for the as-needed purchase of Maxon Gas Valves for the WTE from Sep. 15, 2023 to Sep. 14, 2024 and a total cost not to exceed \$75,000.00 plus tax.

Summary (Background)

Gas valves are needed for the safe operation of the Waste to Energy Facility. To have replacement valves available during maintenance and repairs, RFQ 5950-23 was issued for their as-needed purchase. Two responses were received and Atlas Boiler was the low-cost bidder. The initial value blanket will be for one year with the option of four (4) additional one-year renewals.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense \$ 75,000.00

Select \$

Select \$

Select \$

Budget Account

4490-44100-37148-53210-34002

#

#

#

Approvals

Dept Head AVERYT, CHRIS

Division Director FEIST, MARLENE

Finance ALBIN-MOORE, ANGELA

Legal HARRINGTON, MARGARET

For the Mayor JONES, GARRETT

Additional Approvals

Purchasing WAHL, CONNIE

Council Notifications

Study Session\Other PIES 8/28/23

Council Sponsor CP Kinnear, CM Bingle

Distribution List

mdorgan@spokanecity.org

jsalstrom@spokanecity.org

tprince@spokanecity.org

rrinderle@spokanecity.org

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Solid Waste Disposal
Contact Name	David Paine
Contact Email & Phone	dpaine@spokanecity.org , 509-625-6878
Council Sponsor(s)	CP Kinnear, CM Bingle
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Value Blanket for the purchase of Maxon Gas Valves at the WTE
Summary (Background) *use the Fiscal Impact box below for relevant financial information	Gas valves are needed for the safe operation of the Waste to Energy Facility. To have replacement valves available during maintenance and repairs, RFQ 5950-23 was issued for their as-needed purchase. Bidding closed on Aug. 7, 2023 for RFQ 5950-23 and two responses were received. Atlas Boiler was the low-cost bidder. The initial value blanket will be for one year, spanning from September 15, 2023 to September 14, 2024 with the option for four additional one-year renewals. The total annual cost will be \$75,000.00 plus tax.
Proposed Council Action	Approval of value blanket award
Fiscal Impact	
Total Cost: <u>\$75,000.00 plus tax</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: 2023 SWD Budget	
Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring	
Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities?	
This work is necessary to maintain the WTE Facility's ability to generate low-cost power supplied to the grid. Low-cost power is imperative to curbing the rise in cost of electricity.	
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 contractor is governed by WA L&I.	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?	
The COS Procurement Policies regulate and safeguard this process.	

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 work supports the continued safe operation the Facility. The expenditure is supportive of the Sustainable Action Plan and the Capital Improvement Program.

Bid Response Summary

Bid Number RFQ 5950-23
Bid Title Maxon Gas Valves --No Or-Equals-- As-Needed Value Blanket
Due Date Monday, August 7, 2023 8:00:00 PM [(UTC-08:00) Pacific Time (US & Canada)]
Bid Status Open for Bidding
Company bob@nbiatlasboiler.com
Submitted By Bob Dowers - Friday, August 4, 2023 2:24:07 PM [(UTC-08:00) Pacific Time (US & Canada)]
 bob@nbiatlasboiler.com 509-535-1300

Comments**Question Responses**

Group	Reference Number	Question	Response
Default Item Group			
	#1	ADDENDA Bidder acknowledges receipt of _____ addenda and agrees that their requirements have been included in this bid proposal. If none were issued enter "0".	0
BACK GROUND AND PURPOSE			
	#1	The City of Spokane, Solid Waste Disposal, Waste To Energy (hereinafter "City") is initiating this Request for Quotes to solicit bids from vendors who have a proven ability to provide spec'd Maxon valves. Resulting Contract would result in Value Blanket to allow City to procure Maxon valves – As Needed. The City does not bind itself to purchase the full quantities stipulated in the proposal as estimates.	I agree and I acknowledge
SUBMISSION OF BIDS			
	#1	Bid Responses shall be submitted electronically through the City of Spokane's bidding portal: https://spokane.procureware.com on or before the Due Date and time mentioned above. Hard, e-mailed or faxed copies and/or late bids shall not be accepted.	I agree and I acknowledge
	#2	The City of Spokane is not responsible for bids electronically submitted late. It is the responsibility of the Bidder to be sure the bids are electronically submitted sufficiently ahead of time to be received no later than 9:00 a.m. Pacific Local Time, on the bid opening date.	I agree and I acknowledge
	#3	All communication between the Bidder and the City upon receipt of this bid shall be via the "Clarification Tab" within ProcureWare. Any other communication will be considered unofficial and non-binding on the City of Spokane.	I agree and I acknowledge
GENERAL CONDITIONS			

#1	Bidder acknowledges that they have read and understand the Terms and Conditions Document in the "Documents" tab. If answer is "I don't agree and I don't acknowledge", include requested exception in proposal submittal on separate page and title as "Exception to Terms and Conditions". The City will consider and determine if exception will be accepted.	I agree and I acknowledge
#1.1	EXCEPTION: If you took exception above, upload here.	
INTERPRETATION		
#1	INTERPRETATION If the Bidder discovers any errors, discrepancies or omissions in the Quote specifications, or has any questions about the specifications, the Bidder must notify Purchasing in writing. Any corrections issued by the Purchaser will be incorporated into the contract or purchase order.	I agree and I acknowledge
WITHDRAWAL OF QUOTES		
#1	WITHDRAWAL OF QUOTES Bidders may withdrawal Quote prior to the scheduled Quote due date and time. Unless otherwise specified, no Quotes may be withdrawn for a minimum of seventy-five (75) calendar days after the due date.	I agree and I acknowledge
EVALUATION OF QUOTES		
#1	Shall be based upon the following criteria, where applicable: A. The price, including sales tax and the effect of discounts. Price may be determined by life cycle costing or total cost quoting, when advantageous to the Purchaser. B. The quality of the items quoted, their conformity to specifications and the purpose for which they are required. C. The Bidder's ability to provide prompt and efficient service and/or delivery. D. The character, integrity, reputation, judgment, experience and efficiency of the Bidder. E. The quality of performance of previous contracts or services. F. The previous and existing compliance by the Bidder with the laws relating to the contract or services. G. Uniformity or interchangeability. H. The energy efficiency of the product throughout its life. J. Any other information having a bearing on the decision to award the contract.	I agree and I acknowledge
QUOTING ERRORS		
#1	QUOTING ERRORS When, after the opening and tabulation of Quotes, a Bidder claims error, and requests to be relieved of award, Bidder will be required to promptly present certified work sheets. The Purchaser will review the work sheets and if the Purchaser is convinced, by clear and convincing evidence, that an honest, mathematically excusable error or critical omission of costs has been made, the Bidder may be relieved of his Quote.	I agree and I acknowledge
REJECTION OF QUOTES		

#1	REJECTION OF QUOTES The Purchaser reserves the right to reject any or all Quotes; to waive minor deviations from the specifications, to waive any informality in Quotes received, whenever it is in the Purchaser's best interest, and to accept or reject all or part of this Quote at prices shown.	I agree and I acknowledge
AWARD OF CONTRACT		
#1	AWARD OF CONTRACT Award of contract or purchase, when made, will be to the Bidder whose Quote is the most favorable to the Purchaser, taking into consideration price and the other evaluation factors. INTERLOCAL AND STATE CONTRACTS WHERE APPLICABLE WILL BE CONSIDERED AS A QUOTE. Any order resulting from award will be submitted by Purchasing. Unsuccessful Bidders will not automatically be notified of Quote results.	I agree and I acknowledge
PAYMENT TERMS		
#1	Supplier acknowledges that unless agreeing to payment by credit card with no additional fee, payment shall be made via direct deposit/ACH (except as provided by state law) after receipt of the goods/services ordered. A completed ACH application is required before a City order will be issued. If the City objects to all or any portion of an invoice, it shall notify the supplier and reserve the right to pay only that portion of the invoice not in dispute. In that event, all parties shall immediately make every effort to settle the disputed amount.	I agree and I acknowledge
BIDDER INFORMATION		
#1	Person's Name, Title, Email Address, and Phone Number Submitting Bid	Bob Dowers, Estimator, 3815 E Trent Ave, Spokane, WA 99201, 509-535-1300
#2	State Person and Phone To Be Contacted By City Concerning Items Bid	Bob Dowers 509-535-1300
ORGANIZATION		
#1	Organization: Bidder Should Enter If Proposal Is of an Individual, Partnership, Corporation, and Existing Under The Laws of What US State. Enter Information Here	Corporation
CITY OF SPOKANE BUSINESS REGISTRATION REQUIREMENT		

	#1	Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained and being the holder of a valid annual business registration or temporary business registration as provided in this chapter. The supplier shall be responsible for contacting the State of Washington Business License Services at www.dor.wa.gov or 360-705-6741 to obtain a business registration. If the vendor 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.	I agree and I acknowledge
	#2	City of Spokane Business Registration Number	T12040148BUS
PROPRIETARY INFORMATION/PUBLIC DISCLOSURE			
	#1	All materials submitted to the City in response to this competitive procurement shall become the property of the City.	I agree and I acknowledge
	#2	All materials received by the City are public records and are subject to being released pursuant to a valid public records request. Washington state law mandates that all documents used, received or produced by a governmental entity are presumptively public records, and there are few exemptions. RCW Ch. 41.56.	I agree and I acknowledge
	#3	When responding to this competitive procurement, please consider that what you submit will be a public record. If you believe that some part of your response constitutes legally protected proprietary information, you MUST submit those portions of your response as a separate part of your response, and you MUST label it as "PROPRIETARY INFORMATION." If a valid public records request is then received by the City for this information, you will be given notice and a 10-day opportunity to go to court to obtain an injunction to prevent the City from releasing this part of your response. If no injunction is obtained, the City is legally required to release the records.	I agree and I acknowledge
	#4	The City will neither look for nor honor any claims of "proprietary information" that are not within the separate part of your response.	I agree and I acknowledge
ADDITIONAL ITEMS			
	#1	The City of Spokane reserves the right to purchase additional items at the quoted price. Supplier agrees to sell at the same price, terms and conditions.	Yes
MINORITY BUSINESS ENTERPRISE			
	#1	Vendor (is ____, is not ____) a Minority Business Enterprise. A Minority Business Enterprise is defined as a "business, privately or publicly owned, at least 51% of which is owned by minority group members." For purpose of this definition, minority group members are Blacks, Hispanics, Asian Americans, American Indian or Alaskan Natives, or Women.	Is Not

SMALL BUSINESS		
#1	Vendor (is ____, is not ____) a small business concern. (A small business concern for the purpose of government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operations in which it is bidding on government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria as prescribed by the Small Business Administration).	Is
NON-COLLUSION		
#1	The Bidder certifies that his/her firm has not entered into any agreement of any nature whatsoever to fix, maintain, increase or reduce the prices or competition regarding the items covered by this RFQ	I Certify No Agreement Was Entered
INTERLOCAL PURCHASE AGREEMENTS		
#1	The City of Spokane has entered into Interlocal Purchase Agreements with other public Agencies pursuant to chapter 39.34 RCW. In submitting a response, the Proposer agrees to provide its services to other public Agencies at the same contracted price, terms and conditions it is providing to the City of Spokane, contingent upon the Firm's review and approval at the time of a requested contract. The Firm's right to refuse to enter into a contract with another public Agency at the time of request shall be absolute.	Yes
ACCEPTANCE PERIOD		
#1	Bidders must provide a minimum of seventy-five (75) Calendar Days for acceptance by the City from the due date for receipt of Bids.	I agree and I acknowledge
CONTRACT PERIOD		
#1	The contract shall begin upon approval by City Council and terminate one (1) year from the date on the Value Blanket Order. Renewals or extensions are applicable on termination date The proposed contract shall be for a year one (1) year period. Pricing shall be firm for a period of 6 months, from bid due date. Pricing adjustment requests will be considered every six-months thereafter, to include any option periods.	I agree and I acknowledge
RENEWAL		
#1	Contract renewals or extensions shall be initiated at the discretion of the City and subject to mutual agreement. The contract may be extended for four (4) additional one-year contract periods with the total contract period not to exceed five (5) years.	I agree and I acknowledge
PCB CERTIFICATION		
#1	As far as you know has this type product been tested for PCBs by a WA State accredited lab using EPA Method 1668c (or equivalent as updated)?	Don't Know

#2	If so were PCBs found at a measurable level?	Don't Know
#3	If so attach the results or note from whom the results can be obtained.	
#4	Do you have reason to believe the product contains measurable levels of PCBs?	No
#5	Do you have reason to believe the product packaging contains measurable levels of PCBs?	No
GENERAL INSTRUCTIONS		
#1	Time is of the essence in the performance of this contract.	I agree and I acknowledge
#2	The City of Spokane reserves the right to accept or reject any variance from the published specifications and to award the Quote in a manner that is most advantageous to the continued efficient operation of the City.	I agree and I acknowledge
#3	The City reserves the right to accept or reject any part of or all Quotes deemed to be in the best interest of the City. The City may choose from more than one vendor. The City of Spokane reserves the option of awarding this purchase by item grouping or by any manner most advantageous for the City.	I agree and I acknowledge
#4	The City reserves the right to accept or reject any part of or all Quotes and to accept the Quote deemed to be in the best interest of the City.	I agree and I acknowledge
#5	The City of Spokane reserves the option of awarding this purchase by item grouping or by any manner most advantageous for the City.	I agree and I acknowledge
#6	Bidder should be aware that Quotes may be rejected if all questions are not completely and correctly answered.	I agree and I acknowledge
TECHNICAL SPECIFICATIONS		
#1	Any technical specifications and general provisions listed are the minimum acceptable requirements and failure to comply may be used as a basis for rejection of the Quote.	I agree and I acknowledge
#2	The omission of any standard feature described herein shall not void the bidder's responsibility to furnish a complete unit with all standard equipment of the manufacturer's latest model and design. Equipment to be furnished shall be new and unused unless.	I agree and I acknowledge
#3	No Or-Equals Will Be Accepted. Due to standardization of Maxon valves currently employed within the Waste To Energy Facility.	I agree and I acknowledge
#4	Awarded Supplier would be responsible for providing the following:	Yes
#4.1	PN - 300CMA11-BA22-BB21A0* as needed.	I agree and I acknowledge
#4.2	PN - 150SMA21-AA22-BB11A0* as needed.	I agree and I acknowledge
#4.3	PN - 200SMA21-AA22-BB11A0* as needed.	I agree and I acknowledge

#4.4	PN - 600HMA11-BA22-BB31A0* as needed.	I agree and I acknowledge
#4.5	There are four different types of assembly top positions that can be ordered per valve. – R,L, AW and TO. *Valve top assembly position to be specified when placing order.	I agree and I acknowledge
#4.5.1	Bidder acknowledges that they have reviewed Valve Top Assembly Positions document located in the "Documents" tab.	I agree and I acknowledge
#5	If the product differs from the provisions contained herein, these differences must be explained in detail.	No differences
#6	Any delivered item that does not meet specifications will not be accepted. If the bidder's product is unsatisfactory but was inadvertently placed into the facilities system prior to rejection and subsequently causes physical damage or extra cleanup labor, the City will be reimbursed for any associated costs, and at the City's option, a new supplier will be used. Any equipment damage, down time, labor charges, fines, or any other costs caused by material that does not meet specifications or was not delivered on time, will be assumed by the supplier.	I agree and I acknowledge
#7	Should Bidder not provide "technical data" sheets with bid, quote may be considered non-responsive. Upload here.	maxon-gas-electro-mechanical-valves-technical-catalog.pdf
#8	Suppliers found to have "overstated" the true ability of their product shall reimburse the City for all costs incurred with remanufacturing or replacement of units until all criteria has been satisfied. These costs shall also include legal, rentals, travel, etc.	I agree and I acknowledge
#9	Successful bidder shall furnish standard warranty as well as any other warranty required in the Quote specifications.	Standard warranty will be provided.
#10	Bidders must submit cover letters stating qualifications for supplying specified product on contract with the City of Spokane. State name(s) and address(es) of Original Equipment Manufacturer (OEM) and distributors (if applicable) to be used in the production and delivery of valve. Upload Letter Here	08-07-23 Bid Cover Letter and Supplier Info.pdf
#11	As applicable, Material Safety Data Sheets / Safety Data Sheets must be included with Bid Proposal. Upload Here	
#12	Federal and State laws governing this product and its final certification must be satisfied.	I agree and I acknowledge
12.1	It shall be the Supplier's responsibility to conform to all Federal Standards for certification.	I agree and I acknowledge
#13	Supplier be an authorized factory dealer for the area including the City of Spokane.	I agree and I acknowledge
#14	Successful Bidder will designate a representative who will be available during regular City business hours to serve as a primary contact for the City in the implementation of this supply agreement. Enter representative's name, phone number, and Email Address	I agree and I acknowledge

	#15	If you took exception to any of the above, explain in detail.	
DELIVERY - F.O.B. Delivery Point			
	#1	FOB Delivery Point: Spokane Solid Waste Disposal, WTEF, Attn: Shipping and Receiving, 2900 S. Geiger Blvd, Spokane WA, 99224-5400. Acknowledge. Yes	I Acknowledge
	#2	FREIGHT TRANSPORTATION CHARGES. Prepaid and add; and listed as a separate line item on invoices.	I agree and I acknowledge
	#3	Risk of Loss. Regardless of F.O.B. point, Vendor agrees to bear all risks of loss, injury or destruction of items ordered herein which occur prior to delivery; such loss, injury or destruction shall not release Vendor from any obligation hereunder.	I agree and I acknowledge
	#4	Deliveries shall be made between 7:30 a.m. and 2:30 p.m. Monday through Friday with the exception of recognized holidays unless arranged in advance.	I Acknowledge
	#5	Bidder shall state lead time in calendar days for delivery at WTEF, upon receipt of order(s). Enter number of calendar days here:	210
	#6	If you took exception to any of the above, explain in detail.	
PRICING			
	#1	Sales Tax: The City will apply applicable tax to Bidder's response when tabulating bids. Vendor acknowledges the City of Spokane is not a tax exempt entity and is therefore obligated to pay sales tax under Washington State law. Therefore, all submissions shall be tabulated with the applicable sales tax rate whether that tax shall be charged through the supplier or paid by the City as use tax.	I agree and I acknowledge
	#2	Quantities shown on "Pricing Form" are estimates only and are not to be construed as firm or guaranteed. Quantities, when used, are estimates only and are given for the purpose of comparing bids on a uniform basis. Quantities shall be bid on a more or less basis. Actual usage may be more or less. Orders will be placed as needed throughout contract term with a blanket order process. Payment would only be made for actual orders placed, delivered, and accepted.	I agree and I acknowledge
	#3	WTEF expects to order an initial order for the following quantities: QTY 8: PN - 300CMA11-BA22-BB21A0; QTY 4: PN - 150SMA21-AA22-BB11A0; QTY 2: PN - 200SMA21-AA22-BB11A0; QTY 2: PN - 600HMA11-BA22-BB31A0. Additional orders would be placed as-needed, throughout the Contract Period and Renewal Periods. Taking into account that Pricing shall be firm for a period of 6 months, from bid due date. Pricing adjustment requests will be considered every six-months thereafter, to include any option periods.	I agree and I acknowledge
	#4	Enter Pricing on the "Pricing Tab" . Unit Pricing Should Not Include Tax.	I agree and I acknowledge
	#4.1	Pricing shall be firm for a period of 6 months, from bid due date. Pricing adjustment requests will be considered every six-months thereafter, to include any option periods.	I agree and I acknowledge

#4.2	After initial six-month period, pricing adjustments would be considered on a six-month basis, or more often, based on Supplier providing back up documentation.	I agree and I acknowledge
#4.3	Pricing can be adjusted on the anniversary of the award based on Supplier providing back up documentation.	I agree and I acknowledge
#4.4	Any proposed price increases must be fully documented and justified by the Supplier clearly identify the items impacted by the increase and be accompanied by documentation acceptable to Spokane City sufficient to justify the requested increase. The United States published indices such as the Producer Price Index (PPI), or other government data, may be referenced to help substantiate the Supplier's documentation.	I agree and I acknowledge
#4.5	All price adjustments must be agreed on by both parties. Supplier must request pricing adjustment in writing and cannot be applied retroactively to orders already placed with the Supplier. Price increases must apply to all or broad classes of customers and shall in no way single out the Purchaser.	I agree and I acknowledge
#4.6	Price adjustments cannot be applied retroactively to orders already placed with the Supplier. Price increases must apply to all or broad classes of customers and shall in no way single out the Purchaser.	I agree and I acknowledge
#4.7	Adjustments to pricing shall be to not produce a higher profit margin.	I agree and I acknowledge
#4.8	The City of Spokane reserves the right to cancel the contract if the escalation of price is not advantageous to the City. *	I agree and I acknowledge
#5	PRICE DECREASES: During the contract period, any price decreases obtained by Contractor shall be reflected in a contract price reduction to the Purchaser retroactive to the Contractor's effective date.	I agree and I acknowledge
#6	PERCENTAGE OFF DISCOUNT or PERCENTAGE MARK UP ABOVE VENDOR COST	No
#6.1	Percentage discount off list to be provided by Supplier for additional Maxon valves or related value items not listed on the Pricing tab but may be realized are needed at a later point in time. Enter Percentage Discount Off Supplier's List Cost.	No discount will be offered.
#6.2	Should Supplier not provide percentage off discount for additional Maxon valves or related value items not listed on the Pricing tab but may be realized are needed at a later point in time. Supplier shall then provide Percentage Markup Above Supplier's Cost. Enter Percentage Markup Above Supplier cost here. *	25%
#6.3	Percentage Markup will remain unchanged throughout the life of the contract and any renewals.	I agree and I acknowledge
#6.4	Bidder are aware if it does not PERCENTAGE OFF DISCOUNT or PERCENTAGE MARK UP ABOVE VENDOR COST, that resulting value blanket would only be used to procure items listed on Pricing Form.	I agree and I acknowledge

ADDITIONAL DOCUMENTS BIDDER WOULD LIKE TO UPLOAD	
#1	Should Bidder Want To Upload Any Additional Document(s) Please Do So Here. ***Please Note: Should Bidder Want To Add More Than One Document, ensure all documents are combined into a single document prior to uploading as bidder would only be able to upload one document here.

Pricing Responses

Group	Reference Number	Description	Type	Unit Of Measure	Quantity	Unit Price	Ext Base Price	Comment
Estimated quantities are for the purpose of comparing bids on a uniform basis. Payment will be made only for quantities actually ordered, delivered and accepted, whether greater or less than the stated amounts.								
Empty content for the rest of the table body								

Initial Order	<p>PN - 300CMA11- BA22- BB21A0. Unit Pricing Should be inclusive of Top Valve Assembly, regardless, if position is R,L, AW and TO. Unit Pricing Should Not Include Tax. Unit Pricing Should Not Include Freight. Pricing shall be firm for a period of 6 months, from bid due date. Pricing adjustment requests will be considered on a semi- annual basis thereafter.</p>	Base	Per Each Valve	8.00	\$8,612.87	\$68,902.96
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Initial Order	<p>PN - 150SMA21- AA22- BB11A0. Unit Pricing Should be inclusive of Top Valve Assembly, regardless, if position is R,L, AW and TO. Unit Pricing Should Not Include Tax. Unit Pricing Should Not Include Freight. Pricing shall be firm for a period of 6 months, from bid due date. Pricing adjustment requests will be considered on a semi- annual basis thereafter.</p>	Base	Per Each Valve	4.00	\$4,933.56	\$19,734.24
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PN -
200SMA21-
AA22-
BB11A0.

Unit Pricing
Should be
inclusive of
Top Valve
Assembly,
regardless,
if position is
R,L, AW
and TO.

Unit Pricing
Should Not
Include Tax.

Initial
Order

Unit Pricing
Should Not
Include
Freight.

Base

Per
Each
Valve

2.00

\$6,107.56

\$12,215.12

Pricing shall
be firm for a
period of 6
months,
from bid
due date.
Pricing
adjustment
requests will
be
considered
on a semi-
annual
basis
thereafter.

Initial Order	PN - 600HMA11- BA22- BB31A0 . Unit Pricing Should be inclusive of Top Valve Assembly, regardless, if position is R,L, AW and TO. Unit Pricing Should Not Include Tax. Unit Pricing Should Not Include Freight. Pricing shall be firm for a period of 6 months, from bid due date. Pricing adjustment requests will be considered on a semi- annual basis thereafter.	Base	Total Freight Cost	2.00	\$25,655.75	\$51,311.50
Total Base Bid	\$152,163.82					



ATLAS BOILER & Equipment Co
3815 E. Trent Avenue ▪ Spokane WA 99202
Phone: 509.535.1300 ▪ Fax: 509.535.1518

- Contact Information:
Atlas Boiler & Equipment Co.
3815 E. Trent Avenue
Spokane, WA 99202
Phone: 509-535-1300 Fax: 509-535-1518

Project Contact Names: Bob Dowers-Project Coordinator/Dave Rath
Email: bob@nbiatlasboiler.com/david@nbiatlasboiler.com

- Bid Qualification Statement:
Atlas Boiler & Equipment Co.
Years in business: 30 years
Organizational Structure: S Corporation

Licenses & Registrations:

- EIN/FED ID: 91-1413759
 - UBI: 601-089-229
 - L&I ACCOUNT: 906,011-00
 - DUNS: 14-843-7965
 - CONTRACTORS#: ATLASBE1220W
- Proof of R-welding certification stamp available upon request
 - Proof of Insurance available upon request

2" Maxon Vent Valve 200SMA21-AA22-BB11A0
3" Maxon Shut Off Valve Flanged 300CMA11-BA22-BB21A0
Maxon Vent Valve NPT 150SMA21-AA22-BB11A0
6" Maxon HC Shut Off Valve Flanged 600HMA11-BA22-BB31A0

Manufacturer:

Honeywell Maxon
300 South Tryon Street
Charlotte, NC 28202

MUNCIE, INDIANA, USA – MANUFACTURER

201 East 18th Street
P.O. Box 2068
Muncie, IN 47307-0068

Supplier:

NW Industrial Mechanics, Inc.
PO Box 820325
Vancouver, WA 98682

Honeywell

MAXON

Gas Electro-Mechanical Valves

TECHNICAL CATALOG



- Electrically actuated valves with powerful closing spring provide closure in less than 1 second for reliable, long-life operation
- Factory Mutual, CSA, UL and CE approved; Canadian registration obtained on all valve bodies
- Hazardous Locations valves approved for Non-incendive Class I, Division 2 areas
- Full assessment to IEC 61508 as SIL 3 capable
- Visual position indication provided
- Cast iron, carbon steel, low temperature carbon steel and stainless steel body assemblies with internal trim options to handle general purpose or corrosive gases; oxygen compatibility available
- Ambient and gas temperature ranges of -20°F to 140°F
- Application flexibility provided with 3/4" (DN20) through 6" (DN150) line sizes & line pressures up to 125 psig
- Unique bonnet design eliminates packing adjustments, reducing maintenance and minimizing drag on closing
- MAXON electro-mechanical gas valves meet Fluid Control Institute (FCI) 70-2 control valve standard for Class VI seat leakage
- Field rotatable top assemblies in 90° increments to fit specific application requirements
- Actuator assemblies available with manual reset or automatic reset operators
- Normally-closed and normally-open versions available
- Overtravel position switches for open and closed position

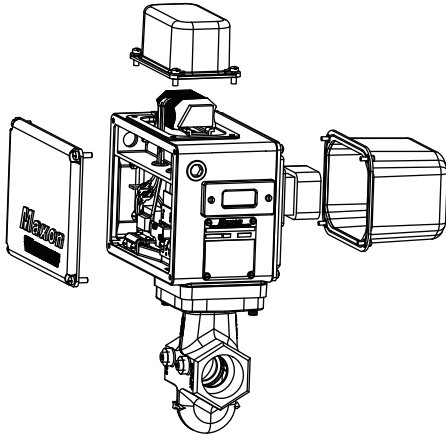


32M-05001-01

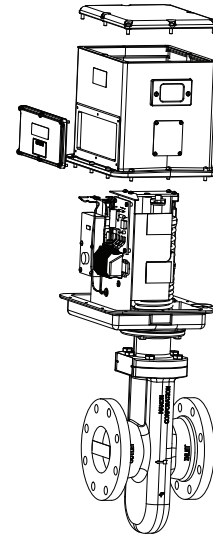
OPERATING CONCEPTS

Automatic reset valves Model designation

S and C Models
SMA11, CMA11, SMA21, CMA21

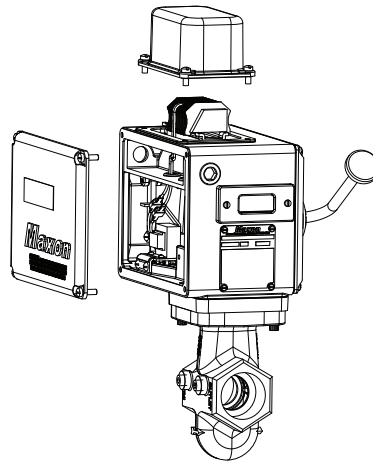


H Models
HMA11



Manual reset valves

Model designation (former model designation)
S and C Models only SMM11, CMM11, SMM21



- All valves are designed to return to normal position instantly with any interruption in the electric power supplied through your safety circuit.
- (Motorized) automatic reset actuators are used where remote access or unmanned applications are needed.
- Manual reset actuators require operating personnel to be physically present to actuate the valve from its at rest position.

Switch assemblies

- Provides positive valve position - open or closed
- Complies with “proof of closure” requirements
- Easily integrates with an analog control system, DCS or PLC
- IP 67 rated, sealed switches included for Non-incendive valves

Body and trim selections

Cast iron, carbon steel, low temperature carbon steel and stainless steel body assemblies feature metal-to-metal seating that meets FCI 70-2 control valve standard for Class VI seat leakage. Internal trim options are available for general purpose and corrosive gases. Oxygen compatible trims are also available. Valve body assemblies are offered in normally-closed shut-off and normally-open vent versions.

Valve bodies are available in threaded, flanged, and socket-welded connections. Bodies are currently available in 3/4" through 6" (DN20 through DN150) sizes. Body design utilizes a straight-through flow path, which minimizes the pressure drop through the body.



Normally-closed shut-off valves utilize power to open. Removal of electrical signal allows instantaneous release of the holding mechanism, allowing the powerful closing spring to close the valve in less than one second.

Series SMA11, SMM11, SMA12, SMM12, CMA11, CMM11, CMA12, CMM12, HMA11











Normally-open vent valves utilize power to close. Removal of electrical signal allows instantaneous release of the holding mechanism, allowing the valve to open in less than one second.

Series SMA21, SMM21, SMA22, SMM22, CMA21, CMA22, CMM22



Agency approvals and certifications

	General Purpose Valves SMA11, SMM11, CMA11, CMM11, SMA21, SMM21, CMA21, HMA11		Non-incendive/Non-sparking Valves SMA12, SMM12, SMA22, CMA22, CMA12, CMM12, SMM22, CMM22	
	Standards	Markings	Standards	Markings
FM approvals	FM 7400		FM 7400 FM 3611 FM 3600 FM 3810	Class I, Div. 2, Groups ABCD Class II, Div. 2, Groups FG Class III, Div. 2 Temp Code T4 (AC) T3 (DC, sizes 3/4" - 1-1/2") T3C (DC, sizes 2"-6") 
FM approvals - IEC Ex Certification	Not applicable		IEC 60079-0 IEC 60079-15	Ex nA nC IIC T4A (AC), T3 (DC), Ta=60°C Gc Ex tc IIIC T135°C Dc IP65 FMG 11.0032X 
UL approvals	UL 429	 Listed General Purpose 628A (Normally open valves)  Listed Safety Shut-off 628A (Normally open valves)	Not applicable	Not applicable
CSA International	CSA 6.5	 C/I	CSA 6.5 CSA 22.2 No. 213	Class I, Div. 2, Groups ABCD Class II, Div. 2, Groups FG Class III, Div. 2 Temp Code T4 (AC) T3 (DC)  C/I
European approvals [1]	EN 161 EN 13774	CL/KL: A, GR 2 EC PIN: C87BQ83	Not applicable	Not applicable
IEC approvals	IEC 61508	None	IEC 61508	None
KTL approvals	None	None	Not applicable	MA12: 12-KB4BO-0057 MM12: 13-KB4BO-0419 MA22: 16-KA4BO-0027 MM22: 16-K4BO-0028 
AGA Certifications	AS 4629 (CLASS 1)	None	AS 4629	None

[1] Product certified to meet the following (SMA11, CMA11, SMM11, CMM11, SMA21, CMA21, SMM21 only):
Gas Appliance Directive (2009/142/EC)
Low Voltage Directive (2014/35/EU)
EMC Directive (2014/30/EU)
Pressure Equipment Directive (2014/68/EU) up to 4"

Valve cycle requirements

This is based on the standards that MAXON valves are approved to and the corresponding minimum number of cycles to be completed without failure as shown in the chart below.

	UL (UL 429)	CSA (CSA 6.5)	FM (FM 7400)	European (EN161)
Automatic Series MA11, MA12	100,000	100,000	20,000	<= 1" 200,000 <= 3" 100,000 <= 6" 50,000
Manual Series MM11, MM12	6,000	20,000	20,000	No special requirements
Vent valves Series MA21, MA22, MM21, MM22	6,000	No special requirements	No special requirements	No special requirements

VALVE MODEL NUMBER DESCRIPTION

Every MAXON gas electro-mechanical valve can be accurately identified by the model number shown on the valve nameplate. The example below shows a typical gas electro-mechanical valve model number, along with the available choices for each item represented in the model number.

Configured item number					Valve body					Actuator						
Valve size	Flow capacity	Valve type	Normal position	Area classification	Body connection	Body seals & bumper material	Body material	Internal trim package	Solenoid OR circuit board voltage	Motor voltage OR handle side plate	Motor timing (automatic valves only)	Switch options	Enclosure rating	Instruction language		
300	C	MA	1	1	-	A	A	1	1	-	B	B	2	0	A	0

Valve size

075 - 3/4" (DN20)
 100 - 1" (DN25)
 125 - 1-1/4" (DN32)
 150 - 1-1/2" (DN40)
 200 - 2" (DN50)
 250 - 2-1/2" (DN65)
 300 - 3" (DN80)
 400 - 4" (DN100)
 600 - 6" (DN150)

Flow capacity

S - Standard
 C - CP body construction
 H - High capacity

Valve reset type

MA - MAXON automatic (motorized) valve
 MM - MAXON manual valve

Normal position

1 - Normally closed shut-off valve
 2 - Normally open vent valve

Area classification

1 - General purpose
 2 - Non-incendive, Class I, II and III Division 2
 4 - Valve body only (400 & 600 high capacity valves only)

Body connection

A - ANSI (NPT) threaded
 B - ANSI flanged (PN20)
 C - ISO 7/1 threaded
 D - DIN PN16 flanged
 E - Socket welded nipple
 F - Socket welded nipple w/Class 150 flange (ISO 7005 PN20)
 H - EN1092-1 PN16 flanged (ISO 7005-1 PN16)

Body seals & bumper material

A - Buna o-rings/Buna bumper
 B - Viton o-rings/Buna bumper
 C - Viton o-rings/Viton bumper [1]
 D - Ethylene Propylene o-rings/Ethylene Propylene bumper [1]
 E - Omniflex o-rings/Buna bumper
 F - Omniflex o-rings/Viton bumper [1]

Body material

1 - Cast iron
 2 - Carbon steel
 5 - Stainless steel
 6 - Low temp carbon steel

Internal trim package

1 - Trim package 1
 2 - Trim package 2
 4 - Trim package 2, oxy clean [1]

Solenoid OR circuit board voltage

A - 115VAC 50 Hz
 B - 115VAC 60 Hz
 C - 230VAC 50 Hz
 D - 230VAC 60 Hz
 E - 208VAC 50 Hz
 F - 24VDC
 G - 120VDC

Motor voltage

A - 115VAC 50 Hz
 B - 115VAC 60 Hz
 C - 230VAC 50 Hz
 D - 230VAC 60 Hz
 E - 24VDC

Motor timing

1 - 2.5 second
 2 - 6 second
 3 - 12 second
 * - N/A with manual valves

OR Handle side plate

A - Standard handle
 B - Tandem main
 C - Tandem blocking
 D - Tandem over-head
 E - Wheel and chain

Switch options

Automatic valves

0 - VOS1/none
 1 - VOS1/VCS1
 2 - VOS2/VCS2
 3 - VOS2/VCS1
 4 - VOS1HC/VCS1HC

Manual valves

0 - None
 1 - VOS1/VCS1
 2 - VOS2/VCS2
 3 - VOS2/VCS1

Enclosure rating

A - NEMA 4
 B - NEMA 4X

Instruction language

0 - English

[1] 0°F minimum ambient temperature limit

VALVE MODEL CROSS REFERENCE

MAXON valve model numbers have changed to intelligent coded model numbers for easy identification and specification. Valves manufactured prior to October 1, 2008 will contain an older model number system which can be easily cross referenced with the chart below.

Normally-closed (shut-off) valves General purpose, NEMA 4 or 4X	
Model number (prior to October 1, 2008)	New model designation
808	SMM11
808 CP	CMM11
5000	SMA11
5000 CP	CMA11
7000	HMA11
Normally-open (vent) valves General purpose, NEMA 4 or 4X	
Model number (prior to October 1, 2008)	New model designation
STO-M	SMM21
STO-A	SMA21
STO-A-CP	CMA21
Normally-closed (shut-off) valves Hazardous area classification	
Model number (prior to October 1, 2008)	New model designation
808 NI	SMM12
808 NI CP	CMM12
5000 NI	SMA12
5000 NI CP	CMA12
Normally-open (vent) valves Hazardous area classification	
Model number (prior to October 1, 2008)	New model designation
STO-M-NI	SMM22
STO-M-NI-CP	CMM22
STO-A-NI	SMA22
STO-A-NI-CP	CMA22

VALVE BODY ASSEMBLY OPTIONS & SPECIFICATIONS

Normally-closed shut-off valve - Body options							
Nominal pipe size	Flow capacity	Body connections	Body material	Trim package	Cv rating	MOPD rating (psig)	Special service MOPD rating (psig) [1]
3/4" (DN20)	S	A, C	1, cast iron	1, 2, 4	19	125	30
		A, C, E, F	2, 6, carbon steel	2, 4			
			5, stainless steel				
1" (DN25)	S	A, C	1, cast iron	1, 2, 4	20	125	30
		A, C, E, F	2, 6, carbon steel	2, 4			
			5, stainless steel				
1-1/4" (DN32)	S	A, C	1, cast iron	1, 2, 4	45	100	30
1-1/2" (DN40)	S	A, C	1, cast iron	1, 2, 4	53	70	20
		A, C, E, F	2, 6, carbon steel	2, 4			
			5, stainless steel				
2" (DN50)	S	A, B, C, D, H	1, cast iron	1, 2, 4	86	70	15
		A, C, E, F	2, 6, carbon steel	2, 4			
			5, stainless steel				
2-1/2" (DN65)	S	A, B, C, D	1, cast iron	1	127	40	10
	C		1, cast iron	1, 2, 4			
		B, D, H	2, 6, carbon steel	2, 4	304	50	15
	5, stainless steel						
3" (DN80)	S	A, C	1, cast iron	1	173	30	5
	C	A, B, C, D, H	1, cast iron	1, 2, 4			
			B, D, H	2, 6, carbon steel	2, 4	423	40
		5, stainless steel					
4" (DN100)	C	B, D, H	1, cast iron	1, 2, 4	490	40	10
			2, 6, carbon steel	2, 4			
			5, stainless steel				
	HC		1, cast iron	1, 2, 4	719	60	10
			2, carbon steel	2, 4			
5, stainless steel							
6" (DN150)	S	B, D, H	1, cast iron	1, 2, 4	869	20	Not available
			2, carbon steel	2, 4			
			5, stainless steel				
	HC		1, cast iron	1, 2, 4	1172	50	10
			2, carbon steel	2, 4			
			5, stainless steel				

[1] Special service fuels (see page 10-30.1-12): Valve maximum operating pressure differential (MOPD) to be reduced

Body connections:

- A - NPT
- B - ANSI flanged (ISO 7005 PN20)
- C - ISO 7-1 threaded
- D - DIN PN16 flanged
- E - Socket welded nipple
- F - Socket welded nipple w/Class 150 flange (ISO 7005 PN20)
- H - EN1092-1 PN16 (ISO 7005-1 PN16)

Body material:

- 1 - Cast iron
- 2 - Carbon steel
- 5 - Stainless steel
- 6 - Low temp carbon steel

Trim package options and typical material:

- 1 - 400 series stainless steel seat, hardened ductile iron disc, PEEK follower ring
- 2 - 316SS seat, 316SS disc, PEEK follower ring
- 4 - Oxy clean, trim 2

Body seals and bumper:

- Buna o-rings/Buna bumper
 - Viton o-rings/Buna bumper
 - Viton o-rings/Viton bumper
 - Ethylene Propylene o-rings/Ethylene Propylene bumper
 - Omniflex o-rings/Buna bumper
 - Omniflex o-rings/Viton bumper
- Refer to valve body assembly gas compatibility for proper elastomer selection.

Normally-open vent valve - Body options							
Nominal pipe size	Flow capacity	Body connections	Body material	Trim package	Cv rating	MOPD rating (psig)	Special service MOPD rating (psig) [1]
3/4" (DN20)	S	A, C	1, cast iron	1, 2, 4	19	125	30
		A, C, E, F	2, 6, carbon steel	2, 4			
			5, stainless steel				
1" (DN25)	S	A, C	1, cast iron	1, 2, 4	20	125	30
		A, C, E, F	2, 6, carbon steel	2, 4			
			5, stainless steel				
1-1/2" (DN40)	S	A, C	1, cast iron	1, 2, 4	53	70	20
		A, C, E, F	2, 6, carbon steel	2, 4			
			5, stainless steel				
2" (DN50)	S	A, B, C, D, H	1, cast iron	1, 2, 4	86	70	15
		A, C, E, F	2, 6, carbon steel	2, 4			
			5, stainless steel				
2-1/2" (DN65)	C	A, B, C, D	1, cast iron	1, 2, 4	304	50	15
		B, D, H	2, 6, carbon steel	2, 4			
			5, stainless steel				
3" (DN80)	C	A, B, C, D, H	1, cast iron	1, 2, 4	423	40	10
		B, D, H	2, 6, carbon steel	2, 4			
			5, stainless steel				
4" (DN100)	C	B, D, H	1, cast iron	1, 2, 4	490	40	10
			2, 6, carbon steel	2, 4			
			5, stainless steel				

[1] Special service fuels (see page 10-30.1-12): Valve maximum operating pressure differential (MOPD) to be reduced

Body connections:

- A - NPT
- B - ANSI flanged (ISO 7005 PN20)
- C - ISO 7-1 threaded
- D - DIN PN16 flanged
- E - Socket welded nipple
- F - Socket welded nipple w/Class 150 flange (ISO 7005 PN20)
- H - EN1092-1 PN16 (ISO 7005-1 PN16)

Body material:

- 1 - Cast iron
- 2 - Carbon steel
- 5 - Stainless steel
- 6 - Low temp carbon steel

Trim package options and typical material:

- 1 - 400 series stainless steel seat, hardened ductile iron disc, PEEK follower ring
- 2 - 316SS seat, 316SS disc, PEEK follower ring
- 4 - Oxy clean, trim 2

Body seals and bumper:

- Buna o-rings/Buna bumper
 - Viton o-rings/Buna bumper
 - Viton o-rings/Viton bumper
 - Ethylene Propylene o-rings/Ethylene Propylene bumper
 - Omniflex o-rings/Buna bumper
 - Omniflex o-rings/Viton bumper
- Refer to valve body assembly gas compatibility for proper elastomer selection.

VALVE ACTUATOR OPTIONS

Automatic reset valve - Actuator options							
Nominal pipe size	Flow capacity	Normal position	Area classification	Solenoid OR circuit board voltage	Motor voltage	Motor timing	Switch options
3/4" (DN20)	S	1, 2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	1, 2 1, 2	0, 1, 2, 3, 4 0, 1, 2, 3
1" (DN25)	S	1, 2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	1, 2 1, 2	0, 1, 2, 3, 4 0, 1, 2, 3
1-1/4" (DN32)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	1, 2 1, 2	0, 1, 2, 3, 4 0, 1, 2, 3
1-1/2" (DN40)	S	1, 2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	1, 2 1, 2	0, 1, 2, 3, 4 0, 1, 2, 3
2" (DN50)	S	1, 2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	1, 2 1, 2	0, 1, 2, 3, 4 0, 1, 2, 3
2-1/2" (DN65)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	1, 2 1, 2	0, 1, 2, 3, 4 0, 1, 2, 3
3" (DN80)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	1, 2 1, 2	0, 1, 2, 3, 4 0, 1, 2, 3
2-1/2" (DN65)	C	1, 2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	2 2	0, 1, 2, 3, 4 0, 1, 2, 3
3" (DN80)	C	1, 2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	2 2	0, 1, 2, 3, 4 0, 1, 2, 3
4" (DN100)	C	1, 2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D	2 2	0, 1, 2, 3, 4 0, 1, 2, 3
4" (DN100)	H	1	1	A, B, C, D, G	A, B, C, D	3	0, 1, 2, 3
6" (DN150)	H	1	1	A, B, C, D, G	A, B, C, D	3	0, 1, 2, 3

Flow capacity

S - Standard
C - CP body construction
H - High capacity

Normal position

1 - Normally-closed shut-off valve
2 - Normally-open vent valve

Area classification

1 - General purpose
2 - Non-incendive, Class I, II and III, Division 2

Solenoid OR circuit board voltage

A - 115VAC 50 Hz
B - 115VAC 60 Hz
C - 230VAC 50 Hz
D - 230VAC 60 Hz
E - 208VAC 50 Hz
F - 24VDC
G - 120VDC

Motor voltage

A - 115VAC 50 Hz
B - 115VAC 60 Hz
C - 230VAC 50 Hz
D - 230VAC 60 Hz
E - 24VDC

Motor timing

1 - 2.5 second
2 - 6 second
3 - 12 second

Switch options

0 - VOS1/None
1 - VOS1/VCS1
2 - VOS2/VCS2
3 - VOS2/VCS1
4 - VOS1HC/VCS1HC

GAS ELECTRO-MECHANICAL VALVES

Manual reset valve - Actuator options						
Nominal pipe size	Flow capacity	Normal position	Area classification	Solenoid voltage	Handle side plate options	Switch options
3/4" (DN20)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
		2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, E A, E	0, 1, 2, 3 0, 1, 2, 3
1" (DN25)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
		2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, E A, E	0, 1, 2, 3 0, 1, 2, 3
1-1/4" (DN32)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
1-1/2" (DN40)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
		2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, E A, E	0, 1, 2, 3 0, 1, 2, 3
2" (DN50)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
		2	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, E A, E	0, 1, 2, 3 0, 1, 2, 3
2-1/2" (DN65)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
3" (DN80)	S	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
2-1/2" (DN65)	C	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
		2	2	A, B, C, D, F, G	A, E	0, 1, 2, 3
3" (DN80)	C	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
		2	2	A, B, C, D, F, G	A, E	0, 1, 2, 3
4" (DN100)	C	1	1 2	A, B, C, D, E, F, G A, B, C, D, F, G	A, B, C, D, E A, B, C, D, E	0, 1, 2, 3 0, 1, 2, 3
		2	2	A, B, C, D, F, G	A, E	0, 1, 2, 3
6" (DN150)	S	1	1	A, B, C, D, E	A, B, C, D, E	0, 1, 2, 3
			2	A, B, C, D	A, B, C, D, E	0, 1, 2, 3

Flow capacity

S - Standard
C - CP body construction
H - High capacity

Normal position

1 - Normally-closed shut-off valve
2 - Normally-open vent valve

Area classification

1 - General purpose
2 - Non-incendive, Class I, II and III, Div 2

Solenoid voltage

A - 115VAC 50 Hz
B - 115VAC 60 Hz
C - 230VAC 50 Hz
D - 230VAC 60 Hz
E - 208VAC 50 Hz
F - 24VDC
G - 120VDC

Handle side plate options

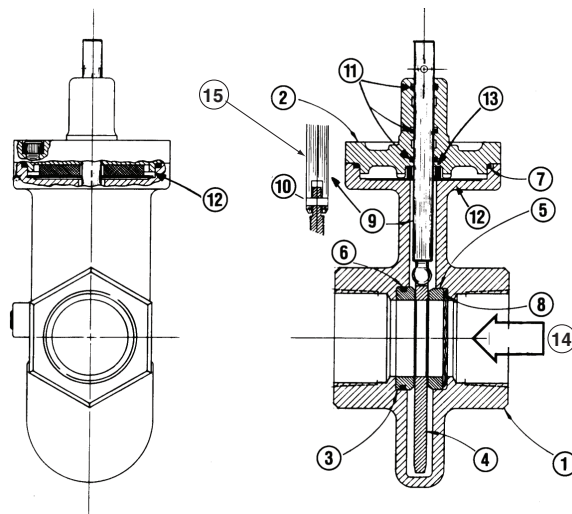
A - Standard handle
B - Tandem main
C - Tandem blocking
D - Tandem overhead
E - Wheel and chain

Switch options

0 - None
1 - VOS1/VCS1
2 - VOS2/VCS2
3 - VOS2/VCS1

VALVE BODY ASSEMBLY SPECIFICATIONS

- 1) Body
- 2) Bonnet
- 3) Seat
- 4) Disc
- 5) Follower ring
- 6) Seat o-ring
- 7) Body o-ring
- 8) Wavy spring
- 9) Stem
- 10) Spring pin
- 11) Stem o-ring
- 12) Striker plate
- 13) Bumper
- 14) Flow direction
- 15) Typical stem/disc connection used with smaller sized valves



Threaded CP body design shown

Body and bonnet materials					
Item number	Description	Material code			
		1	2	5	6
1	Body	Cast iron	Carbon steel	Stainless steel	Low temp carbon steel
2	Bonnet	ASTM A126, Class B	ASTM A216, Gr. WCB	ASTM A351 Gr. CF8M	ASTM A352 Gr. LCB

Body seals and bumper material		
Item number	Description	Material
6	Seat o-ring	Buna o-rings/Buna bumper Viton o-rings/Buna bumper Viton o-rings/Viton bumper Ethylene Propylene o-rings/Ethylene Propylene bumper Omniflex o-rings/Buna bumper Omniflex o-rings/Viton bumper
7	Body o-ring	
11	Stem o-ring	
13	Bumper	

Trim package materials			
Item number	Description	Internal trim package	
		1	2
3	Seat	400 series stainless steel	316 stainless steel
4	Disc	Hardened ductile iron	316 stainless steel
5	Follower ring	PEEK	PEEK
8	Wavy spring	300 series stainless steel	
9	Stem	17-4 PH stainless steel	
10	Spring pin (when required)	Carbon steel	400 series stainless steel
12	Striker plate	17-7 PH stainless steel	

VALVE BODY ASSEMBLY - GAS COMPATIBILITY

Gas	Gas code	Suggested material options			MOPD rating	Agency approvals and certifications					
		Body seals & bumper	Body & bonnet	Trim option [7]		FM	CSA [3]	CE [4]			UL [3]
								GAD	LVD	PED	
Air	AIR	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X		X	X	X
Ammonia	AMM	A, D, E	1, 2, 5, 6	1, 2	Std.	X	X		X	X	
Butane gas	BUT	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X	X	X	X	X
Coke oven gas	COKE	C, F	1, 2, 5, 6	2	[5]	X	X		X	X	
Delco	DEL	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X		X	X	X
Digester [1]	DIG	Analysis required	5	2	[5]	X	X		X	X	
Endothermic AGA	ENDO	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X		X	X	X
Exothermic gas	EXO	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X		X	X	X
Hydrogen gas	HYD	A, B, C, E, F	1, 2, 5, 6	1, 2	[2]	X	X		X	X	
Manufactured [1]	MFGD	Analysis required	5	2	Std.	X	X		X	X	
Natural gas	NAT	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X	X	X	X	X
Nitrogen	NIT	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X		X	X	X
No. 1 fuel oil [6]	NO1OIL	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X		X	X	X
No. 2 fuel oil [6]	NO2OIL	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X		X	X	X
Oxygen (hi p)	OXYH	C, D, F	2, 5, 6	4	125 psig	X	X		X	X	
Oxygen (lo p)	OXYL	C, D, F	1, 2, 5, 6	4	30 psig	X	X		X	X	
Propane	PROP	A, B, C, E, F	1, 2, 5, 6	1, 2	Std.	X	X	X	X	X	X
Refinery [1]	REF	Analysis required	5	2	[5]	X	X		X	X	
Sour natural [1]	SOUR	Analysis required	5	2	[5]	X	X		X	X	
Town gas [1]	TOWN	Analysis required	5	2	Std.	X	X	X	X	X	
Land fill gas [1]	LAND	Analysis required	5	2	[5]	X	X		X	X	

[1] Other body and trim packages may be acceptable pending fuel analysis. For pricing inquiries, Viton or Omniflex o-rings should be used. Contact MAXON for details.

[2] Valve maximum operating pressure differential (MOPD) to be reduced by 25% from standard ratings.

[3] ISO connections are not recognized by CSA or UL standards

[4] SMA11, CMA11, SMM11, CMM11, SMA21, CMA21, SMM21 Series electro-mechanical valves meet the essential requirements of the Low Voltage (2014/35/EU), EMC (2014/30/EU), Gas Appliance - GAD (2009/142/EC), and Pressure Equipment (2014/68/EU) Directives. The Gas Appliance Directive only covers the use of commercially available fuels (natural gas, butane, town gas and LPG). The Pressure Equipment Directive does not cover MAXON valves with Cast Iron Bodies or sizes larger than 4" (DN100).

[5] Special service fuels: Valve maximum operating pressure differential (MOPD) to be reduced from standard ratings

[6] Trim Option 1 is only allowed with body and bonnet Option 1.

Body seals & bumper:

- A - Buna o-rings/Buna bumper
- B - Viton o-rings/Buna bumper
- C - Viton o-rings/Viton bumper
- D - Ethylene propylene o-rings/Ethylene propylene bumper
- E - Omniflex o-rings/Buna bumper
- F - Omniflex o-rings/Viton bumper

Body & bonnet:

- 1 - Cast iron
- 2 - Carbon steel
- 5 - Stainless steel
- 6 - Low temp carbon steel

Trim package:

- 1 - Trim package 1
- 2 - Trim package 2
- 4 - Trim package 2, oxy clean

ELECTRICAL DATA

General

MAXON shut-off valves are electrically actuated from a power source. Standard assemblies include an internal holding solenoid or clutch and printed circuit board.

Position switch wiring diagrams (reproduced below) are part of each valve assembly, summarizing electrical data and wiring for a valve equipped with terminal block and a full complement of optional switches.

Good practice normally dictates that auxiliary switches in valves should be used for signal duty only, not to operate additional safety devices.

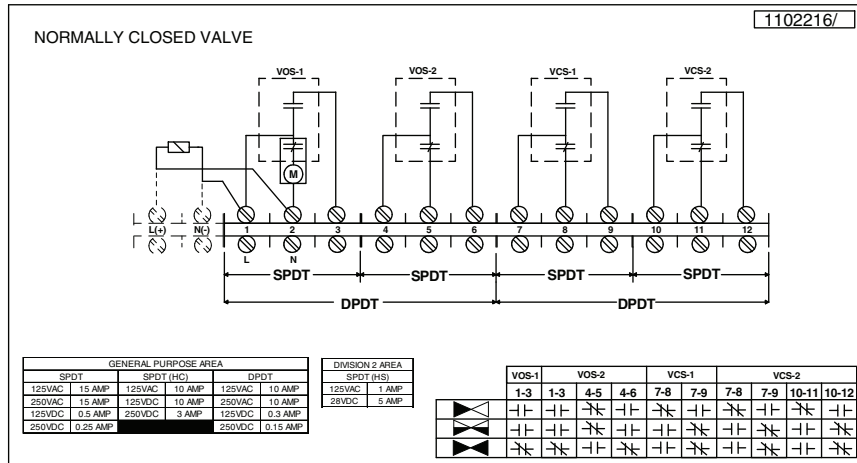
Valve position switches are offered in SPDT (single pole/double throw). Recommended packages include one open switch and one closed switch (VOS1/VCS1). Additional auxiliary switches are designated by VOS2/VCS2.

VCS (valve closed switch) is actuated at the end of the closing stroke. VOS (valve open switch) is actuated at the end of the opening stroke.

Switch amperage ratings are shown on the schematic wiring diagrams below. DO NOT EXCEED rated amperage or total load shown. Diagrams show valve with a full complement of switches. For normally-closed valves, the wiring diagram illustrates the switch contact positions with the valve closed. For normally-open valves, the wiring diagram illustrates the switch contact position with the valve open.

Figure 1: Normally-closed shut-off valves

S and C Model valves



H Model valves (4" & 6" sizes only)

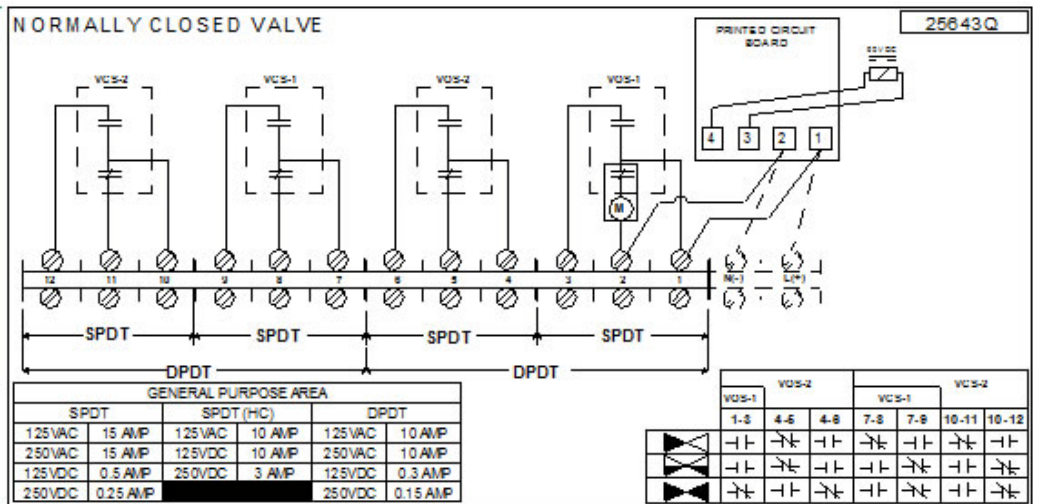
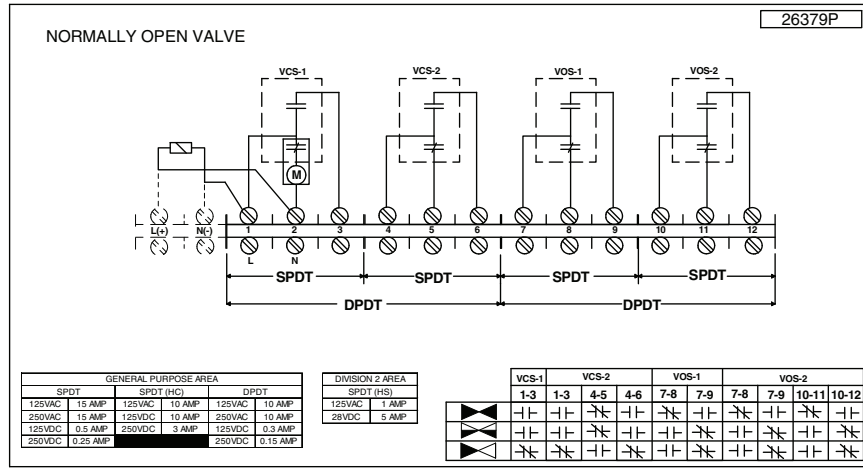


Figure 2: Normally-open valves

S and C Model valves



Available voltages and electrical data - General Purpose areas

All MAXON valves are electrically actuated from a power source through the flame safeguard and/or safety control circuits. Standard valve assemblies include an internal holding solenoid on standard flow and CP body constructions, or a printed circuit board on high capacity valves. The solenoid (or printed circuit board) is energized whenever the valve is powered. The motor operator on automatic reset valves is powered only during the opening stroke for normally-closed valves, or the closing stroke for normally-open versions.

S and C Model body constructions

Solenoids					
3/4" - 1-1/2" S Models		2" - 3" S Models		2-1/2"C - 4"CP Model & 6" S Model	
Voltage	Power	Voltage	Power	Voltage	Power
115VAC, 50 Hz	23VA	115VAC, 50 Hz	23VA	115VAC, 50 Hz	40VA
115VAC, 60 Hz	23VA	115VAC, 60 Hz	23VA	115VAC, 60 Hz	40VA
230VAC, 50 Hz	23VA	230VAC, 50 Hz	23VA	230VAC, 50 Hz	40VA
230VAC, 60 Hz	23VA	230VAC, 60 Hz	23VA	230VAC, 60 Hz	40VA
208VAC, 50 Hz	23VA	208VAC, 50 Hz	23VA	208VAC, 50 Hz	40VA
24VDC	14W	24VDC	24W	24VDC	24W
120VDC	14W	120VDC	34W	120VDC	34W

Motor operators	
Voltage	Power
115VAC, 50 Hz	322VA
115VAC, 60 Hz	196VA
230VAC, 50 Hz	322VA
230VAC, 60 Hz	198VA
24VDC	60W

TO DETERMINE VALVE OPENING POWER: (OR CLOSING POWER FOR NORMALLY-OPEN VERSIONS)

Automatic reset valves

- Total power is the sum of the motor and solenoid power ratings for the appropriate voltage/frequency in the tables above.
- If supply voltages are different, then the circuits must be segregated.

Manual reset valves

- Total power consists of only the solenoid power rating.

TO DETERMINE VALVE HOLDING POWER:

- Holding power consists of the solenoid power rating for the appropriate voltage/frequency.

4" and 6" H Model valves

Printed circuit boards	
Voltage	Power
115VAC, 50 Hz	13VA
115VAC, 60 Hz	13VA
230VAC, 50 Hz	25VA
230VAC, 60 Hz	25VA
120VDC	14W

Motor operators	
Voltage	Power
115VAC, 50 Hz	667VA
115VAC, 60 Hz	391VA
230VAC, 50 Hz	667VA
230VAC, 60 Hz	391VA

TO DETERMINE VALVE OPENING POWER:

- Total power is the sum of the motor and printed circuit board power ratings for the appropriate voltage/frequency in the tables shown.
- If supply voltages are different, then the circuits must be segregated.

TO DETERMINE VALVE HOLDING POWER:

- Holding power consists of the printed circuit board power rating for the appropriate voltage/frequency.

Available voltages and electrical data - Non-incendive areas

All MAXON valves are electrically actuated from a power source through the flame safeguard and/or safety control circuits. Standard valve assemblies include an internal holding solenoid on standard flow and CP body constructions, or a printed circuit board on high capacity valves. The solenoid (or printed circuit board) is energized whenever the valve is powered. The motor operator on automatic reset valves is powered only during the opening stroke for normally-closed valves, or the closing stroke for normally-open versions.

Standard flow and CP body constructions

Solenoids					
3/4" - 1-1/2" S Models		2" - 3" S Models		2-1/2"C - 4"CP Models & 6" S Model	
Voltage	Power	Voltage	Power	Voltage	Power
115VAC, 50 Hz	23VA	115VAC, 50 Hz	23VA	115VAC, 50 Hz	34VA
115VAC, 60 Hz	16VA	115VAC, 60 Hz	16VA	115VAC, 60 Hz	26VA
230VAC, 50 Hz	23VA	230VAC, 50 Hz	23VA	230VAC, 50 Hz	34VA
230VAC, 60 Hz	16VA	230VAC, 60 Hz	16VA	230VAC, 60 Hz	26VA
24VDC	18W	24VDC	24W	24VDC	24W
120VDC	26W	120VDC	34W	120VDC	34W

Motor operators	
Voltage	Power
115VAC, 50 Hz	322VA
115VAC, 60 Hz	196VA
230VAC, 50 Hz	322VA
230VAC, 60 Hz	198VA

TO DETERMINE VALVE OPENING POWER: (OR CLOSING POWER FOR NORMALLY-OPEN VERSIONS)

Automatic reset valves

- Total power is the sum of the motor and solenoid power ratings for the appropriate voltage/frequency in the tables above.
- If supply voltages are different, then the circuits must be segregated.

Manual reset valves

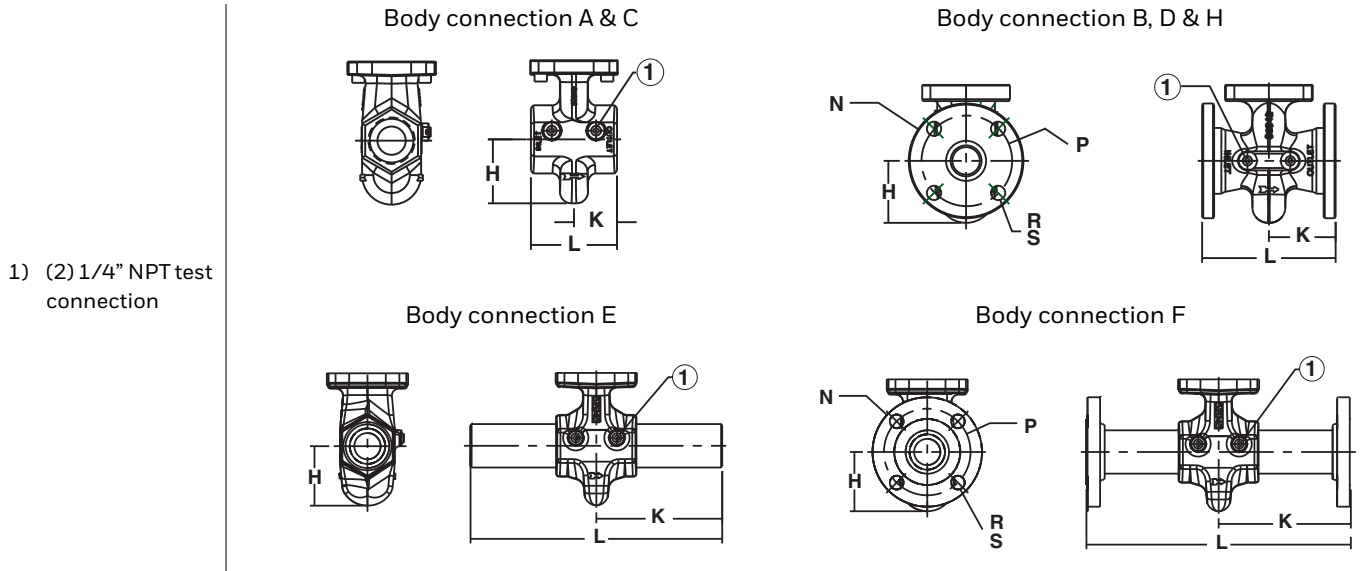
- Total power consists of only the solenoid power rating.

To determine valve HOLDING power:

- Holding power consists of the solenoid power rating for the appropriate voltage/frequency.

DIMENSIONS AND WEIGHTS

Valve bodies: 3/4" (DN20) to 3" (DN80)



1) (2) 1/4" NPT test connection

Valve size	Flow capacity	Body Connection	Body/ bonnet material	Approximate dimensions (in inches)							Approximate weight (in lbs)				
				H	K	L	N Ø	P Ø	R Ø	S # of holes	Body assembly	Actuator assembly	Total weight		
3/4" (DN20)	S	A, C	Cast iron	2.0	1.9	3.8	N/A				8	11	19		
		A, C	Carbon steel & stainless steel				N/A				9		20		
		E					6.9	13.8	N/A				10.5	21.5	
		F					7.3	14.5	3.9	2.8	0.62		4	13	24
1" (DN25)	S	A, C	Cast iron	2.0	1.9	3.8	N/A				8	11	19		
		A, C	Carbon steel & stainless steel				N/A				9		20		
		E					6.9	13.8	N/A				11	22	
		F					7.3	14.5	4.3	3.1	0.62		4	15	26
1-1/4" (DN32)	S	A, C	Cast iron	2.4	2.0	4.0	N/A				9	11	20		
1-1/2" (DN40)	S	A, C	Cast iron	2.7			6.8	13.6	N/A				11	22	
		A, C	Carbon steel & stainless steel		N/A				11	22					
		E			7.2	14.4			5.0	3.9	0.62	4	14	25	
		F			7.2	14.4			5.0	3.9	0.62	4	21	32	
2" (DN50)	S	A, C	Cast iron	3.3	2.2	4.4	N/A				16	13	29		
		B					6.0	4.8	0.75	4	26		39		
		D, H					6.5	4.9	0.71		26		39		
		A, C	Carbon steel & stainless steel		N/A				18	31					
		E			6.9	13.8	N/A				23		36		
		F			7.3	14.5	6.0	4.8	0.75	4	33		46		
2-1/2" (DN65)	S	A, C	Cast iron	2.9	2.5	5.0	N/A				19	13	32		
		B		3.1	3.8	7.5	7.0	5.5	0.75	4	30		43		
		D, H					7.3	5.7	0.71		30		43		
3" (DN80)	S	A, C	Cast iron	3.0	2.6	5.2	N/A				20		33		

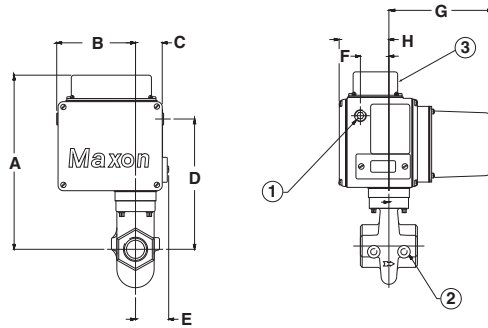
Flow capacity:
 S - Standard
 C - CP body construction
 H - High capacity

Body connection:
 A - NPT
 B - ANSI flanged (ISO 7005 PN20)
 C - ISO 7-1 threaded

D - DIN PN16 flanged
 E - Socket welded nipple
 F - Socket welded nipple w/Class 150 flange (ISO 7005 PN20)
 H - EN 1092-1 PN16 (ISO 7005-1 PN16)

Valve actuators: 3/4” through 1-1/2” valves

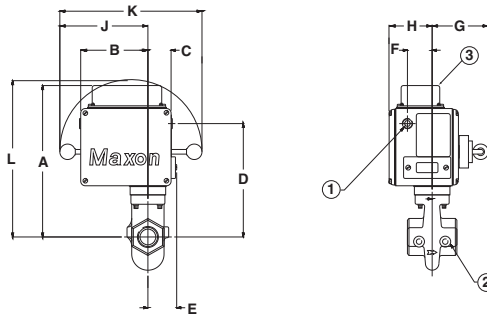
Automatic reset type (SMA11, SMA21, SMA12, SMA22)



- 1) (2) 3/4" NPT conduit connection
- 2) (2) 1/4" NPT test connection
- 3) Terminal block cover

NOTE: 2.75" needed for terminal block cover removal

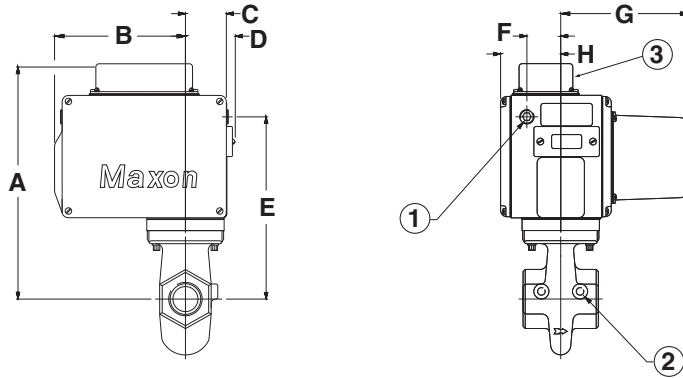
Manual reset type (SMM11, SMM21, SMM12, SMM22)



Valve size	Flow capacity	Valve type	Approximate dimensions (in inches)											
			A	B	C	D	E	F	G	H	J	K	L	
3/4" (DN20)	S	MM11, MM21	12.25	5.5	1.87	8.11	2.3	2	4.5	3.49	7.13	11.5	11.58	
		MM12, MM22								5.48				
		MA11, MA21								7.34				3.49
		MA12, MA22												5.48
1" (DN25)	S	MM11, MM21	12.25	5.5	1.87	8.11	2.3	2	4.5	3.49	7.13	11.5	11.58	
		MM12, MM22								5.48				
		MA11, MA21								7.34				3.49
		MA12, MA22												5.48
1-1/4" (DN32)	S	MM11	12.81	5.5	1.87	8.67	2.3	2	4.5	3.49	7.13	11.5	12.14	
		MM12								5.48				
		MA11								7.34				3.49
		MA12												5.48
1-1/2" (DN40)	S	MM11, MM21	13.31	5.5	1.87	9.14	2.3	2	4.5	3.49	7.13	11.5	12.61	
		MM12, MM22								5.48				
		MA11, MA21								7.34				3.49
		MA12, MA22												5.48

Valve actuators: 2” through 3” valves

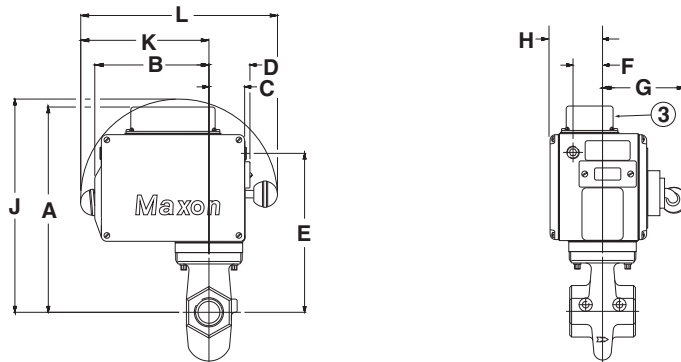
Automatic reset type (SMA11, SMA21, SMA12, SMA22)



- 1) (2) 3/4” NPT conduit connection
- 2) (2) 1/4” NPT test connection
- 3) Terminal block cover

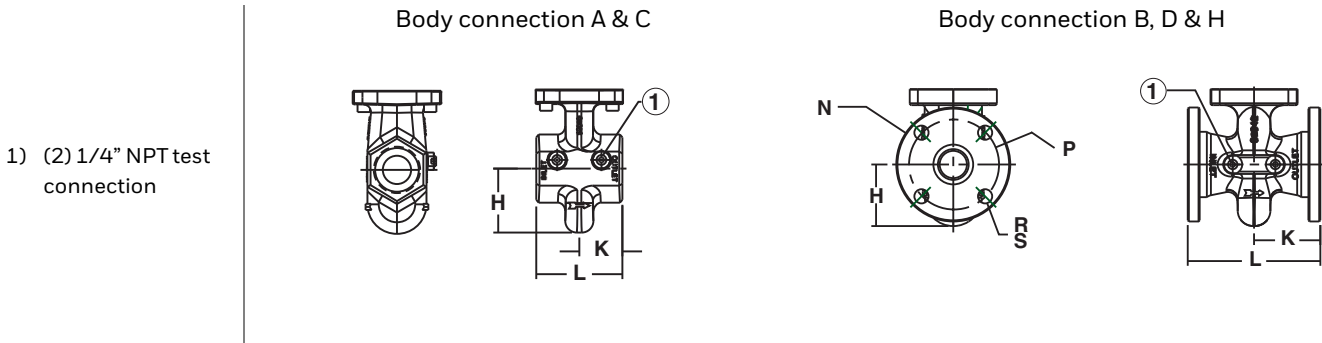
NOTE: 2.75” needed for terminal block removal

Manual reset type (SMM11, SMM21, SMM12, SMM22)



Valve size	Flow capacity	Valve type	Approximate dimensions (in inches)											
			A	B	C	D	E	F	G	H	J	K	L	
2” (DN50)	S	MM11, MM21	14.75	7.61	2.38	2.9	10.6	1.97	5.63	3.5	14.38	8.55	13.12	
		MM12, MM22								5.38				
		MA11, MA21								7.51				3.5
		MA12, MA22								5.38				
2-1/2” (DN65)	S	MM11	14.62	7.61	2.38	2.9	10.46	1.97	5.63	3.5	14.25	8.55	13.12	
		MM12								5.38				
		MA11								7.51				3.5
		MA12								5.38				
3” (DN80)	S	MM11	14.86	7.61	2.38	2.9	10.71	1.97	5.63	3.5	14.49	8.55	13.12	
		MM12								5.38				
		MA11								7.51				3.5
		MA12								5.38				

Valve bodies: 2-1/2" C (DN65), 3" C (DN80), 4" C (DN100) and 6" S (DN150)



Valve size	Flow capacity	Body connection	Body/bonnet material	Approximate dimensions (in inches)							Approximate weight (in lbs)		
				H	K	L	N Ø	P Ø	R Ø	S #of holes	Body assembly	Actuator assembly	Total weight
2-1/2" (DN65)	C	A, C	Cast iron	4.3	2.5	5.0	N/A			19	15	34	
		B		4.5	3.8	7.5	7.0	5.5	0.75	4		31	46
		D					7.3	5.7	0.71	8		31	46
		H					7.3	5.7	0.71	8		31	46
		B	Carbon steel & stainless steel	7.0	5.5	0.75	4	34	49				
		D		7.3	5.7	0.71	8	34	49				
		H		7.3	5.7	0.71	8	30	45				
3" (DN80)	C	A, C	Cast iron	5.1	2.8	5.5	N/A			24	39		
		B		5.2	4.0	8.0	7.5	6.0	0.75	4	46	61	
		D, H	7.9				6.3	0.71	8	46	61		
		B	Carbon steel & stainless steel				7.5	6.0	0.75	4	47	62	
		D, H		7.9	6.3	0.71	8	47	62				
4" (DN100)	C	B	Cast iron	5.5	4.5	9.0	9.0	7.5	0.75	8	64	79	
		D, H					8.7	7.1	0.71		64	79	
		B	Carbon steel & stainless steel				9.0	7.5	0.75		64	79	
		D, H					8.7	7.1	0.71		64	79	
6" (DN150)	S	B	Cast iron	7.5	5.25	10.5	11.0	9.5	0.88	8	115	130	
		D, H					11.2	9.4	0.86		115	130 59	
		B	Carbon steel & stainless steel				11.0	9.5	0.88		115	130	
		D, H					11.2	9.4	0.86		115	130	

Flow capacity:

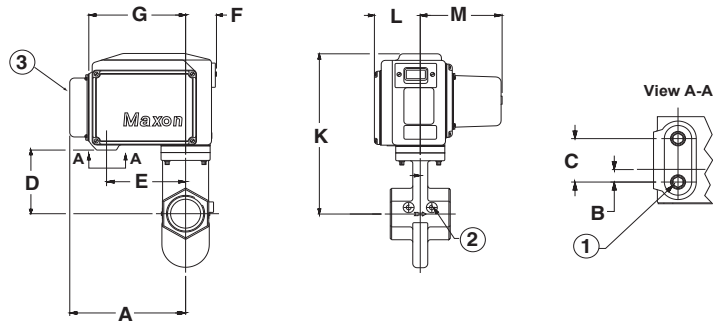
- S - Standard
- C - CP body construction
- H - High capacity

Body connection:

- A - NPT
- B - ANSI flanged (ISO 7005 PN20)
- C - ISO 7-1 threaded
- D - DIN PN16 flanged
- E - Socket welded nipple
- F - Socket welded nipple w/Class 150 flange (ISO 7005 PN20)
- H - EN1092-1 PN16 (ISO 7005-1 PN16)

Valve actuators: 2-1/2" C through 4" C and 6" S valves

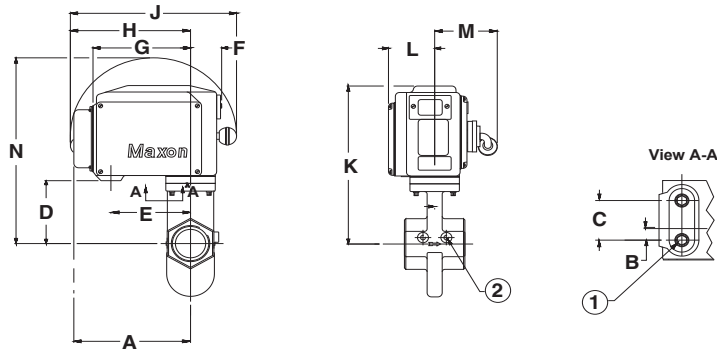
Automatic reset type (CMA11, CMA21, CMA12, CMA22)



- 1) (2) 3/4" NPT conduit connection
- 2) (2) 1/4" NPT test connection
- 3) Terminal block cover

NOTE: 2.75" needed for terminal block cover removal

Manual reset type (CMM11, CMM12, CMM22, SMM11, SMM12)

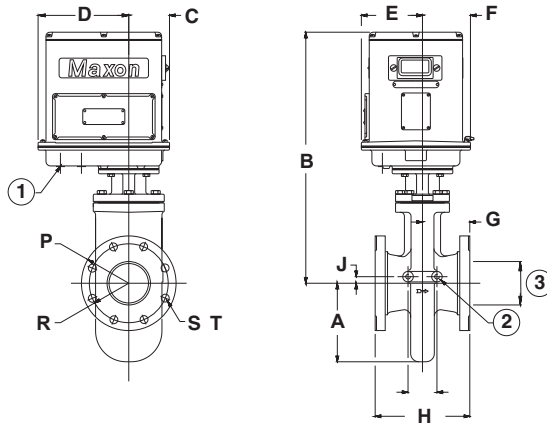


Valve size	Flow capacity	Valve type	Approximate dimensions (in inches)																											
			A	B	C	D	E	F	G	H	J	K	L	M	N															
2-1/2" (DN65)	C	MM11	11.6	0.88	3	6.09	7.25	2.83	8.87	10.9 4	15.12	14.56	4.2	6.34	14.56															
		MM12, MM22											6.14																	
		MA11, MA21											4.2			7.51														
		MA12, MA22											6.14																	
3" (DN80)	C	MM11								11.6	0.88	3	6.09	7.25	2.83	8.87	10.9 4	15.12	15.29	4.2	6.34	17.97								
		MM12, MM22																		6.14										
		MA11, MA21																		4.2			7.51							
		MA12, MA22																		6.14										
4" (DN100)	C	MM11															11.6	0.88	3	6.09	7.25	2.83	8.87	10.9 4	15.12	15.29	4.2	6.34	17.97	
		MM12, MM22																									6.14			
		MA11, MA21																									4.2			7.51
		MA12, MA22																									6.14			
6" (DN150)	S	MM11	11.6	0.88	3	6.09	7.25	2.83	8.87															10.9 4	15.12	20.75	4.2	6.34	23.43	
		MM12																									6.14			

Valve bodies and actuators: 4” & 6” high capacity valves

HMA11 versions only

- 1) (2) 3/4” NPT conduit connection
- 2) (2) 1/4” NPT test connection
- 3) Pipe size



Valve size	Flow capacity	Valve type	Approximate dimensions (in inches)					
			A	B	C	D	E	F
4” (DN100)	H	MA11	7.31	23.88	3.87	8.63	4.19	4.56
6” (DN150)	H	MA11	8.38	25.0			5.81	

Valve size	Body connection	Body/bonnet material	Approximate dimensions (in inches)							Approximate weight (in lbs)		
			G	H	J	P Ø	R Ø	S Ø	T # of holes	Body assembly	Actuator assembly	Total weight
4” (DN100)	B	Cast iron	4.5	9.0	0.62	9.0	7.5	0.75	8	94	45	139
	D, H					8.7	7.1	0.72		94		139
	B	Carbon steel & stainless steel				9.0	7.5	0.75		94		139
	D, H					8.7	7.1	0.72		94		139
6” (DN150)	B	Cast iron	5.25	10.5	0.62	11.0	9.5	0.88	8	117	45	162
	D, H					11.2	9.4	0.86		117		162
	B	Carbon steel & stainless steel				11.0	9.5	0.88		126		171
	D, H					11.2	9.4	0.86		126		171

Flow capacity:

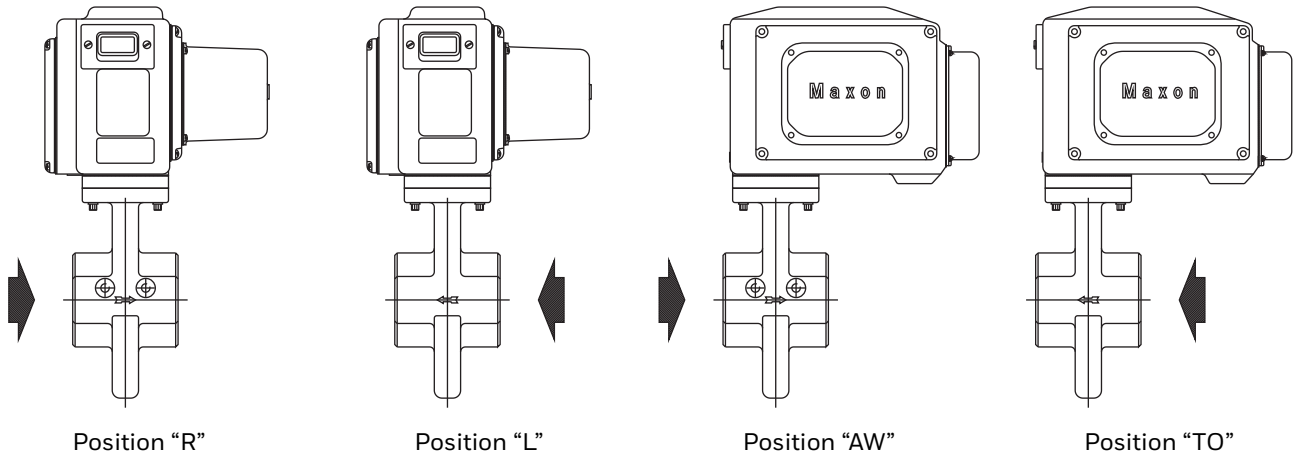
- S - Standard
- C - CP body construction
- H - High capacity

Body connection:

- A - NPT
- B - ANSI flanged (ISO 7005 PN20)
- C - ISO 7-1 threaded
- D - DIN PN16 flanged
- E - Socket welded nipple
- F - Socket welded nipple w/Class 150 flange (ISO 7005 PN20)
- H - EN1092-1 PN16 (ISO 7005-1 PN16)

Available top assembly positions

The valve top assembly can be positioned on the body in four different orientations. See sketches below to determine the designation of the required orientation for your application.



Tandem arrangements

(for simultaneous opening of main and blocking valves)

General

Wherever insurance underwriters or other regulatory groups require the use of a double-valve or “block-and-bleed” system, but manual operation is preferred to the use of automatic reset valves, operation can be simplified by adding a tandem arrangement to a pair of MAXON manual reset shut-off valves.

A linkage overtravel spring in the tandem arrangement latches the blocking valve just before the main valve is latched, assuring latching of both valves.

If it is necessary to locate a tandem valve above arms reach, an overhead wheel and chain assembly may be added which includes a loop of chain accessible to operating personnel.

To order

Valves are to be specified in the usual manner and must be in top assembly position TO or AW.

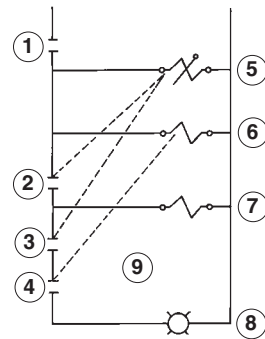
VOS and VCS switches must be included on the main valve and a VOS switch on the blocking valve to permit electrical connection as shown in the wiring schematic illustrated below.

If overhead wheel and chain assembly is also required, specify loop length to reach appropriate operating position. Extra chain (in one foot increments) may be specified.

Center line distance between valves must be within the ranges indicated in Table 1 and shown in sketch below and must be specified at the time of order.

- 1) Flame safeguard contact
- 2) VCS in main valve
- 3) VOS in main valve
- 4) VOS in blocking valve
- 5) Main valve (normally-closed)
- 6) Blocking valve (normally-closed)
- 7) Vent valve (normally-open)
- 8) Main fuel panel light
- 9) For illustration only (not a wiring diagram)

Wiring schematic

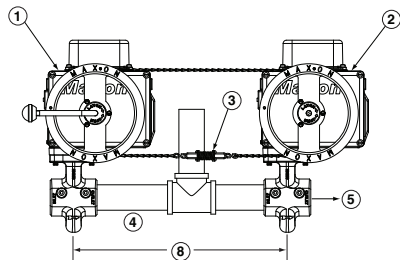


Main valve and blocking valve wired in parallel. VCS switch on main valve powers vent valve. VOS switches on main and blocking valves wired in series to signal light.

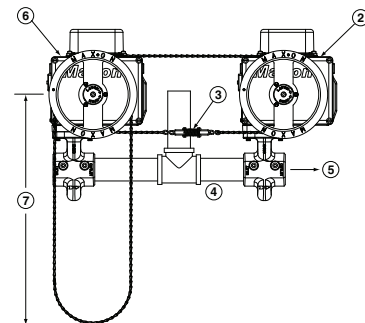
Table 1. Allowable valve spacing for tandem arrangement (in inches)		
Valve size	Minimum C-C	Maximum C-C
3/4" - 1-1/2"	18	24
2" - 3"	20	27
4" & 6"	27	33

- 1) Tandem main valve
- 2) Tandem blocking valve
- 3) Tension spring
- 4) Piping by others
- 5) Flow
- 6) Tandem overhead valve
- 7) Specify loop length if overhead wheel & chain option
- 8) See Table 1 above

Tandem arrangement



Tandem arrangement with overhead wheel & chain



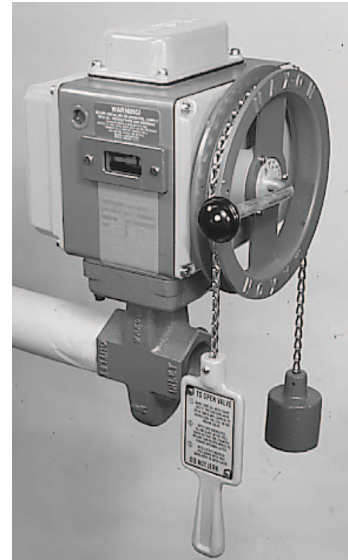
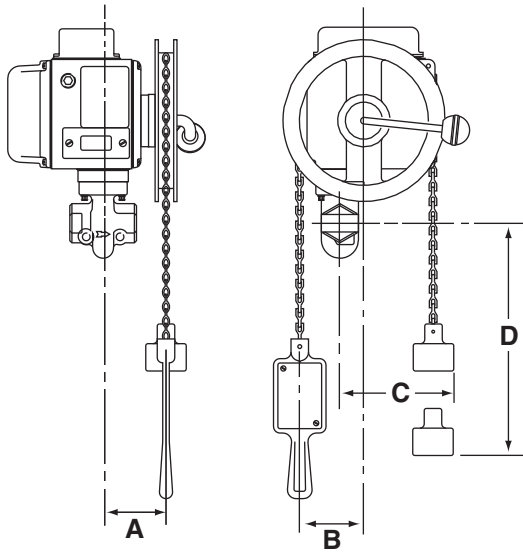
Overhead wheel & chain assembly

Overhead wheel and chain assembly allows operation of a manual reset valve in an otherwise inaccessible overhead location. A wheel is mounted onto the handle of the valve. The attached chain is weighted on one end and has a paddle handgrip on the other.

Once the valve is electrically energized, pulling down on the paddle will open normally-closed versions or close normally-open versions.

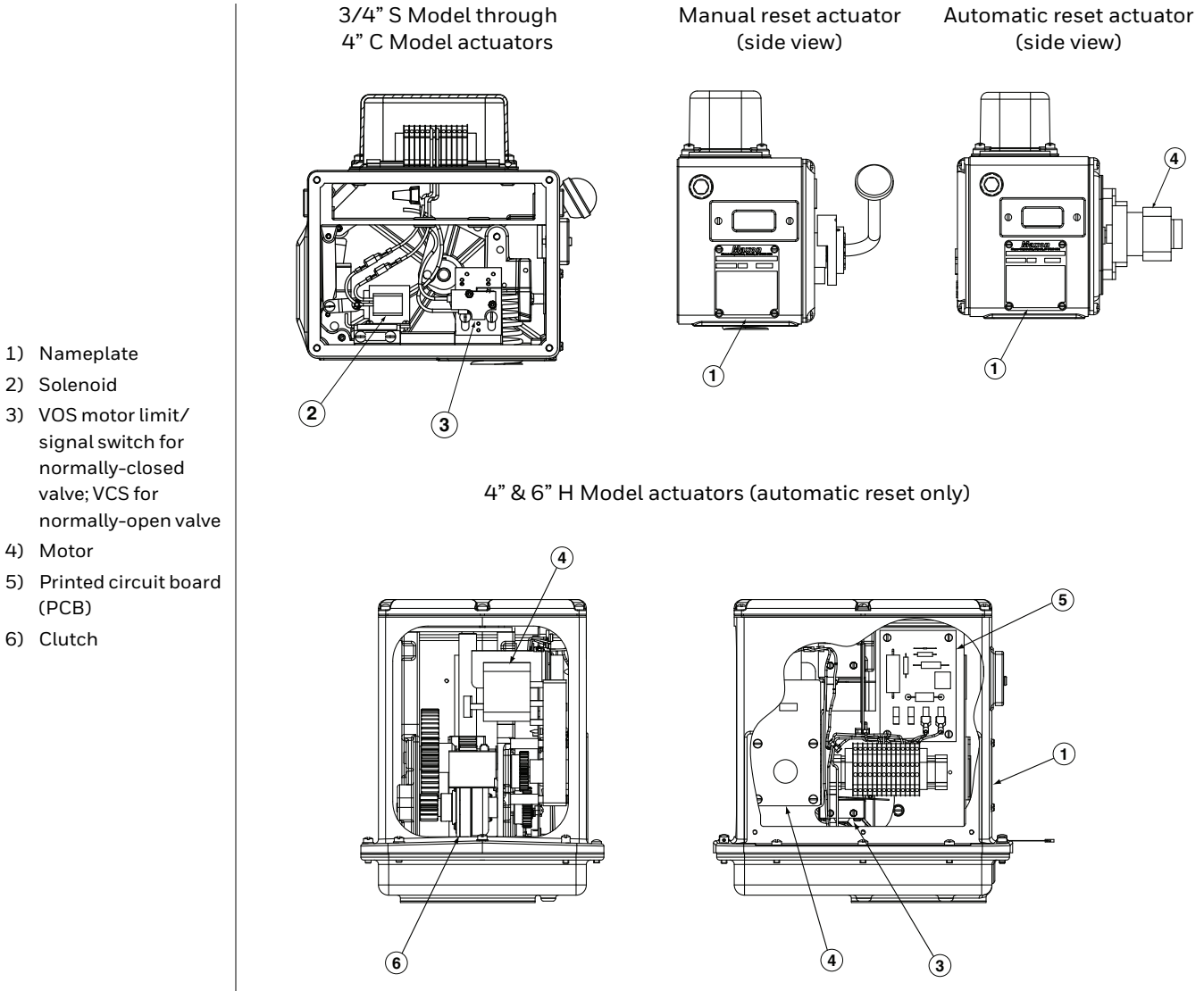
MAXON valve's free-handle design permits valve to trip to its rest position on any power interruption.

Wheel and chain assembly includes a length of chain to position the paddle handgrip slightly below pipe centerline. A standard length of 7 feet of chain is included with CP and larger valve sizes and 5 feet is included with all other valves. Extra chain (in one foot increments) may be specified to fit your specific location.



Dimensions (in inches)			
A	B	C	D
5.25 maximum	4.06	7.25	12.19 maximum

VALVE ACTUATOR SPARE PART IDENTIFICATION



- **MAXON nameplates include a model designation, which can be used to easily identify the exact components for each valve configuration.**
- **S and C Model valve spare parts include the solenoid, motor, and switches as shown above.**
- **H Model valve spare parts include the clutch, motor and circuit board as shown above.**



Please read the operating and mounting instructions before using the equipment. Install the equipment in compliance with the prevailing regulations.

Bedrijfs- en montagehandleiding voor gebruik goed lezen! Apparaat moet volgens de geldende voorschriften worden geïnstalleerd.

Lire les instructions de montage et de service avant utilisation! L'appareil doit impérativement être installé selon les réglementations en vigueur.

Betriebs- und Montageanleitung vor Gebrauch lesen! Gerät muß nach den geltenden Vorschriften installiert werden.

MANUFACTURER AND IMPORTER ADDRESSES

Below are the addresses and contact information for the Honeywell – Maxon manufacturing location and European sales office. The European sales office serves as the importer and EU manufacturer's representative under the EU New Legislative Framework (NLF).

MUNCIE, INDIANA, USA – MANUFACTURER

201 East 18th Street

P.O. Box 2068

Muncie, IN 47307-0068

Tel: 765.284.3304

Fax: 765.286.8394

EUROPEAN SALES OFFICE – IMPORTER

BELGIUM

Maxon International BVBA

Luchthavenlaan 16-18

1800 Vilvoorde, Belgium

Tel: 32.2.255.09.09

Fax: 32.2.251.82.41

WARNING






The installation, operation and maintenance instructions contain important information that must be read and followed by anyone operating or servicing this product. Do not operate or service this equipment unless the instructions have been read. IMPROPER INSTALLATION OR USE OF THIS PRODUCT COULD RESULT IN BODILY INJURY OR DEATH.

Nameplate and abbreviations

Consult the nameplate of your valve. This lists the maximum operating pressure, temperature limitations, voltage requirements and service conditions of your specific valve. Do not exceed nameplate ratings.

Description

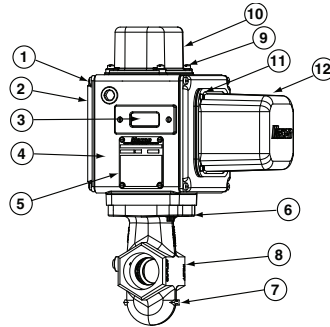
MAXON electro-mechanical valves are electrically actuated fuel shut-off valves. The valves are designed for a fast acting return to the at rest position upon removal of a control voltage signal. Motorized automatic and manual actuators are available depending on application needs. In addition, normally-closed and normally-open options are available. The normally-closed versions will shut off flow when de-energized and pass flow when energized. The normally-open versions will shut off flow when energized and pass flow when de-energized. Electro-mechanical valves are also offered in configurations that meet hazardous locations.

Abbreviation or symbol	Description
M.O.P.	Maximum operating pressure
OPENING	Valve opening time (for automatic valves only). Units shown in seconds.
	Solenoid/clutch voltage and frequency
	Motor voltage and frequency
T _{AMB}	Ambient temperature range
T _F	Fluid temperature range
SHUT	Visual indication that valve is shut
OPEN	Visual indication that valve is open
SPDT (HS)	Single pole double throw hermetically-sealed switch(es)
SPDT	Single pole double throw switch(es)
SPDT (HC)	Single pole double throw high capacity switch(es) (used when DC motors are ordered)
DPDT	Double pole double throw switch(es)
GENERAL PURPOSE AREA	Designates components used in general purpose areas
DIVISION 2 AREA	Designates components used in Division 2 hazardous locations areas
	Valve is shut
	Valve is partially open
	Valve is full open
VOS-1/2	Valve open switch(es)
VCS-1/2	Valve closed switch(es); proof of closure

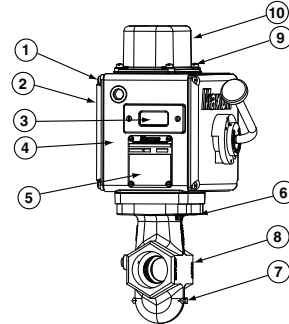
Component identification

- 1) Access cover screws
- 2) Access cover
- 3) Visual indication
- 4) Mainbase
- 5) Nameplate
- 6) Actuator bolts
- 7) Flow arrow
- 8) Valve body
- 9) Terminal block cover screws
- 10) Terminal block cover
- 11) Motor cover screws
- 12) Motor cover
- 13) Top cover plate screws
- 14) Top cover plate
- 15) Top housing
- 16) Top housing screws

Automatic (motorized) valve
Model designation
SMA11, CMA11, SMA21, CMA21



Manual valve
Model designation
SMM11, CMM11, SMM21



Automatic (motorized) valve - 4" & 6" high capacity
Model designation
HMA11

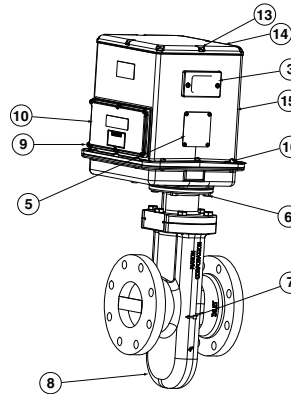


Table 1 - Torque specifications

Valve type	Item number	Description	Torque
"S" Valves 3/4" - 1-1/2"	1	Access cover screws 1/4-20	72 in-lbs
	6	Actuator bolts 5/16-18	13 ft-lbs
	9	Terminal block cover screws 1/4-20	72 in-lbs
	11	Motor cover screws #10-24	42 in-lbs
"S" Valves 2" - 3"	1	Access cover screws 1/4-20	72 in-lbs
	6	Actuator bolts 3/8 - 16	20 ft-lbs
	9	Terminal block cover screws 1/4-20	72 in-lbs
"C" Valves 2" - 4"	1	Access cover screws 1/4-20	72 in-lbs
	6	Actuator bolts 3/8 - 16	20 ft-lbs
	9	Terminal block cover screws 1/4-20	72 in-lbs
	11	Motor cover screws #10-24	42 in-lbs
"H" Valves 4" - 6"	9	Terminal block cover screws #10-24	42 in-lbs
	13	Top cover plate screws 1/4-20	72 in-lbs
	16	Top housing screws 1/4-20	72 in-lbs

Installation

1. A gas filter or strainer of 40 mesh (0.6 mm) or

smaller is recommended in the fuel gas piping to protect the downstream safety shut-off valves.

2. Properly support and pipe the valve in the direction of the flow arrow on the valve body. Valve seats are directional. Sealing will be maintained at full rated pressures in one direction only. Sealing will be provided in reverse flow only at reduced pressures.
3. Mount valve so that open/shut window indicator will be visible to your operating personnel. The open/shut window indicator should never face downward. The valve side plates should be located in a vertical plane for best performance. Valves are usually installed in horizontal piping; however, other orientations are acceptable, subject to the above limitations. The top assemblies of all MAXON valves are field rotatable to allow installations involving conflicts with these mounting restrictions.
4. Wire the valve in accordance with all applicable local and national codes and standards. In U.S. and Canada, wiring must conform to the NEC ANSI/NFPA 70 and/or CSA C22.1, Part 1.
 - Supply voltages must agree with valve's nameplate voltage within -15%/+10% for proper operation. For electrical wiring schematic, see instructions or sample affixed inside valve terminal block cover.
 - Grounding is achieved with a grounding screw, which is located in the top assembly.
 - Customer connections are provided via terminal blocks located in the top assembly.
 - Main power wiring (120 VAC or 240 VAC) must be segregated from lower voltage 24 VDC signal wiring, when both are required.
 - To eliminate any potential for gas to enter the electrical wiring system, install a conduit seal fitting at the actuator conduit hub.
5. Maintain integrity of the electro-mechanical actuator enclosures by using the appropriate electrical connectors for the (2) 3/4" NPT conduit threaded connections. The electrical enclosure is NEMA 4 rated with an option for NEMA 4X.
6. All access cover plate screws should be tightened using an alternate cross-corner tightening pattern to the values shown in Table 1 on page 24.
7. Verify proper installation and operation by electrically actuating the valve for 10-15 cycles prior to the first introduction of gas.
8. **WARNING - Explosion hazard**
 - Do not connect or disconnect this equipment unless power has been removed or the area is known to be non-hazardous.
 - Substitution of components may impair suitability for Class I, Division 2 (applies to MM12, MA12, MM22 and MA22 valves only).
9. This equipment is suitable for installation in Class I, Division 2 Groups B, C, D, and Class II Groups F and G, and Class III hazardous locations or non-hazardous locations (applies to MM12, MA12, MM22 and MA22 valves only).

Auxiliary features

- **Non-adjustable proof of closure switch(es) with valve seal over travel interlock**
- **Auxiliary switch for indication of full travel (open for normally-closed valves, closed for normally-open valves)**

Operating environment

- **Actuators rated for NEMA 4 or optional NEMA 4X**
- **Ambient and fluid temperature range of -20°F to +140°F for S and C Model constructions**
- **Ambient and fluid temperature range of -20°F to +125°F for H Model constructions**
- **All valves for oxygen service or using Ethylene Propylene body seals are limited to a minimum ambient and fluid temperature of 0°F**

ACTUATOR ASSEMBLY ROTATION

WARNING

MAXON electro-mechanical valves should be ordered in a configuration compatible with planned piping. If valve orientation is not correct, the actuator assembly can be rotated in 90° increments around the valve body centerline axis using the procedure below.

1. Shut off all electrical power and close off upstream manual cock.
2. Remove terminal block cover plate and disconnect power lead wires. (Tag carefully for later re-assembly.)
3. Remove conduit and electrical leads.
4. Note physical position of any signal switch actuator wands on auxiliary signal switches.
5. Unscrew the two actuator bolts screwed up from the bottom to 1/4 inch. DO NOT completely remove. These bolts secure the valve body to the valve's top assembly housing.
6. Gently lift the top assembly (not more than 1/4" in height); just enough to break the seal between the valve body assembly and the rubber gasket adhering to the bottom of the top housing.

WARNING

Lifting too far may dislodge some small parts inside the top housing, requiring complex re-assembly and retesting by trained factory personnel.

7. Remove the two actuator bolts screwed up from the bottom (were partially unscrewed in step 5).
8. Carefully rotate top assembly to the desired position in a plane parallel to the top of the valve body casting. Rotate the top housing about 30° beyond this position, and then rotate it back. Reposition the top housing back down onto the valve body casting. This should align the open/shut indicator with its window and provide proper alignment of the internal mechanism.
9. Realign holes in valve body casting with the corresponding tapped holes in the bottom of the top assembly housing. Be sure the gasket is still in place between the body and top housing.
10. Reinsert the actuator bolts up from the bottom through the body and carefully engage threads of the top assembly. Tighten securely.
11. Reconnect conduit and electrical leads, then check that signal switch wands are properly positioned and that the open/shut indicator moves freely. Failure to correct any such misalignment can result in extensive damage to the internal mechanism of your valve.
12. Energize valve and cycle several times from closed to full open position. Also electrically trip the valve in a partially opened position to prove valve operates properly.
13. Replace and secure terminal block cover plate and place valve in service.

FIELD INSTALLATION OF VALVE POSITION SWITCH

General

- Shut off fuel supply upstream of valve, then de-energize valve electrically.
- Remove terminal block and access cover to provide access, being careful not to damage gaskets.
- Compare with illustrations below to identify your valve type.

Replacement switches

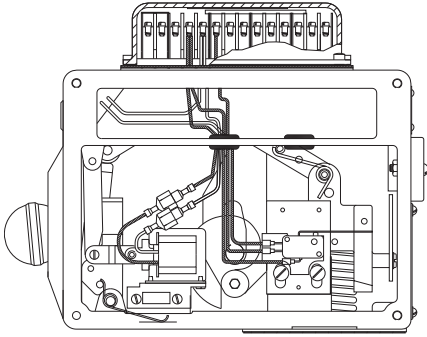
- Note wand position and mounting hole location carefully, then remove 2 screws and lift existing switch.
- Install replacement switch in same mounting holes on bracket and verify correct wand position.
- Replace existing wiring one connection at a time, following original route and placement.

Add switches

NOTE: Instructions below are written for normally-closed valves. For normally-open valves, reverse switch nomenclature (VOS becomes VCS and vice versa).

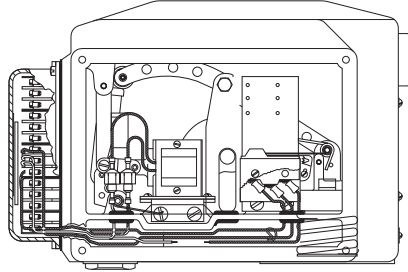
- Check illustrations below. If your valve uses a switch mounting bracket as in Fig. 1 & 2, mount switches to bracket using the mounting holes appropriate for valve type and size. For high capacity valves, mount switches on the support stand.
- Position bracket so VCS wand just touches top of actuator, then move downward slightly, depressing wand until switch clicks, then tighten mounting screws to hold this position.
- Pin bracket by drilling 1/8" diameter holes 1/4" deep into bracket mounting pad through drive pin holes, then tap drive pin in until flush (not required for high capacity valves).
- Route wires to wiring compartment as shown, then complete wiring connections and clean out metal drilling chips from previous procedure.
- Cycle valve, checking switch actuation points carefully. (VCS actuates at top of stem stroke, VOS at bottom.) Simultaneously the valve body must be tested for switch continuity and seat leakage. Bend VOS switch wands slightly if necessary to insure valve is opening fully.
- Replace covers, then return valve to service.

Fig. 1
Manual reset actuator
3/4" - 3" S Models



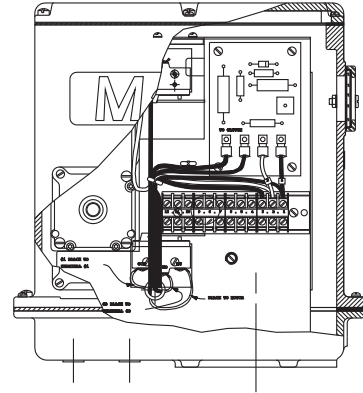
Reference mounting bracket A

Fig. 2
Automatic reset actuator
2-1/2" C - 4" C Models and 6" S Model



Reference mounting bracket B

Fig. 3
Automatic reset actuator
4" & 6" H Models



Switches mount on support stand

Wand position (for normally-closed valves)

VOS switch wand should be actuated from above

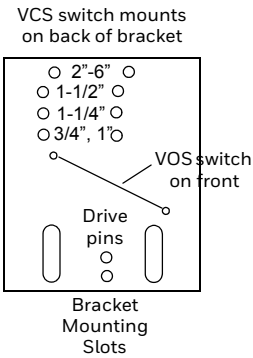


VCS switch wand should be actuated from below

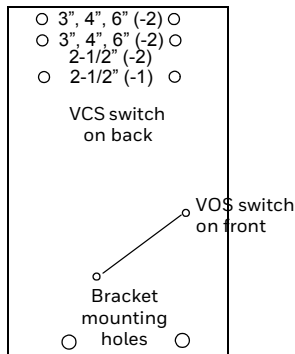


Mounting brackets

Mounting bracket A



Mounting bracket B



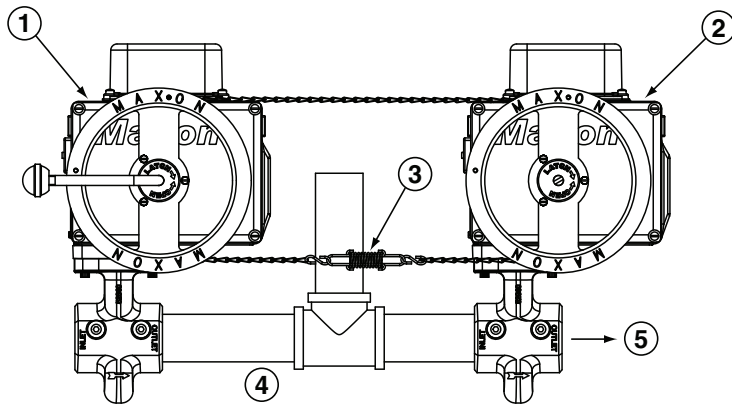
Tandem arrangements

(for simultaneous opening of main and blocking valves)

Installation instructions for tandem arrangements

1. Review and comply with all general valve installation instructions provided separately. (See sketch below.)
2. Mount both valves in fuel line with center to center spacing as originally specified, and blocking valve (without handle) downstream of main valve (with handle).
3. Check valve alignment to be certain that operating wheels lie in the same plane.
4. Remove tape from the wheel of the main valve and unwind the attached chain. Do not remove the screw holding chain to wheel; it has been factory positioned to assure correct alignment. Do not remove tension spring attached to one end of chain or the wooden block insert which preloads the spring.
5. Take free end of chain and loop it around the wheels of both main and blocking valve as shown in sketch below. Depending on the specific valve series and arrangement, tension spring may be located either above or below the wheel centerline.
6. Draw free end of chain and tension spring together so that as much slack as possible is eliminated, then insert the open eye of the spring "S" hook through the link in the chain that will most nearly maintain this position.
7. Crimp the "S" hook shut around the chain link, then cut and discard excess chain.
8. Remove spring preload wood block insert from the tension spring, and verify that the chain is drawn tight.
9. Rotate the operating handle of the main valve fully to latching position for your particular valve, then hold handle firmly in this position while performing the next few steps.
10. Rotate blocking valve wheel fully counter-clockwise until it strikes a stop (it will slide within the loop of chain).
11. Still holding main valve wheel in place, move blocking valve wheel approximately 1/4 to 1/2 inch back in the clockwise direction. Insert the #10-24 X 1/2" screw (furnished) through the chain link that lines up with the tapped hole on bottom of blocking valve wheel, then fasten securely.
12. Verify that the valves are wired in parallel as shown in wiring schematic on page 13.

- 1) Tandem main valve
- 2) Tandem blocking valve
- 3) Tension spring
- 4) Piping by others
- 5) Flow direction



To add wheel & chain assembly to existing tandem valves

1. Verify that both valves are in the same top assembly position (TO or AW). Rotate if necessary. (See top assembly rotation instructions on page 10-30.1-33.)
2. Bend handle of main valve outward about 25°.
3. Cut off handle of blocking valve at outer wheel face.
4. Remove hardware holding main valve wheel in place and mount new wheel and spacer to the existing wheel with new hardware provided.
5. Cut chain loop to the desired length and secure to both wheels.

MAINTENANCE INSTRUCTIONS

MAXON electro-mechanical valves are endurance tested far in excess of the most stringent requirements of the various approval agencies. They are designed for long life even if frequently cycled, and to be as maintenance-free and trouble-free as possible. A valve operational test should be performed on an annual basis. If abnormal opening or closing is observed, the valve should be removed from service and your MAXON representative should be contacted. (See MAXON Technical Document 10-35.1.)

Valve leak test should be performed on an annual basis to assure continued safe and reliable operation. Every MAXON valve is operationally tested and meets the requirements of FCI 70-2 Class VI Seat Leakage when in good operable condition. Zero leakage may not be obtained in the field after it has been in service. For specific recommendations on leak test procedures, see MAXON Technical Document 10-35.2. Any valve that exceeds the allowable leakage, as set forth by your local codes or insurance requirements should be removed from service and your MAXON representative should be contacted.

Actuator assembly components require no field lubrication and should never be oiled.

Auxiliary switches, solenoids, motors, clutches or circuit boards may be replaced in the field.



WARNING

Do not attempt field repair of valve body or actuator. Any alterations void all warranties and can create potentially hazardous situations.

If foreign material or corrosive substances are present in the fuel line, it will be necessary to inspect the valve to make certain it is operating properly. If abnormal opening or closing is observed, the valve should be removed from service. Contact your MAXON representative for instructions.

Operator should be aware of and observe characteristic opening/closing action of the valve. Should operation ever become sluggish, remove valve from service and contact MAXON for recommendations.

Address inquiries to MAXON. Local worldwide offices may be located at www.maxoncorp.com. Include valve serial number and nameplate information.

FITTING CERTIFICATE

We:
Maxon Corporation

Address:
201 E. 18th Street
Muncie, IN 47302
USA

Declare that all fittings produced at the above address
within the following product group:
Maxon Series MA11, MM11, MA21 and MM21 Valves

Conform to all applicable provisions of the European Gas
Appliance Directive.

Certification: Product Identification Number C87BQ83
applies
EC Surveillance: GL Industrial Services (Notified Body
Number 0087)

This certificate issued by: Maxon Corporation
Name: Lora Davis
Title/Position: Product Engineering Manager
Date of issue: June 21, 2011

Distributed by:



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For More Information

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Agenda Sheet for City Council Meeting of:
09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2023-0451
Renews #	
Cross Ref #	
Project #	
Bid #	WSDS 02915
Requisition #	CR 25380

Submitting Dept	SOLID WASTE DISPOSAL
Contact Name/Phone	DAVID PAINE 625-6878
Contact E-Mail	DPAINE@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490 CAT 988 LOADER RENTAL AMENDMENT

Agenda Wording
Contract amendment for the rental of a CAT 988 loader from L&M Truck Sales, Inc. for the Waste to Energy Facility from April 17, 2023 through August 7, 2023. Additional funds needed in the amount of \$30,000.00 incl. tax. (\$79,000.00 total).

Summary (Background)
The WTE required the rental of a CAT 988 loader. The need for the loader was longer than expected and incurred additional costs. The initial contract, which utilized state contract #02915 was for \$49,000.00 including tax. Due to keeping the loader for an additional month and a half, \$30,000.00 needs added to the contract, for a total cost of \$79,000.00 including tax.

Lease? NO	Grant related? NO	Public Works? NO
Fiscal Impact		Budget Account
Expense	\$ 30,000.00	# 4490-44100-37148-54501
Select	\$	#
Select	\$	#
Select	\$	#

Approvals		Council Notifications	
Dept Head	AVERYT, CHRIS	Study Session\Other	PIES 8/28/23
Division Director	FEIST, MARLENE	Council Sponsor	CP Kinnear, CM Bingle
Finance	ALBIN-MOORE, ANGELA	Distribution List	
Legal	HARRINGTON, MARGARET	mdorgan@spokanecity.org	
For the Mayor	JONES, GARRETT	jsalstrom@spokanecity.org	
Additional Approvals		tprince@spokanecity.org	
Purchasing	WAHL, CONNIE	DocuSign: David Robison, Rental Manager, rental@lmtrucks.com	

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Solid Waste Disposal
Contact Name	David Paine
Contact Email & Phone	dpaine@spokanecity.org , 509-625-6878
Council Sponsor(s)	CM Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Contract amendment with cost for the rental of a CAT Loader at the WTE.
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>The WTE required the rental of a CAT 988 for the purpose of loading excess ash into containers for transport to the landfill. The metals ash that was transported to the local recycling contractor had too much residual ash that is not metal and needed removed prior to recycling.</p> <p>The loading of the ash took longer than expected, so the loader needed to be rented for longer. The initial contract, which utilized state contract #02915 was for \$49,000.00 including tax. To cover the cost of the additional time needed, an additional \$30,000.00 will need added to the contract, for a total cost of \$79,000.00 including tax.</p>
Proposed Council Action	Council approval of contract amendment
Fiscal Impact Total Cost: <u>\$30,000.00 addl. Total contract cost of \$79,000.00 including tax</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: 2023 SWD Budget Expense Occurrence <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? This work is necessary to maintain the WTE Facility's ability to generate low-cost power supplied to the grid. Low-cost power is imperative to curbing the rise in cost of electricity.	
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 contractor is governed by WA L&I.	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?	

The COS Procurement Policies regulate and safeguard this process.

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 work supports the continued safe operation the Facility. The expenditure is supportive of the Sustainable Action Plan and the Capital Improvement Program.



City of Spokane
CONTRACT AMENDMENT / EXTENSION
Title: **Rental of CAT Loader**

This Contract Amendment / Extension is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **L & M Truck Sales, Inc.**, whose address is 4001 East Boone Avenue, Spokane, Washington 99202 as ("**Company**", individually hereafter referenced as a "Party", and together as the "Parties".

*WHEREAS, the parties entered into a Contract wherein the **Company** agreed to provide Rental and Delivery of a 988 CAT Loader to the Waste to Energy Facility; and*

WHEREAS, a change or revision of the Work has been requested, and the Contract time for performance needs to be extended, thus the original Contract needs to be formally Amended and Extended by this written document; and

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

1. CONTRACT DOCUMENTS.

The Contract, dated April 21, 2023, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

This Contract Amendment / Extension shall become effective on April 17, 2023, and shall end August 7, 2023.

3. AMENDMENT.

The Contract is amended to add additional funds due to the extension of the contract. The job was not finished on time.

4. COMPENSATION.

The City shall pay an additional amount not to exceed **THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00)** for everything furnished and done under this Contract Amendment / Extension. This is the maximum amount to be paid under this Amendment / Extension, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this document.

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

L & M TRUCK SALES, 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:

N/A

U2023-073

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

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2022-0709
Renews #	

Submitting Dept	SOLID WASTE DISPOSAL	Cross Ref #	
Contact Name/Phone	DAVID PAINE 625-6878	Project #	
Contact E-Mail	DPAINE@SPOKANECITY.ORG	Bid #	IRFP 5616-22
Agenda Item Type	Contract Item	Requisition #	CR 25381
Agenda Item Name	4490 CONTRACT AMENDMENT FOR AIR EMISSIONS COMPLIANCE TESTING		

Agenda Wording

Contract amendment with Deeco Inc. (Raleigh, NC) for air emissions compliance testing at the Waste to Energy Facility. An additional \$40,000.00 is needed for a total annual cost of \$175,728.00 incl. tax.

Summary (Background)

Annual emissions testing, is required by the WTE's operating permits. On July 29, 2022, bidding closed on IRFP #5616-22 for these testing services. DEECO, Inc. was the most qualified respondent. The contract award was from Jan 1, 2023 through Dec 31, 2023 with a cost of \$135,278.00. Due to issues with the boiler while the testing was being conducted, DEECO was forced to stop and proceed with testing this fall. The additional funds are to support the additional testing and trip required.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense \$ 40,000.00

Select \$

Select \$

Select \$

Budget Account

4490-44100-37148-54940

#

#

#

Approvals

Dept Head	AVERYT, CHRIS
Division Director	FEIST, MARLENE
Finance	ALBIN-MOORE, ANGELA
Legal	HARRINGTON, MARGARET
For the Mayor	JONES, GARRETT

Council Notifications

Study Session\Other	PIES 8/28/23
Council Sponsor	CP Kinnear, CM Bingle

Distribution List

mdorgan@spokanecity.org
jsalstrom@spokanecity.org

Additional Approvals

tprince@spokanecity.org

Purchasing WAHL, CONNIE

rrinderle@spokanecity.org

DocuSign: Marc Hamilton, President,
deeco@deeco.com

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Solid Waste Disposal
Contact Name	David Paine
Contact Email & Phone	dpaine@spokanecity.org , 509-625-6878
Council Sponsor(s)	CP Kinnear, CM Bingle
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Contract amendment for air quality emission testing at the WTE.
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>Annual emissions testing, including the annual Relative Accuracy Test Audit (RATA) of the continuous emission monitoring system, is required by the operating permits for the WTE.</p> <p>On July 29, 2022, bidding closed on IRFP #5616-22 for these testing services. Two responses were received; DEECO, Inc. (Raleigh, NC) and Alliance Tech Group (Salt Lake City, UT). DEECO, Inc. was determined to be the most qualified and most cost effective respondent. The contract award was for one year with the option of four (4) one-year renewals from January 1, 2023 through December 31, 2023 with a total cost not to exceed \$135,278.00. Unfortunately, there were issues with the boiler while the testing was being conducted, forcing DEECO to stop and proceed with testing this fall. Due to the additional trip and testing, an additional \$40,000.00 will need added to the cost of this contract.</p>
Proposed Council Action	Approval of contract amendment.
Fiscal Impact	
Total Cost: <u>\$40,000.00 additional for a total annual cost of \$175,728.00</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: 2023 SWD Budget	
Expense Occurrence <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring	
Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities?	
This work is necessary to maintain the WTE Facility's ability to generate low-cost power supplied to the grid. Low-cost power is imperative to curbing the rise in cost of electricity.	
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 contractor is governed by WA L&I.	

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

The COS Procurement Policies regulate and safeguard this process.

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 work supports the continued safe operation the Facility. The expenditure is supportive of the Sustainable Action Plan and the Capital Improvement Program.



City of Spokane
CONTRACT AMENDMENT
Title: **AIR EMISSIONS
COMPLIANCE TEST PROGRAM**

This Contract Amendment is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **DEECO, INC.**, whose address is 3404 Lake Woodard Road, Raleigh, North Carolina 27604 as (“Consultant”), individually hereafter referenced as a “party”, and together as the “parties”.

WHEREAS, the parties entered into a Contract wherein the Consultant agreed conduct the Air Emissions Compliance Test Program at the Spokane Waste-to-Energy Facility; and

WHEREAS, additional funds are required due to testing delay, thus the original Contract needs to be formally amended by this written document; and

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

1. CONTRACT DOCUMENTS.

The Contract, dated October 12, 2022 and October 13, 2022, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE TERM.

This Contract Amendment shall become effective on January 1, 2023 and shall run through December 31, 2023.

3. COMPENSATION.

The City shall pay an additional amount not to exceed **FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00)** plus applicable tax, for everything furnished and done under this Contract Amendment. This is the maximum amount to be paid under this Amendment and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this document.

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

DEECO, 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

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

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2019-1094
Renews #	
Cross Ref #	
Project #	
Bid #	PW ITB 5130-19
Requisition #	CR 25382

Submitting Dept	SOLID WASTE DISPOSAL
Contact Name/Phone	DAVID PAINE 625-6878
Contact E-Mail	DPAINE@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490 CONTRACT AMENDMENT FOR INSULATION SERVICES AT THE WTE

Agenda Wording

Contract amendment with BrandSafway Services, LLC (Pasco, WA) for removal and replacement of insulation and cladding at the WTE from Feb. 1, 2023 to Jan. 1, 2024 with an additional cost of \$50,000.00 needed for an annual cost of \$150,000.00 incl. tax

Summary (Background)

During outages at the WTE, removal of insulation and cladding for boiler walls and other areas is needed to allow access. Replacement of the insulation as well as fabrication and installation of removable insulation blankets is also required during these outages. BrandSafway Services was awarded the contract for this work in 2019 and is currently on it's third contract renewal. Due to unanticipated maintenance needs in 2023, an additional \$50,000.00 is needed to complete the projects scheduled.

Lease? NO Grant related? NO Public Works? YES

Fiscal Impact

Expense \$ 50,000.00

Select \$

Select \$

Select \$

Budget Account

4490-44100-37148-54803-34002

#

#

#

Approvals

Dept Head	AVERYT, CHRIS
Division Director	FEIST, MARLENE
Finance	ALBIN-MOORE, ANGELA
Legal	HARRINGTON, MARGARET
For the Mayor	JONES, GARRETT

Council Notifications

Study Session\Other	PIES 8/28/23
Council Sponsor	CP Kinnear, CM Bingle

Distribution List

mdorgan@spokanecity.org
jsalstrom@spokanecity.org
tprince@spokanecity.org
rrinderle@spokanecity.org
DocuSign: Jorge Torres, Branch Manager,
Jtorres4@brandsafway.com

Additional Approvals

Purchasing	WAHL, CONNIE
-------------------	--------------

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Solid Waste Disposal
Contact Name	David Paine
Contact Email & Phone	dpaine@spokanecity.org
Council Sponsor(s)	CP Kinnear, CM Bingle
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Contract amendment for removal and replacement of insulation and cladding at the WTE
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>During outages at the WTE, removal of insulation and cladding for boiler walls and other areas is needed to allow access. Replacement of the insulation as well as fabrication and installation of removable insulation blankets is also required during these outages.</p> <p>On October 31, 2019 bidding on PW ITB 5130-19 closed for these insulation services. BrandSafway Services, LLC., of Pasco, WA was the only response received. The bid stipulated that the contract will be for one year with the option of four (4) additional one-year periods. The contract is currently on its third of the allowed renewals from February 1, 2023 through January 31, 2024 with a cost of \$100,000.00 including tax. Due to unanticipated maintenance needs this year, an additional \$50,000.00 is needed to complete the projects scheduled in the fall of 2023.</p>
Proposed Council Action	Approval of contract amendment
Fiscal Impact	
Total Cost: <u>\$50,000.00 addl. \$150,000.00 total incl. tax</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: 4490 Solid Waste Disposal Budget	
Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring	
Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? The work is required to maintain the Facility's ability to generate low-cost power supplied to the grid. Low-cost power is imperative to curbing the rise in cost of electricity.	
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 contractor is governed by WA L&I.	

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

The COS Procurement Policies regulate and safeguard this process.

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 work supports the continued safe operation the Facility. The expenditure is supportive of the Sustainable Action Plan and the Capital Improvement Program.



City of Spokane
CONTRACT AMENDMENT
Title: INSULATION SERVICES

This Contract Amendment is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **BRANDSAFWAY SERVICES, LLC**, whose address is 1523 East Hillsborough Avenue, Pasco, Washington 99301 as (“Contractor”), individually hereafter referenced as a “party”, and together as the “parties”.

WHEREAS, the parties entered into a Contract wherein the Contractor agreed to perform Insulation Services; Removal and Replacement of Insulation and Cladding for Boiler Walls and Piping and Fabrication of and Installation ff Removable Insulation Blankets for the City; and

WHEREAS, additional funds are required due to unanticipated maintenance needs in 2023, thus the original Contract needs to be formally amended by this written document; and

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

1. CONTRACT DOCUMENTS.

The original Contract, dated December 11, 2019 and December 26, 2019, 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 TERM.

This Contract Amendment shall become effective on February 1, 2023 and shall run through January 31, 2024.

3. COMPENSATION.

The City shall pay an estimated maximum cost not to exceed **FIFTY THOUSAND AND NO/100 (\$50,000.00)** for everything furnished and done under this Contract Amendment. This is the maximum amount to be paid under this Amendment, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this Amendment document.

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

BRANDSAFWAY SERVICES, LLC.

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

**ATTACHMENT
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.

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



Agenda Sheet for City Council Meeting of:

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2023-0896
Renews #	
Cross Ref #	
Project #	
Bid #	PW ITB 5918-23
Requisition #	2024 BUDGET

Submitting Dept	SOLID WASTE DISPOSAL
Contact Name/Phone	DAVID PAINE 625-6878
Contact E-Mail	DPAINE@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490 CONTRACT FOR BOILER FEEDWATER PUMP SERVICES AT THE WTE

Agenda Wording
 Contract award to Bender CCP, Inc. (Portland, OR) for as-needed boiler feedwater pump maintenance and repairs at the WTE from Sept. 1, 2023 through August 31, 2024 with a total cost not to exceed \$100,000.00 including tax.

Summary (Background)
 The Waste to Energy Facility utilizes Sulzer Pumps in its operation of the facility to supply water to the boilers to be converted into high pressure steam. On June 26, 2023 bidding closed on PW ITB 5918-23 for the as-needed service of these pumps. Responses were received from Flowserve US Inc., Bender CCP Inc. and McKinstry. Bender CCP, Inc. was selected as the low-cost, responsible bidder. The initial contract award will be for one year with the option of three (3) additional one-year renewals

Lease? NO	Grant related? NO	Public Works? YES
Fiscal Impact		Budget Account
Expense	\$ 100,000.00	# 4490-44100-37148-54803-34002
Select	\$	#
Select	\$	#
Select	\$	#

Approvals		Council Notifications	
Dept Head	AVERYT, CHRIS	Study Session\Other	PIES 8/28/23
Division Director	FEIST, MARLENE	Council Sponsor	CP Kinnear, CM Bingle
Finance	ALBIN-MOORE, ANGELA	Distribution List	
Legal	HARRINGTON, MARGARET	mdorgan@spokanecity.org	
For the Mayor	JONES, GARRETT	jsalstrom@spokanecity.org	
Additional Approvals		tprince@spokanecity.org	
Purchasing	WAHL, CONNIE	rrinderle@spokanecity.org	
		DocuSign: Mike Potter, President/CEO, mpotter@benderccp.com	

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Solid Waste Disposal
Contact Name	David Paine
Contact Email & Phone	dpaine@spokanecity.org , 509-625-6878
Council Sponsor(s)	CP Kinnear, CM Bingle
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Contract for as-needed boiler feedwater pump maintenance and repairs at the WTE
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>The Waste to Energy Facility utilizes Sulzer Pumps in its operation of the facility to supply water to the boilers to be converted into high pressure steam.</p> <p>On June 26, 2023 bidding closed on PW ITB 5918-23 for the as-needed service of these pumps. Responses were received from Flowserve US Inc., Bender CCP Inc. and McKinstry. Bender CCP, Inc. was selected as the low-cost, responsible bidder. The initial contract will be for one year, from September 1, 2023 through August 31, 2024, with the option of three additional one-year renewals. The total annual cost is \$100,000.00 plus tax.</p>
Proposed Council Action	Approval of contract award
Fiscal Impact Total Cost: <u>\$100,000.00</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: 2023 SWD Budget Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? This work is necessary to maintain the WTE Facility's ability to generate low-cost power supplied to the grid. Low-cost power is imperative to curbing the rise in cost of electricity.	
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 contractor is governed by WA L&I.	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?	

The COS Procurement Policies regulate and safeguard this process.

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 work supports the continued safe operation the Facility. The expenditure is supportive of the Sustainable Action Plan and the Capital Improvement Program.



City of Spokane
PREVENTATIVE MAINTENANCE AGREEMENT
Title: AS-NEEDED PUMP REPAIR

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **BENDER CCP, INC.**, whose address is 2315 NW 21st Place, Portland, Oregon 97210 as (“Contractor”), individually hereafter referenced as a “Party”, and together as the “Parties”.

WHEREAS, the purpose of this Agreement is to provide Sulzer Boiler Feed Water Pumps On-Site and Off-Site As-Need Maintenance and Repair Services at the Waste to Energy Facility; and

WHEREAS, the Contractor was selected from an PW ITB 5918-23 issued by the City.

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

1. TERM OF AGREEMENT.

The term of this Agreement begins on September 1, 2023, and ends on August 31, 2024, unless amended by written agreement or terminated earlier under the provisions. This Agreement may be extended by written agreement of the parties not to exceed three (3) additional one year contract periods.

2. TIME OF BEGINNING AND COMPLETION.

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

3. SCOPE OF WORK.

The Contractor’s General Scope of Work for this Agreement is described in **Attachment C**, which is attached to and made a part of this Agreement. In the event of a conflict or discrepancy in the Agreement documents, this City Agreement controls.

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

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

4. COMPENSATION / PAYMENT.

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

The Company shall submit its applications for payment to Spokane Solid Waste Disposal, Office Manager, 2900 South Geiger Blvd, Spokane, Washington 99224. All invoices should include the City Clerk's File No. "OPR XXXX-XXXX" and an approved L & I Intent to Pay Prevailing Wage number. The final invoice should include an approved Affidavit of Wages Paid number. Payment will not be made without this documentation included on the invoice. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

5. TAXES, FEES AND LICENSES.

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

6. PREVENTATIVE MAINTENANCE.

The following Preventative Maintenance requirements apply to the Work under this Agreement:

- A. The Contractor shall pay state prevailing wages. The Contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages," certified by the industrial statistician of the Department of Labor and Industries, prior to any payments. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Contractor's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by a Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the pre-filed statement or statements of intent to pay prevailing wages on file with the City. At the end of the work, the Contractor and subcontractors must submit an "Affidavit of Wages Paid," certified by the industrial statistician.
- B. **STATEMENT OF INTENT TO PAY PREVAILING WAGES TO BE POSTED.** For contracts in excess of \$10,000, the Contractor and each subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the Washington State Department of Labor and Industries (L & I); and (2) the address and telephone number of the industrial statistician of the Department of

Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

- C. A payment/performance bond is NOT required.
- D. Statutory retainage is NOT required.

7. CITY OF SPOKANE BUSINESS LICENSE.

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor shall be responsible for contacting the State of Washington Business License Services at 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.

8. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.

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

9. INDEMNIFICATION.

The Contractor shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity-asserted by third parties for bodily injury (including death) and/or property damage which arise from the Contractor's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Contractor to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Contractor's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Contractor, its agents or employees. The Contractor specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, the Contractor specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Contractor recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

10. INSURANCE.

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

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

B. **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 Contractor's services to be provided under this Agreement;

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

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

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Contractor or its insurer(s) to the City. As evidence of the insurance coverages required by this Agreement, the Contractor shall furnish acceptable insurance certificates to the City at the time it returns the signed Agreement. The certificate shall specify 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 Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. SUBCONTRACTOR RESPONSIBILITY.

The Contractor must verify responsibility criteria for each first-tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW.

12. INDEPENDENT CONTRACTOR.

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

security or other tax that may arise from employment. The Contractor shall pay all income and other taxes as due.

13. ASSIGNMENT AND SUBCONTRACTING.

The Contractor 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 Contractor shall incorporate by reference this Agreement, except as otherwise provided. The Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Contractor from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

14. TERMINATION.

Either party may terminate this Agreement, with or without cause, by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all work previously authorized and performed prior to the termination date.

15. STANDARD OF PERFORMANCE.

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

16. ANTI KICK-BACK.

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

17. CONSTRUAL.

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

18. 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.

19. CONTRACTOR'S ACKNOWLEDGEMENT AND WARRANTY.

The Contractor acknowledges that it has visited the site of the work, has examined it, and is qualified to perform the work required by this Agreement.

The Contractor guarantees and warranties all work, labor and materials under this Agreement for one (1) years following final acceptance. If any unsatisfactory condition or defect develops within that time, the Contractor will immediately place the work in a condition satisfactory to the City and repair all damage caused by the condition or defect. The Contractor will repair or restore to the City's satisfaction, in accordance with the contract documents and at its expense,

all property damaged by his performance under this Agreement. This warranty is in addition to any manufacturers' or other warranty in the Agreement documents.

20. MISCELLANEOUS PROVISIONS.

- A. **Amendments/Modifications:** The City may modify this Agreement and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the City, and the Agreement time and compensation will be adjusted accordingly.
- B. The Contractor, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Contractor. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.
- I. Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

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

BENDER CCP, 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:

Attachment A – Debarment Certification

Attachment B - Certification of Compliance with Wage Payment Statutes

Attachment C – Contractor’s Response to PW ITB

23-145

ATTACHMENT 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.

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



Certification of Compliance with Wage Payment Statutes and Washington Department of Labor and Industries Training Requirement

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (_____), the bidder is not a “willful” violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction. As of July 1, 2019, have fulfilled the Department of Labor and Industries’ Public Works and Prevailing Wage Training Requirement before bidding and/or performing work on public works projects under RCW 39.04.350 and RCW 39.06.020 by either of the following:

- 1) Received training on the requirements related to public works and prevailing wage under chapter RCW 39.04.350 and chapter 39.12; or
- 2) Be certified exempt by the Department of Labor and Industries by having completed three or more public work projects and have a had a valid business license in Washington for three or more years.

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

Bidder’s Business Name

Signature of Authorized Official*

Printed Name

Title

Date

City

State

Check One:

Sole Proprietorship Partnership Joint Venture Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

If a co-partnership, give firm name under which business is transacted:

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

ATTACHMENT C

Bid Response Summary

Bid Number PW ITB 5918-23
Bid Title Sulzer Boiler Feed Water Pumps On-site and Off-site “as needed” Maintenance and Repair Services – Public Works Maintenance – On Call
Due Date Monday, June 26, 2023 1:00:00 PM [(UTC-08:00) Pacific Time (US & Canada)]
Bid Status Closed to Bidding
Company Bender CCP, Inc.
Submitted By Pete Weaver - Monday, June 26, 2023 12:40:12 PM [(UTC-08:00) Pacific Time (US & Canada)]
pweaver@benderccp.com 503-853-6487

Comments**Question Responses**

Group	Reference Number	Question	Response
SUBMISSION OF BIDS			
	1	Bid Responses shall be submitted electronically through the City of Spokane’s bidding portal: https://spokane.procureware.com on or before the Due Date and time mentioned above. Hard, e-mailed or faxed copies and/or late bids shall not be accepted.	I acknowledge and agree
	2	The City of Spokane is not responsible for bids electronically submitted late. It is the responsibility of the Bidder to be sure the bids are electronically submitted sufficiently ahead of time to be received no later than 1:00PM Pacific Local Time, on the bid due date.	I acknowledge and agree
	3	All communication between the Bidder and the City upon receipt of this bid shall be via the “Clarification Tab” within ProcureWare. Any other communication will be considered unofficial and non-binding on the City of Spokane.	I acknowledge and agree
BACKGROUND AND PURPOSE			
	1	The Waste to Energy Facility (WTEF) operates a 24-hour/365 day per year environment and works under aggressive deadlines and schedules that require suppliers to provide high service levels.	I acknowledge and agree

2	<p>The City of Spokane, through its Solid Waste Disposal Department (hereinafter "City") is initiating this Public Works Invitation To Bid to solicit Proposals from to provide On-site and Off-site "as needed" service of Sulzer Feed Water Pumps utilized by the WTEF: to include but not limited to three (3) MC50-220/11 BFW: Feedwater pump label plate info: Sulzer Bingham Boiler Feed Water Pump Serial: 1D547/548, 91352/2, 2C5420 Size: 2x4x9, Type: MSNC, Capacity: 282gpm, RPM: 3560, Head: 3020 ft, Thrust Bearing: 31311 J2, Radial Bearing: NU311 and (1) Sulzer Bingham 3x6x10 8 stage ID 1D549 KW/HP= 620, Speed= 3560rpm, model 350T, rated at 544gpm at 3560rpm driven by a steam turbine at 700psi.</p>	I acknowledge and agree
3	<p>The WTEF utilizes two Babcock and Wilcox refuse fired boiler units each operating at 850 psig 825 F producing up to 114000 lbs/hr of steam per hour. The flue gas flows up from the furnace and thru a 33 pendant wide 20 tube deep super heater before entering a long flow generating bank. From the generator the flue gas flows thru a two unit Kentube horizontal tube economizer. Upon exiting the economizer the gas then flows down thru a seven story high spray dyer absorber before entering the fabric filter bag houses.</p>	I acknowledge and agree
Default Item Group		
CONTRACTOR'S REPRESENTATION	<p>The Contractor by making its Bid represents that it has read and understands the specifications.</p>	I acknowledge and agree
QUALIFICATION	<p>Prior to the award of Contract, the Contractor shall be required to submit evidence of sufficient facilities, equipment, experience and financial ability to insure completion of the Work, unless waived by the City.</p>	I acknowledge and agree
AWARD OF CONTRACT	<p>AWARD OF CONTRACT Award of Contract, when made by the City, will be to lowest responsive responsible bidder based on rates and most favorable service. Unsuccessful Contractors will not automatically be notified of results.</p>	I acknowledge and agree
EXECUTION OF CONTRACT	<p>Within ten (10) days of contract award, the Contractor shall sign and return to the City an executed copy of the contract and approved evidence of insurance unless otherwise mutually agreed by the City and Contractor.</p>	I acknowledge and agree
PERIOD OF PERFORMANCE	<p>The period of performance of any contract resulting from this PW ITB is tentatively scheduled to begin on or about AUGUST 1, 2023 and to end on July 31, 2024.</p>	I acknowledge and agree
CONTRACT RENEWALS	<p>Contract renewals or extensions may be initiated by the City of Spokane, subject to mutual agreement. This contract may be renewed for three (3) one-year options with the total contract period not to exceed four (4) years .</p>	I acknowledge and agree

PAYMENT	Payment will be made via direct deposit/ACH after receipt of the Contractor's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Contractor and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.	I acknowledge and agree
INVOICING	Invoices must be submitted to Spokane Solid Waste Disposal within 30 days of performing the work. • Invoices shall include the location and type of services performed, detailed hours and rate per hour, and on site contact that approved services. • Invoices shall reference and list OPR #2023-XXXX and approved Intent to Pay Prevailing Wage Number. • Payment of invoices shall be contingent upon receipt of sufficient detail to permit identification of the services performed and compliance with contract conditions. Original invoices are required and shall not be approved for payment until all services per request have been satisfactorily performed. Invoices shall be emailed to mdorgan@spokanecity.org or mailed to Spokane Solid Waste Disposal, Attn: Office Manager, 2900 S Geiger Blvd, Spokane WA 99224.	I acknowledge and agree
REJECTION OF BIDS	The City reserves the right to reject any or all Bids, to waive minor deviations from the specifications, to waive minor informalities in Bid process whenever it is in the City's best interest, and to accept or reject all or part of this Request for Bids, at the prices shown.	I acknowledge and agree
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 business registration. The Vendor shall be responsible for contacting the State of Washington Business License Services at www.dor.wa.gov or 1-360-705-6741 to obtain a business registration. If the Vendor 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	I acknowledge and agree
CONTRACTOR CONTACT INFORMATION	Please indicate Name, Telephone Number and E-Mail address for the person submitting this Bid response.	Pete Weaver, 503-853-6487, pweaver@benderccp.com
CONTRACTOR CONTACT INFORMATION	Provide the name, phone number, and email address for the person in your Company that would potentially sign a contract through the DocuSign process used by the City.	Mike Potter, 707-590-0067, mpotter@benderccp.com
EXCEPTIONS	If you marked "I do not acknowledge and agree" on any of the areas above, explain here what you are taking exception to.	
ADDITIONAL INFORMATION	If you have additional information/documents to submit, upload them here.	Bender CCP- Pump Brochure vFINAL.pdf
GENERAL REQUIREMENTS		

SCOPE OF WORK	Unless otherwise stated, the Contractor shall furnish all labor, supervision, materials, tools, construction equipment, transportation, and other items of work and costs necessary to complete the specified Work	I acknowledge and agree
COMPLETION TIME	Work must be completed in a reasonable amount of time, contractor cannot leave our work incomplete to go to another job. If repair is delayed due to needed parts, estimated wait time and shipping tracking information must be provided. If for any reason the contractor is unable to respond in a reasonable amount of time, the City reserves the right to go outside the contract and work with another contractor.	I acknowledge and agree
LIQUIDATED DAMAGES	If the Work is not completed within the stated completion time, the Contractor agrees to pay to the City liquidated damages in the amount of \$0.00 for each and every calendar day the work remains.	I acknowledge and agree
INTENT OF SPECIFICATION	The apparent silence or omission in the specifications as to any detail of the Work to be done or materials to be furnished means that the region's best general practice shall prevail, and that material and workmanship of the best quality shall be used. The specifications shall be interpreted on this basis.	I acknowledge and agree
WASHINGTON STATE RETAIL SALES TAX.	A. GENERAL CONSTRUCTION. Retail sales tax, when applicable, will be paid as a separate item, and shall not be included in the Bid price. Sales tax shall be added on the amounts due the Contractor and the Contractor shall be responsible for making payment to the State. The City reserves the right to claim any exemption authorized by law.	I acknowledge and agree
WASHINGTON STATE RETAIL SALES TAX.	B. PUBLIC STREET IMPROVEMENTS. If the technical requirements in the specifications indicate that all or a portion of the Work is a "public street improvement" as defined by state law, the Contractor shall include all contractor-paid taxes, including use taxes on materials in its Bid price. The City will NOT pay retail sales tax as a separate item.	I acknowledge and agree
PERMITS	The Contractor shall be responsible for obtaining at its expense all related and necessary permits required by regulatory agencies	I acknowledge and agree
GUARANTY	The Contractor guarantees all work, labor and materials for one (1) year following final acceptance of the Work. If any unsatisfactory condition or defect develops within that time, the Contractor shall immediately place the Work in a satisfactory condition, and further repair all damage caused by the condition or defect at its sole expense. This guarantee shall not apply to Work, which has been abused or neglected by the City.	I acknowledge and agree
SUBCONTRACTORS	The Contractor shall not award any portion of the Work to any subcontractor without the City's prior approval. The Contractor shall be fully responsible to the City for the acts, errors and omissions of its subcontractors. No contractual relationship shall be created between any subcontractor and the City.	I acknowledge and agree

INSURANCE	During the term of the Contract, the Contractor shall maintain in force at its own expense, the below insurance coverage(s):	I acknowledge and agree
INSURANCE	a. Worker's Compensation Insurance in compliance with RCW 51.12.020 which requires subject employers to provide worker's compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000.00.	I acknowledge and agree
INSURANCE	b. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000.00 for bodily injury and property damage. It shall include premises and operations, independent contractors, products and completed operations, personal injury liability, and contractual liability coverage for the indemnity provided under the contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Contractor's services to be provided under the contract; i. Acceptable supplementary Umbrella insurance coverage, combined with the Contractor's General Liability Insurance policy must be a minimum of \$1,500,000.00 in order to meet the insurance coverages required under this Contract;	I acknowledge and agree
INSURANCE	c. Property Insurance if materials and supplies are furnished by the Contractor. The amount of the insurance coverage shall be the value of the materials and supplies or the completed value of the improvement. Hazard or XCU (Explosion, Collapse, Underground) Insurance should be provided if any hazard exists; and	I acknowledge and agree
INSURANCE	d. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000.0 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.	I acknowledge and agree
INSURANCE	There shall be no cancellation, material change, reduction of limits or intent not to renew insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the City. The Contractor shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns the signed Contract. The certificate shall specify the City of Spokane as "additional insured", and all of the parties who are additional insured; as well as applicable policy endorsements and the deduction or retention level. Insuring companies or entities are subject to City acceptance.	I acknowledge and agree
PUBLIC WORKS REQUIREMENTS		
A.	The work under this contract is classified as routine maintenance under state law.	I acknowledge and agree
1.	A payment/performance bond is NOT required	I acknowledge and agree
2.	Statutory retainage is NOT required	I acknowledge and agree
B.	Prevailing Wage	Yes

1.	The State prevailing rate of wages to be paid to all workmen, laborers or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 of the Revised Code of Washington (RCW) and the rules and regulations of the Washington State Department of Labor and Industries (L & I).	I acknowledge and agree
2.	The State of Washington prevailing wage rates applicable for this public works project, which is located in Spokane County, may be found at the following website address of the Department of Labor and Industries: https://secure.lni.wa.gov/wagelookup/ . Prevailing wages for all work performed pursuant to each work order must be the prevailing wage rates in effect at the beginning date for each contract year. On call contracts must have prevailing wage rates updated annually. Intents and affidavits for prevailing wages paid must be submitted annually for all work completed within the previous twelve-month period of the unit priced contract. (RCW 35.22.620) Upon the anniversary date of the contract, labor rates may be adjusted according to the revised prevailing wages adopted by the Department of Labor and Industries at that time. In order to calculate the change in prevailing wages due to the Contractor, the Contractor shall provide to the City of Spokane a breakdown of the fully loaded labor rates for each classification of labor including hourly wage rates, fringe benefits, overhead and profit. The City of Spokane shall not pay for any price escalation for overhead, profit, equipment, material, or any other costs except for changes in the prevailing wages. The revised prevailing wages shall be effective for any Work issued after the anniversary date of the contract. The basis of modified prevailing wage rates applicable for the contract shall be calculated and issued in writing by the City of Spokane, but such changes shall not be included in a change order. To the extent that the contract sum changes, a change order will be issued as appropriate.	I acknowledge and agree
C.	Apprenticeship	Yes
1.	If apprentices are to be used, they must be registered with the State Apprenticeship Council; otherwise, they are to be paid State prevailing journeyman wages.	I acknowledge and agree
D.	Statement of Intent	Yes

1.	The Contractor and subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the Department of Labor and Industries, prior to any work or payments. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Contractor's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Prior to payment of funds held under RCW 39.12.040, the Contractor and subcontractors must submit an "Affidavit of Wages Paid" certified by the industrial statistician annually for all work completed within the previous twelve-month period of the unit priced contract (RCW 35.22.620).	I acknowledge and agree
E.	Filing Fees	Yes
1.	The fee for the approval of 1) "Statements of Intent to Pay Prevailing Wages" and 2) "Affidavits of Wages Paid" is forty dollars (\$40) for each form. The Contractor is responsible for payment of these fees and shall make all applications directly to L & I.	I acknowledge and agree
F.	Department of Labor and Industries' Public Works and Prevailing Wage Training	Yes
1.	As of July 1, 2019 contractors must have fulfilled the Department of Labor and Industries' Public Works and Prevailing Wage Training Requirement before bidding and/or performing work on public works projects under RCW 39.04.350 and RCW 39.06.020 - indicate whether you are exempt, have taken the training or have not taken the training.	have not taken training
G.	Prevailing Wages Multi-Year Contracts and Extensions	Yes
1.	For multi-year contracts and/or contract extensions, prevailing wage rates must be updated annually, using the rates in effect at the beginning of each contract year (not calendar year), and intents and affidavits for prevailing wages paid must be submitted annually for all work completed during the previous 12 months. RCW 35.22.620	I acknowledge and agree
PROPRIETARY INFORMATION/PUBLIC DISCLOSURE		
1	All materials submitted to the City in response to this competitive procurement shall become the property of the City.	I acknowledge and agree
2	All materials submitted to the City in response to this competitive procurement shall become the property of the City.	I acknowledge and agree

3	<p>PROPRIETARY INFORMATION/PUBLIC DISCLOSURE: When responding to this competitive procurement, please consider that what you submit will be a public record. If you believe that some part of your response constitutes legally protected proprietary information, you MUST submit those portions of your response as a separate part of your response, and you MUST label it as "PROPRIETARY INFORMATION." If a valid public records request is then received by the City for this information, you will be given notice and a 10-day opportunity to go to court to obtain an injunction to prevent the City from releasing this part of your response. If no injunction is obtained, the City is legally required to release the records.</p>	I acknowledge and agree
GENERAL CONDITIONS		
#1	Contractor acknowledges that they have read and understand the General Conditions Document in the "Documents" tab.	I acknowledge and agree
TECHNICAL REQUIREMENTS		
SUPPLEMENTAL BIDDER RESPONSIBILITY CRITERIA	Supplemental Bidder Responsibility Criteria Form, is located in the "Documents" tab. These criteria will apply to this requirement. The bidder must meet the mandatory bidder responsibility criteria called out in Supplemental Bidder Criterion to be considered a responsible bidder.	I acknowledge and agree
SUPPLEMENTAL BIDDER RESPONSIBILITY CRITERIA	Complete and upload Supplemental Bidder Responsibility Criteria Form, that is located in the "Documents" tab.	Supplemental Bidder Responsibility Criteria PW ITB 5918-23- Updated .pdf
Performance	Unless otherwise stated, the Contractor shall obtain all required permits and be responsible for providing all supervision, administration, labor, tools, construction equipment, transportation (Mobilization & Demobilization), supplies, parts, and consumable materials, and other items of work and cost necessary for the performance and completion of described work, adhering stated response times for the proper execution and completion of the described work.	I acknowledge and agree
Scope of Work 1	Perform On-site and Off-site "as needed" service of Sulzer Feedwater Pumps utilized by the WTEF: to include but not limited to three (3) MC50-220/11 BFW: Feedwater pump label plate info: Sulzer Bingham Boiler Feed Water Pump Serial: 1D547/548, 91352/2, 2C5420 Size: 2x4x9, Type: MSNC, Capacity: 282gpm, RPM: 3560, Head: 3020 ft, Thrust Bearing: 31311 J2, Radial Bearing: NU311 and (1) Sulzer Bingham 3x6x10 8 stage Feedwater pump. ID 1D549 KW/HP= 620, Speed= 3560rpm, model 350T, rated at 544gpm at 3560rpm driven by a steam turbine at 700psi.	I acknowledge and agree

Scope of Work 2	On-Site Services fall under Public Works Requirements.	I acknowledge and agree
Scope of Work 2.1	On-site Requirements: WTE could choose from Contractor Performing On-site Services or Contractor Providing On-Site Supervision.	I acknowledge and agree
Scope of Work 2.2	It is estimated that on-site On-site Requirements would not exceed 40 hours during a 12-month contract period.	I acknowledge and agree
Scope of Work 2.3	Contractor Performing On-site Services: Contractor must be able to perform On-site services according to manufacturer's specifications to include but not limited to: Removal Boiler Feed Water Pump; Installation Boiler Feed Water Pump; Bearing Change; Mechanical Seal Change; Balance Drum and Liner Removal and Installation; Hydraulic Performance and Vibration Testing; Machining of Parts, Disassembly and Reassembly of the Pump. The Contractor shall provide all labor, supervision, materials, tooling, and equipment required to complete the services described herein according to manufacturer's specifications, unless other arrangements are agreed upon in specific work scope.	I acknowledge and agree
Scope of Work 2.3	Contractor Providing On-site Supervision: Should WTE decide to perform associated Labor, Contractor must provide On-site Supervision ensuring WTE performs services in according to manufacturer's specifications in regards to: Removal Boiler Feed Water Pump; Installation Boiler Feed Water Pump; Bearing Change; Removal Mechanical Seal Change; Balance Drum and Liner Removal and Installation; Hydraulic Performance and Vibration Testing. Contractor must also provide use of special laser tooling.	I acknowledge and agree
Scope of Work 2.4	Contractor will be on-site at WTEF within 48 hours after being notified by WTEF. WTEF will advise the Contactor at the time of notification if the Contractor would need to Perform On-site Services or if the Contractor would need to Provide On-Site Supervision.	I acknowledge and agree
Scope of Work 2.5	The Contractor must report to WTEF Control Room prior to performing any service.	I acknowledge and agree
Scope of Work 3	Off-site services, vendor's repair facility, to include but not limited to the performance of the following services according to manufacturer's specifications: Any Machining of Parts, Disassembly and Reassembly of The Pump.	I acknowledge and agree
Scope of Work 3.1	It is estimated that Off-site Services would not exceed 20 hours during a 12-month contract period.	I acknowledge and agree
Professionalism	Successful Contractor will fulfill contract in a responsible, professional manner at all times. Representatives shall dress appropriately and use acceptable health and safety practices.	I acknowledge and agree
SAFETY	Bidder has read and understand the Contractor Safety and Environmental Requirements document that is located in the "Documents" tab.	I acknowledge and agree

SAFETY	Awarded Contractor shall be responsible for implementing and maintaining their own safety program during the work. Awarded Contractor must comply with On Site Safety Training requirements prior to performing and services onsite. All personnel that are to perform on-site services at the WTE Facility must watch 10-minute video that can be accessed via: https://vimeo.com/194591363/b5e0552df3 and must read and complete Contractor On-Site Declaration in addition to watching video. Contractor On-Site Declaration is located in the Documents Tab.	I acknowledge and agree
SAFETY	The WTEF Lock Out/Tag out (LOTO) system shall be used during all work activities. A copy of WTEF LOTO Policy will be provided upon request. The Contractor shall use their own hard locks as part of these LOTO procedures.	I acknowledge and agree
EXCEPTIONS	If you marked "I do not acknowledge and agree" on any of the areas above, explain here what you are taking exception to.	
BID		
Evaluating	The winning Contractor shall receive a unit priced contract and, upon complete and accepted performance by the Contractor, the City shall issue payment in the applicable amount set forth on the Pricing Page for services performed.	I acknowledge and agree
Evaluating	For Evaluating Purposes we are using unit cost.	I acknowledge and agree
Bid	Complete Pricing Page located in Documents Tab and upload here.	Bid Pricing Pages PW ITB 5918-23.docx
Other Cost	Bidders are to list any other cost that could be incurred that were not listed on pricing page. If not listed would not be allowed.	N/A
Bidding Errors	Unit pricing will prevail in the circumstance of unit and extension pricing discrepancies. When, after the opening and tabulation of Bids, a Bidder claims error, and requests to be relieved of award, he will be required to promptly present certified work sheets. The Purchaser will review the work sheets and if the Purchaser is convinced, by clear and convincing evidence, that an honest, mathematically excusable error or critical omission of costs has been made, the Bidder may be relieved of his Bid.	I acknowledge and agree
Addenda	Indicate how many Addenda the Contractor acknowledges receipt of and agrees that its requirements have been included in this Bid.	ADDENDUM NO. 1
Withdrawal of Bid	The Contractor agrees that its Bid will NOT be withdrawn for a minimum of ninety (90) calendar days after the stated submittal date.	I acknowledge and agree
Subcontractors	Download and complete the Subcontractor List in the "Documents" tab and upload it.	Subcontractor List under \$1M.pdf
CONTRACTOR RESPONSIBILITY		
#1	Provide Washington State Contractor's Registration No.	BENDECI783LW
#2	Provide Contractor's U.B.I. Number	604-395-964

#3	Provide Contractor's Washington Employment Security Department Number	000-455-045-00-9
#4	Provide Contractor's Washington Excise Tax Registration Number	604-395-964
#5	Provide Contractor's City of Spokane Business Registration Number	Need to register.
CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUS		
#1	The Contractor hereby certifies that, within the three-year period immediately preceding the bid solicitation date for this Project, the contractor is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.	I acknowledge

BID PROPOSAL

PROJECT: PW ITB 5918-23

Sulzer Boiler Feed Water Pumps On-site and Off-site "as needed" Maintenance and Repair Services – Public Works Maintenance – On Call

Pricing To Be Valid 8/1/2023 through 7/31/2024

BIDDER'S DECLARATION.

The undersigned bidder certifies that it has examined the site, read and understands the specifications for the above project, and agrees to comply with all applicable federal, state and local laws and regulations. The bidder is advised that by signature of this bid proposal it has acknowledged all bid requirements and signed all certificates contained herein. All travel, lodging cost per <https://www.gsa.gov/travel/plan-book/gsa-lodging>, per diem per <https://www.gsa.gov/travel/plan-book/per-diem-rates>. The City of Spokane does not pay markup on: Lodging, Airfare, and Rental Vehicles.

BID OFFER.

The price(s) listed in this bid proposal is tendered as an offer to furnish all labor, supervision, materials, tooling, equipment required to complete the proposed project in strict accordance with the contract documents. The bidder proposes to do the project at the following price:

Bid Item:	Contractor Performing On-site Services
Removal Boiler Feed Water Pump; "all-inclusive firm fixed price" comprised of Mobilization and Demobilization, all labor, supervision, materials, tooling, and equipment required to complete the proposed project in strict accordance with the contract documents.	\$14,400.00
Sales tax should not be included in respondent's pricing.	
Installation Boiler Feed Water Pump; "all-inclusive firm fixed price" comprised of Mobilization and Demobilization, all labor, supervision, materials, tooling, and equipment required to complete the proposed project in strict accordance with the contract documents.	\$18,000.00
Sales tax should not be included in respondent's pricing.	
Bearing Change; "all-inclusive firm fixed price" comprised of Mobilization and Demobilization, all labor, supervision, materials, tooling, and equipment required to complete the proposed project in strict accordance with the contract documents.	\$13,320.00
Sales tax should not be included in respondent's pricing.	
Mechanical Seal Change; "all-inclusive firm fixed price" comprised of Mobilization and Demobilization, all labor, supervision, materials, tooling, and equipment required to complete the proposed project in strict accordance with the contract documents.	\$13,20.00
Sales tax should not be included in respondent's pricing.	
Balance Drum and Liner Removal and Installation; "all-inclusive firm fixed price" comprised of Mobilization and Demobilization, all labor, supervision, materials, tooling, and equipment required to complete the proposed project in strict accordance with the contract documents.	\$14,400.00
Sales tax should not be included in respondent's pricing.	

Hydraulic Performance and Vibration Testing; "all-inclusive firm fixed price" comprised of Mobilization and Demobilization, all labor, supervision, materials, tooling, equipment required to complete the proposed project in strict accordance with the contract documents.	\$16,920.00
Sales tax should not be included in respondent's pricing.	

Bid Item:	Contractor Providing On-Site Supervision
Supervision of Removal Boiler Feed Water Pump; "firm fixed price" includes Mobilization and Demobilization, all supervision, and use of special laser tooling.	\$7,400.00
Sales tax should not be included in respondent's pricing.	

Supervision of Installation Boiler Feed Water Pump; "firm fixed price" includes Mobilization and Demobilization, all supervision, and use of special laser tooling.	\$9,250.00
Sales tax should not be included in respondent's pricing.	

Supervision of Bearing Change; "firm fixed price" includes Mobilization and Demobilization, all supervision, all supervision, and use of special laser tooling.	\$6,845.00
Sales tax should not be included in respondent's pricing.	

Supervision of Removal Mechanical Seal Change "firm fixed price" includes Mobilization and Demobilization, all supervision, all supervision, and use of special laser tooling.	\$6,845.00
<i>The City of Spokane is not a tax exempt entity and is therefore obligated to pay sales tax under Washington State law. Sales tax should not be included in respondent's pricing. All submissions shall be tabulated with the applicable sales tax rate whether that tax shall be charged through the supplier or paid by the City as use tax.</i>	

Supervision of Balance Drum and Liner Removal and Installation; "firm fixed price" includes Mobilization and Demobilization, all supervision, all supervision, and use of special laser tooling.	\$7,400.00
Sales tax should not be included in respondent's pricing. .	

Supervision of Hydraulic Performance and Vibration Testing; "firm fixed price" includes Mobilization and Demobilization, all supervision, all supervision, and use of special laser tooling.	\$8,695.00
Sales tax should not be included in respondent's pricing.	

In regards to other On-Site Services that were "not listed above" that may be required:			
Vendor To Define What Constitutes "Straight Time":	Monday – Friday, 7am to 3:30pm		
Vendor To Define What Constitutes "Overtime" :	Any time over 8hrs in a day, or 40hrs in a week; Saturdays.		
Vendor To Define What Constitutes "Double-Time":	Sundays and Holidays		
Vendor's Hourly Rates For On-Site Services	Description	Description	Description
Hourly Rates & Classifications	Straight Time	Overtime	Double Time
Onsite Supervisor	\$185.00	\$277.50	\$370.00
Onsite Mechanic	\$180.00	\$270.00	\$360.00
Travel	\$180.00	\$270.00	\$360.00
Standby	\$180.00	\$180.00	\$240.00

(other)_____	\$	\$	\$
(other)_____	\$	\$	\$
(other)_____	\$	\$	\$
Percentage Markup For Parts / Materials Above Cost			\$

Off-Site Services At Vendor's Location		(Estimated 20 labor hours during a 12-month contract period)	
Vendor To Define What Constitutes "Straight Time":	Monday – Friday, 6am to 2:30pm		
Vendor To Define What Constitutes "Overtime"	Any time over 8hrs in a day, or 40hrs in a week; Saturdays.		
Vendor To Define What Constitutes "Double-Time"	Sundays and Holidays		
Hourly Rates & Classifications	Straight Time	Overtime	Double Time
Onsite Supervisor	\$185.00	\$277.50	\$370.00
Onsite Mechanic	\$180.00	\$270.00	\$360.00
(other)_____	\$	\$	\$
(other)_____	\$	\$	\$
(other)_____	\$	\$	\$
Percentage Markup For Parts / Materials Above Cost			15%
Applicable Use Tax Rate			8.3%
Ground Freight Cost Would Be Prepay and Add		Prepay & Add	
List Any Other Cost That Would Be Incurred For Off-Site Services			
			\$
			\$
			\$
			\$
			\$



City of Spokane, Washington

Supplemental Bidder Responsibility Criteria

Bidders shall complete, sign and submit this form with attachments with Bid.	
Project Name Sulzer Boiler Feed Water Pumps On-site and Off-site "as needed" Maintenance and Repair Services – Public Works Maintenance – On Call	
	Project # PW ITB 5918-23
Part A: General Company Information	
Company Name: Bender CCP, Inc.	
Address: 2315 NW 21 st Place, Portland, OR 97210	
Contact Name and Title: Pete Weaver, Sales Account Manager	
Contact Phone: 503-853-6487	Contact E-mail: pweaver@benderccp.com
Years in business as a Prime Contractor -15	Years in business as a sub-contractor - 15
Years in business under present Name - 15	
List any former company names under which the company, its owners, and/or its principals has operated in the past five (5) years	
Explain reason for name change(s) in the past five (5) years	
Part B: Work Experience	
If the request for bids has project specific criteria, including work experience, list at least the requested number of projects completed within the required time frame on the attached Project Experience form which are similar in type, size and scope of work required for this project	
Part C: Performance Evaluation	
Under past or present names does the bidder have a history of receiving "deficient" or "inadequate" evaluations on two (2) or more contracts from the City or other municipalities or another governmental agency on a public works project within the last five (5) years?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes" attach a separate, signed / dated statement listing the projects and an explanation.	
Part D: Record of Debarment / Disqualification	
Has the bidder (including the primary contractor, any firm with which any of the primary contractor's owners, officers, or partners was associated) been debarred, disqualified, removed or has been otherwise prevented from bidding on, or completing any governmental agency or public works projects, including debarment by the federal, state or other municipal government during the last five (5) years?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes", attach a separate signed / dated statement listing any debarments, disqualifications, removal, etc. from any governmental public works project and the basis for the action.	
Part E: Safety	
In the last five (5) years, has the bidder received willful or repeat violations of safety or health regulations by the OSHA or other agencies responsible for safety oversight?	

The Contractor shall submit safety records for the past three (3) years including OSHA 300A logs, recordable incidents, lost time accident statistics, EMR rating, OSHA type violations and NAICS code. The Contractor shall submit a list of any work activities previously performed at the City of Spokane WTEF. It is expected the contractor will have an EMR rating <1, OSHA recordable rate below industry average and no OSHA Violations for the past 3 years.

Yes X No

If "Yes," attach a separate signed /dated statement describing each willful or repeat violation, including information about the dates and nature of the violations, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.

Part F: Environmental

In the last five (5) years, has the bidder received serious citations from government environmental enforcement agencies on projects for which the bidder was the contractor?

Yes X No

If "Yes," attach a separate signed / dated statement describing each serious citation, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.

Part G: Discrimination

Has the bidder or any of its owners, officers or partners been found guilty of violating or failing to comply with discrimination laws in contracting, employment or provision of public services?

Yes X No

If "Yes", attach a separate signed / dated statement identifying the type of violation, who was involved, the name of the public agency, year of the investigation, the resolution in court or administrative process, and the grounds for the findings.

Part H. Prevailing Wage

In the last five (5) years, has the bidder received prevailing wage violations as determined by the applicable state or federal government agency monitoring prevailing and/or Davis Bacon wage compliance?

Yes X No

If "Yes," attach a separate signed/dated statement listing the prevailing wage violations, along with an explanation of each violation and how it was resolved. The City shall evaluate these explanations and the resolution of each violation to determine whether the violations demonstrate a pattern of failure to pay prevailing wages to workers unless there are extenuating circumstances acceptable to the City.

Part I. Claims Against Retainage and Bonds

Does the bidder have a record of multiple claims filed against the retainage or payment bonds for public works projects during the previous three (3) years?

Yes X No

If "Yes", attach a separate signed / dated statement listing the claims filed against the retainage and/or payment bond for any completed public works projects and include for each project a written explanation of the circumstances surrounding the claim and the ultimate resolution of the claim. The City shall evaluate the statement to determine if it demonstrates a lack of effective management by the bidder of making timely and appropriate payments, unless there are extenuating circumstances acceptable to the City in its sole discretion.

Part J. Termination for Cause	
Has the bidder had any public works contract terminated for cause by any government agency during the previous five (5) years?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes", attach a separate signed / dated statement listing each contract terminated, the government agency terminating the contract and the circumstances involving the termination for cause. The City will determine if there are extenuating circumstances acceptable to the City in its sole discretion.	
Part K: Litigation	
Has the bidder been involved in lawsuits (or arbitrations for those instances where arbitration is completed in lieu of a lawsuit) with judgments entered against the bidder for failure to meet terms on contracts in the previous five (5) years?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes", attach a list of lawsuits and/or arbitrations with judgments / arbitration awards entered against the bidder along with a written explanation of the circumstances surrounding each lawsuit and/or arbitration. The City will evaluate the explanations to determine whether the lawsuits and/or arbitrations demonstrate a pattern of failing to meeting terms of conditions of contracts, unless there are extenuating circumstances acceptable to the City in its sole discretion.	
Part L: Delinquent State Taxes	
Does the bidder owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department before the date of contract award?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes", attach a separate signed / dated statement describing the circumstances and stating that the bidder is not on the Washington State Department of Revenue's "Delinquent Taxpayer List".	
Part M: Subcontractor Responsibility	
Does the bidder's standard subcontract form include the subcontractor language required by RCW 39.06.020? Does the bidder have an established procedure which it uses to validate the responsibility of each of its subcontractor? Does the subcontract form require that each of the bidder's subcontractors have and document a similar procedure for sub-tier subcontractors?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes" or "No", provide a copy of its standard subcontract form and a copy of the procedures used to validate the responsibility of subcontractors.	
Signature	
The undersigned certifies that the information and data contained herein is correct and complete. Failure to disclose information or submitting false or misleading information may result in rejection of my bid, revocation of award, contract termination, or may impact my firm's ability to bid on future projects by the City of Spokane.	
Signature of Authorized Representative	Date
<i>Pete Weaver</i>	6/26/23
Printed Name of Authorized Representative	Title
Pete Weaver	Sales Account Manager

Attachment to Supplemental Bidder Responsibility Criteria Work Experience Form

Please complete one form per project and include the minimum number of projects (and forms) as requested. You may include any additional work experience you deem relevant in determining bidder responsibility. Please be sure to provide a thorough description of the work in order to demonstrate how your firm meets any required experience detailed in the specifications. You may attach additional documentation if needed.

PROJECT DETAIL

Bidder's Company Name Bender CCP, Inc.		Bidders Contact Name & Phone Number Cody Robinson, 323-919-5315	
Project Name S2022 Unit 2B Boiler Feed Pump Rebuild		Project Contract Number Bender job # 221-1363 Customer PO # 126924 REV.#2	
Project Owner Tucson Electric Power		Project Location FS – Springerville Generating Station, Springerville, AZ Shop – Bender CCP's Vernon, CA facility	
Project Owner Contact Name & Title Jim Padilla, Coordinator John Udall, Supervisor Procurement & Controls		Owner's Telephone Number 928-337-7326 928-337-5858	
Notice to Proceed Date 3/11/2022	Final Completion Date 7/15/2022	Awarded Contract Value \$98,745 (T&M)	Final Contract Price \$125,727
Prime Contractor Name (If Not Bidder)		Contractor Contact Name & Phone Number (If Not Bidder)	
Brief Project Description Field Service to disassemble, inspect, repair & reassemble 2B BFP during spring outage. Send volute and any other parts needing work to Bender shop for repairs.			
Brief Summary Of Technical Work Completed By Bidder, Including Any Relevant Details To Demonstrate Similar Experience And Any Required Experience Detailed In the Specifications In addition to project scope above, Bender CCP also performed the following: Chrome plate, grind & burnish repair of pump shaft; Manufacture new shaft sleeve; Manufacture 3 new stuffing box bushings; Manufacture 2 new deflectors; Provide new gaskets & hardware			

SUBCONTRACTOR LIST

PROJECT NAME: Sulzer Boiler Feed Water Pumps On-site and Off-site "as needed" Maintenance and Repair Services – Public Works Maintenance – On Call

IMPORTANT: REFER TO SECTION 5.2.1 OF THE SUPPLEMENTAL CONDITIONS FOR INSTRUCTIONS ON COMPLETING THE SUBCONTRACTOR LIST *(use additional pages if necessary):*

CONTRACTOR/SUPPLIER No plans to use subcontractors at this time.
TYPE OF WORK/BID ITEM _____
AMOUNT _____
CONTRACTOR'S REGISTRATION NO. _____

CONTRACTOR/SUPPLIER _____
TYPE OF WORK/BID ITEM _____
AMOUNT _____
CONTRACTOR'S REGISTRATION NO. _____

CONTRACTOR/SUPPLIER _____
TYPE OF WORK/BID ITEM _____
AMOUNT _____
CONTRACTOR'S REGISTRATION NO. _____

CONTRACTOR/SUPPLIER _____
TYPE OF WORK/BID ITEM _____
AMOUNT _____
CONTRACTOR'S REGISTRATION NO. _____

 NO SUBCONTRACTORS WILL BE USED ON THIS PROJECT



PUMP REPAIR SERVICES



A Reputation for Quality and Expertise in Pump Repairs and Upgrades

Bender CCP is dedicated to providing the finest service for your engineered rotating equipment. Our trained technical staff and well-equipped shops are available to you 24/7 to keep your equipment running its best. We are the “one-stop shop” for all your needs: troubleshooting, failure analysis, repairs/upgrades, testing, welding, machining, fabrication, start-up, etc. Our Broad experience translates into improved equipment efficiency and/or MTBF.



Bender CCP provides complete equipment repair service on all makes and models including API 610, ANSI B 73.1, Vertical, In-Line, Multistage, Vertical Turbine, Centrifugal Pumps, Progressive Cavity, Reciprocating, Rotary, and more. No matter the model, manufacturer or age of your equipment, Bender CCP can have you back up and running quickly and reliably. Best of all, Bender CCP's workmanship is 100% guaranteed. Repair and manufacturing are performed according to OEM and industry Standards.

We have the capability to support all the modifications and improvements you need, with huge in-shop capacity, technical expertise in thermal spray, machining, grinding and replacement parts fabrication and refurbishment.

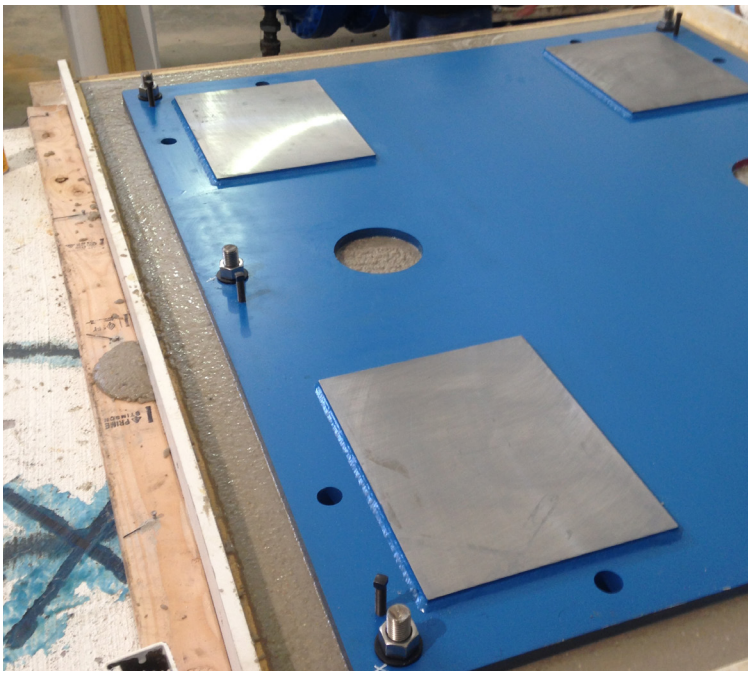
Bender CCP Pump Repair and Upgrade Capabilities

Pump Repair Services Include:

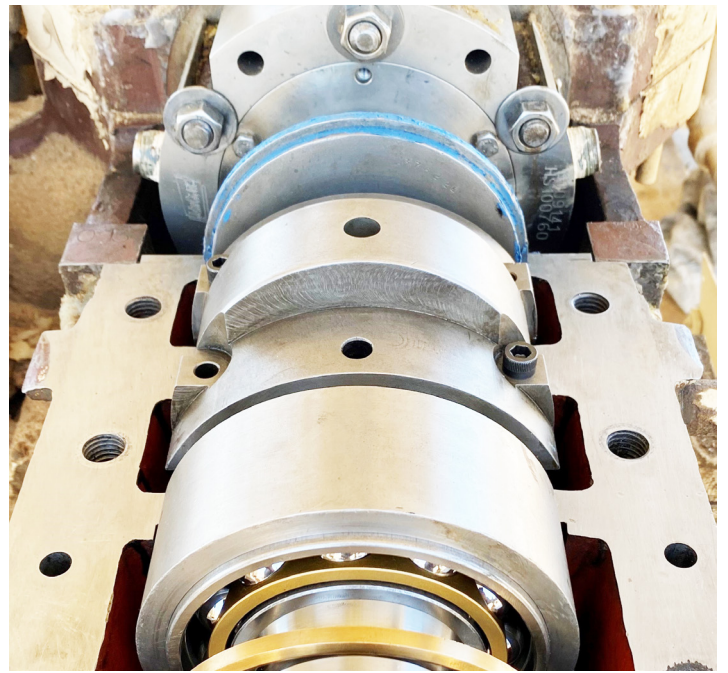
- Removal From Jobsite (If needed)
- On-Site Troubleshooting
- Complete Disassembly and Inspection Including non-destructive testing and precise measuring
- Sandblasting and thorough cleaning of all component parts
- Mechanical Repairs/Parts Replacement
- Pump parts Fabrication (As Required)
- Reassembly
- Performance Testing
- Reverse Engineering
- Delivery & Re-Installation
- Shaft Laser Alignments
- Field Machining of Pump Bases

Pump Manufacturers Include:

- Flowserve
- Sulzer
- Ebara
- ITT Goulds
- Floway
- Union
- United
- Fairbanks Morse
- Patterson
- Worthington
- Dresser
- KSB
- Sier-Bath
- Ingersoll-Rand
- Bingham
- Byron Jackson
- Layne
- Peerless
- Westinghouse
- Pacific
- Delaval
- Moyno
- Seepex
- Indar
- Torishima
- Durco
- IDP



*Field Service Base Plate & Sole Plate Installation,
Machining, Grouting & Foundation Repair*



*Many of our services can also be performed in the
field such as bearing and seal changes*

Pump Repair Procedure

- Match mark mating components, and take pictures
- Inspect for improper clearances, corrosion, erosion
- Flow issues, cavitation and damage
- Clean and NDT parts as needed
- Take measurements and runouts
- Determine upgrades and repairs
- Balance rotating element to 4W/N
- Assemble pump, test, paint & tag

In-Shop Capability

- 100 ton lifting capacity
- 37 ft. under the hook
- Machining up to 17 ft. diameter
- Machining up to 60 ft. length
- OD & ID grinding
- 115,000 sq. ft. shop space



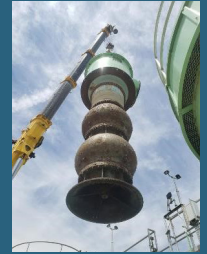
Modifications/Improvements:

- Conversion to Mechanical Seals
- Installation of Labyrinth Seals and Bearing Isolators
- Change in metallurgy (Nitronics, 17-4, Etc.)
- Bearing upgrade (Vespel, Thordon, Etc.)
- Wear-resistant coatings
- Epoxy coatings

Thermal Spray Services

- Shaft refurbishment
- Ceramic coating for bearing areas
- Chrome replacement coatings
- In-house babbitt bearing refurbishment
- Hard-facing for extreme services



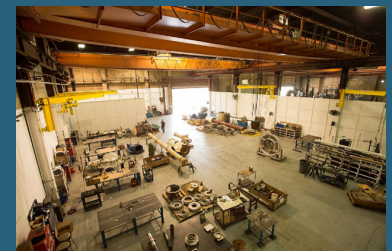


Certifications & Qualifications

Quality Management System	<ul style="list-style-type: none"> • ISO 9001-2015 QMS Certified; Certification • NAVSEA Standard Item 009-04 Compliant • QMS Audit Compliant - Port of San Diego Ship Repair Association
Safety Management System	<ul style="list-style-type: none"> • OHSAS 18001 Compliant
Welding and NDT	<ul style="list-style-type: none"> • Level III Examiner oversight • NAVSEA SWRMC approved IAW MIL-STD-248 • Qualified & Certified American Welding Society (AWS), American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code (BPVC) and NAVSEA MIL-STD-248. • R, U, & S Stamp Holder
HVOF Thermal Spray	<ul style="list-style-type: none"> • NAVSEA Approved Facility and Procedures - MIL-STD -1687-A and MIL-STD-2138 for Thermal Spray Repairs and New Component manufacturing • American Bureau of Shipping (ABS) Approved Facility and Procedures
The Society for Protective Coatings (SSPC)	<ul style="list-style-type: none"> • Corporate Member, Council of Facility Owners (CFO) • NBPI Certified Coatings Inspector
National Association Corrosion Engineer (NACE)	<ul style="list-style-type: none"> • Level III Certified Coatings Inspector

Contact us to discuss your next Pump Repair or Upgrade at info@benderccp.com or call 323-232-2371

To see Bender CCP's full suite of Equipment Repair and Upgrade Services, visit us at www.benderccp.com



Bender CCP, Southwest
323-232-2371
www.benderccp.com



Unico Mechanical, Northwest
707-745-9970
www.unicomechanical.com





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/27/2023

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

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

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 2121 N. California Blvd., Suite 350 Walnut Creek CA 94596	CONTACT NAME: Certificate Department PHONE (A/C. No. Ext): 925-299-1112 E-MAIL ADDRESS: GSC_Construction_Certrequests@AJG.com	FAX (A/C. No): 925-299-0328
	INSURER(S) AFFORDING COVERAGE	
INSURED Bender CCP, Inc. 2150 East 37th Street Vernon CA 90058	License#: 0D69293 VERNMAC-01	INSURER A: Indian Harbor Insurance Company 36940
		INSURER B: Hartford Casualty Insurance Company 29424
		INSURER C: Hartford Accident and Indemnity Company 22357
		INSURER D: Travelers Property Casualty Insurance Co 36161
		INSURER E: The Travelers Indemnity Company of CT 25682
		INSURER F:

COVERAGES

CERTIFICATE NUMBER: 1332699774

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	Y-660-4W505673-TIL-23	3/10/2023	3/10/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1,000,000
E	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Comp \$1,000 <input checked="" type="checkbox"/> Coll \$1,000	Y	Y	810-4W504246-23-14-G	3/10/2023	3/10/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y		CUP-4W505925-23-14	3/10/2023	3/10/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	UB-4W50450A-23-14-G	3/10/2023	3/10/2024	<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
A	Pollution Liability			PEC003714111	3/10/2023	3/10/2024	Occurrence Limit \$5,000,000 Aggregate Limit \$10,000,000

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

Excess/Umbrella follows form over the General Liability, Automobile and Employers Liability policies
 RE: Bid Number PW ITB 5918-23; Sulzer Boiler Feed Water Pumps On-site and Off-site "as needed" Maintenance and Repair Services – Public Works Maintenance – On Call; Bender job # 221-1363; Customer PO # 126924 REV.#2; S2022 Unit 2B Boiler Feed Pump Rebuild; Project Location: FS – Springerville Generating Station, Springerville, AZ; Shop – Bender CCP's Vernon, CA facility; Solid Waste Disposal

ADDITIONAL INSURED(S): City of Spokane, its officers and employees, all of the parties

CERTIFICATE HOLDER**CANCELLATION**

City of Spokane
 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

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED
(Includes Products-Completed Operations If Required By Contract)

This endorsement modifies insurance provided under the following:
 COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

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

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

(1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and

(b) Supervisory, inspection, architectural or engineering activities.

(2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

c. The additional insured must comply with the following duties:

(1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

(a) How, when and where the "occurrence" or offense took place;

(b) The names and addresses of any injured persons and witnesses; and

(c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

(2) If a claim is made or "suit" is brought against the additional insured:

- (a)** Immediately record the specifics of the claim or "suit" and the date received; and
- (b)** Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3)** Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4)** Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR MANUFACTURERS AND WHOLESALERS

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. 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.

- | | |
|--|--|
| <ul style="list-style-type: none"> A. Who Is An Insured – Unnamed Subsidiaries B. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees And Co-Volunteer Workers C. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies D. Blanket Additional Insured – Broad Form Vendors E. Blanket Additional Insured – Controlling Interest F. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers G. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises | <ul style="list-style-type: none"> H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations I. Blanket Additional Insured – Grantors Of Franchises J. Incidental Medical Malpractice K. Medical Payments – Increased Limit L. Blanket Waiver Of Subrogation M. Contractual Liability – Railroads |
|--|--|

PROVISIONS

A. 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 are the sole owner of, or 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 and 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.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a.** A limited liability company;
 - b.** An organization other than a partnership, joint venture or limited liability company; or
 - c.** A trust;
- as indicated in its name or the documents that govern its structure.

B. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES AND CO-VOLUNTEER WORKERS

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" to a co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" while performing duties related to the conduct of your business.

C. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of SECTION II – WHO IS AN INSURED:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only:
 - (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;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
 - b. An organization, other than a partnership, joint venture or limited liability company; or
 - c. A trust;
- as indicated in its name or the documents that govern its structure.

D. 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. Occurs subsequent to the signing of that contract or agreement; and
- b. Arises out of "your products" that 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 minimum limits that 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 or any distribution or sale for a purpose 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" that, after distribution or sale by you, have been labeled or relabeled 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.

E. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

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

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

- 2. The following is added to Paragraph 4. of **SECTION II – WHO IS AN INSURED**:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

F. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

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

Any person or organization that is a mortgagee, assignee, successor or receiver 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 its

liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that 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 person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

G. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

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

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or 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", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has

issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations.

H BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

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

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or 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", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

I. BLANKET ADDITIONAL INSURED – GRANTORS OF FRANCHISES

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

Any person or organization that grants a franchise to you is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your operations in the franchise granted by that person or organization.

If a written contract or agreement exists between you and such additional insured, the limits of insurance provided to such insured will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical

services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of 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:

(a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist, occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

(b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "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 replaces the last sentence of Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE**:

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

4. The following exclusion is added to Paragraph **2., Exclusions,** of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

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

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

- 6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

K. MEDICAL PAYMENTS – INCREASED LIMIT

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

- 7. Subject to Paragraph 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 in the Declarations of this Coverage Part for Medical Expense Limit.

L. 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" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

M. 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.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

d. Primary And Non-Contributory Insurance If Required By Written Contract

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

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 the 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.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. BROAD FORM NAMED INSURED B. BLANKET ADDITIONAL INSURED C. EMPLOYEE HIRED AUTO D. EMPLOYEES AS INSURED E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS G. WAIVER OF DEDUCTIBLE – GLASS | <ul style="list-style-type: none"> H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT J. PERSONAL PROPERTY K. AIRBAGS L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS M. BLANKET WAIVER OF SUBROGATION N. UNINTENTIONAL ERRORS OR OMISSIONS |
|---|---|

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c.** in **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5.**, **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1)** Any covered "auto" you lease, hire, rent or borrow; and
- (2)** Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of SECTION IV – BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., Limits Of Insurance, of SECTION II – COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., Limits Of Insurance, of SECTION II – COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- The airbags are not covered under any warranty; and
- The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- You (if you are an individual);
- A partner (if you are a partnership);
- A member (if you are a limited liability company);
- An executive officer, director or insurance manager (if you are a corporation or other organization); or
- Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE

THIS POLICY, IN PART, PROVIDES FOLLOW-FORM LIABILITY COVERAGE. COVERAGE WILL APPLY ON A CLAIMS-MADE BASIS WHEN FOLLOWING CLAIMS-MADE UNDERLYING INSURANCE.

COVERAGE WILL APPLY ON A DEFENSE-WITHIN-LIMITS BASIS WHEN FOLLOWING UNDERLYING INSURANCE UNDER WHICH DEFENSE EXPENSES ARE PAYABLE WITHIN, AND NOT IN ADDITION TO, THE LIMITS OF INSURANCE. WHEN FOLLOWING SUCH UNDERLYING INSURANCE, PAYMENT OF DEFENSE EXPENSES UNDER THIS POLICY WILL REDUCE, AND MAY EXHAUST, THE LIMITS OF INSURANCE OF THIS POLICY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION VI – DEFINITIONS**.

SECTION I – COVERAGES

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

1. We will pay on behalf of the insured those sums, in excess of the "applicable underlying limit", that the insured becomes legally obligated to pay as damages to which Coverage **A** of this insurance applies, provided that the "underlying insurance" would apply to such damages but for the exhaustion of its applicable limits of insurance. If a sublimit is specified in any "underlying insurance", Coverage **A** of this insurance applies to damages that are in excess of that sublimit only if such sublimit is shown for that "underlying insurance" in the Schedule Of Underlying Insurance.
2. Coverage **A** of this insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the "underlying insurance", except with respect to any provisions to the contrary contained in this insurance.
3. The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE**.
4. For the purposes of Paragraph 1. above:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance will be considered to be reduced or exhausted only by the following payments:
 - (1) Payments of judgments or settlements for damages that are covered by that "underlying insurance". However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for damages that would not be covered by this Excess

Follow-Form And Umbrella Liability Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance";

- (2) Payments of "medical expenses" that are covered by that "underlying insurance" and are incurred for "bodily injury" caused by an accident that takes place during the policy period of this Excess Follow-Form And Umbrella Liability Insurance; or
- (3) Payments of defense expenses that are covered by that "underlying insurance", only if such "underlying insurance" includes such payments within the limits of insurance. However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for defense expenses that would not be covered by this Excess Follow-Form And Umbrella Liability Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance".

If the applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance is actually reduced or exhausted by other payments, Coverage **A** of this insurance is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had such limit not been actually reduced or exhausted by such other payments.

- b. If any "underlying insurance" has a limit of insurance greater than the amount shown for that insurance in the Schedule of Underlying Insurance, this insurance will apply in excess of that greater amount. If any "underlying insurance" has a limit of insurance, prior to any reduction or exhaustion by payment of damages, "medical expenses" or defense expenses described in Paragraph **a.** above, that is less than the amount shown for that insurance in the Schedule Of Underlying Insurance, this insurance will apply in excess of the amount shown for such insurance in the Schedule Of Underlying Insurance.

5. When the "underlying insurance" applies on a claims-made basis and includes a retroactive date provision, the retroactive date for Coverage **A** of this insurance is the same as the retroactive date of that "underlying insurance".

B. COVERAGE B – UMBRELLA LIABILITY

1. We will pay on behalf of the insured those sums in excess of the "self-insured retention" that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which Coverage **B** of this insurance applies.
2. Coverage **B** of this insurance applies to "bodily injury" or "property damage" only if:
 - a. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place anywhere in the world;
 - b. The "bodily injury" or "property damage" occurs during the policy period; and
 - c. Prior to the policy period, no insured listed under Paragraph **1.** in Paragraph **B.**, **COVERAGE B – UMBRELLA LIABILITY**, of **SECTION II – WHO IS AN INSURED** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, in whole or in part, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
3. Coverage **B** of this insurance applies to "personal injury" or "advertising injury" caused by an offense arising out of your business, but only if the offense was committed during the policy period anywhere in the world.
4. The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE.**
5. "Bodily injury" or "property damage":
 - a. Which occurs during the policy period; and
 - b. Which was not prior to, but was during, the policy period known to have occurred by any insured listed under Paragraph **1.** in Paragraph **B.**, **COVERAGE B –**

UMBRELLA LIABILITY of **SECTION II – WHO IS AN INSURED**, or any "employee" authorized by you to give notice of an "occurrence" or claim;

includes any continuation, change or resumption of the "bodily injury" or "property damage" after the end of the policy period.

6. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. in Paragraph B., **COVERAGE B – UMBRELLA LIABILITY**, of **SECTION II – WHO IS AN INSURED** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - c. Becomes aware by any other means that the "bodily injury" or "property damage" has occurred or has begun to occur.
7. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
8. Coverage B of this insurance does not apply to damages covered by any "underlying insurance" or that would have been covered by any "underlying insurance" but for the exhaustion of its applicable limit of insurance.

C. COVERAGE C – CRISIS MANAGEMENT SERVICE EXPENSES

1. We will reimburse the insured, or pay on the insured's behalf, "crisis management service expenses" to which Coverage C applies.
2. Coverage C of this insurance applies to "crisis management service expenses" that:
 - a. Arise out of a "crisis management event" that first commences during the policy period;
 - b. Are incurred by the insured, after a "crisis management event" first commences and before such event ends; and
 - c. Are submitted to us within 180 days after the "crisis management advisor" advises you that the "crisis management event" no longer exists.
3. A "crisis management event" will be deemed to:

- a. First commence at the time when any "executive officer" first becomes aware of an "event" or "occurrence" that leads to that "crisis management event"; and

- b. End when we decide that the crisis no longer exists or when the Crisis Management Service Expenses Limit has been exhausted, whichever occurs first.

4. The amount we will pay for "crisis management service expenses" is limited as described in **SECTION III – LIMITS OF INSURANCE**.

5. A "self-insured retention" does not apply to "crisis management service expenses".

6. Any payment of "crisis management service expenses" that we make will not be determinative of our obligations under this insurance with respect to any claim or "suit" or create any duty to defend or indemnify any insured for any claim or "suit".

D. DEFENSE AND SUPPLEMENTARY PAYMENTS

1. We will have the right and duty to defend the insured:

- a. Under Coverage A, against a "suit" seeking damages to which such coverage applies, if:

- (1) The "applicable underlying limit" is the applicable limit of insurance stated for a policy of "underlying insurance" in the Schedule Of Underlying Insurance and such limit has been exhausted solely due to payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY** of **SECTION I – COVERAGES**; or

- (2) The "applicable underlying limit" is the applicable limit of any "other insurance" and such limit has been exhausted by payments of judgments, settlements or medical expenses, or related costs or expenses (if such costs or expenses reduce such limits).

For any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance"; or

- b. Under Coverage B, against a "suit" seeking damages to which such coverage applies.

2. We have no duty to defend any insured against any "suit":
 - a. Seeking damages to which this insurance does not apply; or
 - b. If any other insurer has a duty to defend.
3. When we have the duty to defend, we may, at our discretion, investigate and settle any claim or "suit". In all other cases, we may, at our discretion, participate in the investigation, defense and settlement of any claim or "suit" for damages to which this insurance may apply. If we exercise such right to participate, all expenses we incur in doing so will not reduce the applicable limits of insurance.
4. Our duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or defense expenses if such expenses are within the limits of insurance of this policy.
5. We will pay, with respect to a claim we investigate or settle, or "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. The cost of:
 - (1) Bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies; or
 - (2) Appeal bonds and bonds to release attachments;

but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of such claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.
 - d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - f. All interest that accrues on the full amount of any judgment after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the

applicable limit of insurance. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.

With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY**, these payments will not reduce the applicable limits of insurance, but only if the applicable "underlying insurance" provides for such payments in addition to its limits of insurance. With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE B – UMBRELLA LIABILITY**, these payments will not reduce the applicable limits of insurance.

SECTION II – WHO IS AN INSURED

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the "underlying insurance". If you have agreed to provide insurance for that person or organization in a written contract or agreement:
 - a. The limits of insurance afforded to such person or organization will be:
 - (1) The amount by which the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement exceed the total limits of insurance of all applicable "underlying insurance"; or
 - (2) The limits of insurance of this policy; whichever is less; and
 - b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable "underlying insurance".

B. COVERAGE B – UMBRELLA LIABILITY

With respect to Coverage B:

1. The Named Insured shown in the Declarations is an insured.
2. If you are:

- a. An individual, your spouse is also an insured, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, your members are also insureds, but only with respect to the conduct of your business. Your managers are also insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, your "officers" and directors are also insureds, but only with respect to their duties as your "officers" or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, your trustees are also insureds, but only with respect to their duties as trustees.
3. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
- 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 such "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.
- (2) "Property damage" to property:
 - (a) Owned, occupied or used by; or
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
 - you, any of your "employees" or "volunteer workers", any of your partners or members (if you are a partnership or joint venture), or any of your members (if you are a limited liability company).
 - b. Any person (other than your "employee" or "volunteer worker"), or any organization, while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That

representative will have all your rights and duties under this insurance.

4. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, on the first day of the policy period is an insured and will qualify as a Named Insured. No such organization is an insured or will qualify as a Named Insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.
5. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, is an insured and will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
 - b. Coverage for such organization does not apply to:
 - (1) "Bodily injury" or "property damage" that occurred; or
 - (2) "Personal injury" or "advertising injury" arising out of an offense committed;
 before you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named Insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Paragraph B. of SECTION II – WHO IS AN INSURED.

C. COVERAGE C – CRISIS MANAGEMENT SERVICE EXPENSES

With respect to Coverage C, the following persons and organizations are insureds and will qualify as Named Insureds:

1. The Named Insured shown in the Declarations.

2. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, on the first day of the policy period. No such organization is an insured or will qualify as a Named Insured for "crisis management service expenses" arising out of a "crisis management event" that first commences after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
 - b. Coverage for such organization does not apply to "crisis management service expenses" arising out of a "crisis management event" that occurred before you acquired or formed the organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis management event" after the date you acquired or formed the organization.

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

SECTION III – LIMITS OF INSURANCE

- A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay for the amounts described below to which this insurance applies regardless of the number of:
 1. Insureds;
 2. Claims made or "suits" brought;
 3. Number of vehicles involved;
 4. Persons or organizations making claims or bringing "suits"; or
 5. Coverages provided under this insurance.

As indicated in Paragraph D.1. of SECTION I – COVERAGES, for any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the

limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance".

B. The General Aggregate Limit is the most we will pay for the sum of all:

1. Damages; and
2. Defense expenses if such expenses are within the limits of insurance of this policy;

except:

1. Damages and defense expenses because of "bodily injury" or "property damage" included in the "auto hazard";
2. Damages and defense expenses because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; or
3. Damages and defense expenses for which insurance is provided under any Aircraft Liability coverage included as "underlying insurance" to which no aggregate limit applies.

C. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all:

1. Damages; and
2. Defense expenses if such expenses are within the limits of insurance of this policy; because of "bodily injury" or "property damage" included in the "products-completed operations hazard".

D. Subject to Paragraph **B.** or **C.** above, whichever applies, the Occurrence Limit is the most we will pay for the sum of all:

1. Damages, and defense expenses if such expenses are within the limits of insurance of this policy, under Coverage **A** arising out of any one "event" to which the "underlying insurance" applies a limit of insurance that is separate from any aggregate limit of insurance; and
2. Damages under Coverage **B** because of all "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence".

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

E. The Crisis Management Service Expenses Limit is the most we will pay for the sum of all "crisis management service expenses" arising out of all "crisis management events". Payment of such "crisis management service expenses" is in addition to, and will not reduce, any other limit of insurance of this policy.

F. The limits of insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations. If the policy period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

SECTION IV – EXCLUSIONS

This insurance does not apply to:

A. With respect to Coverage **A** and Coverage **B**:

1. Asbestos

- a. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the damages are caused or contributed to by the hazardous properties of asbestos.
- b. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any damages described in Paragraph **a.** above.
- c. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, asbestos, asbestos fibers or products containing asbestos; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

2. Employment-Related Practices

Damages because of injury to:

- a. A person arising out of any:
 - (1) Refusal to employ that person;
 - (2) Termination of that person's employment; or

(3) Employment-related practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment, applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment; or

b. The spouse, child, parent, brother or sister of that person as a consequence of injury to that person as described in Paragraphs **a.(1)**, **(2)** or **(3)** above.

This exclusion applies:

- a.** Whether the insured may be liable as an employer or in any other capacity; and
- b.** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

3. ERISA, COBRA And Similar Laws

Any obligation of the insured under:

- a.** The Employees Retirement Income Security Act Of 1974 (ERISA) or any of its amendments;
- b.** The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or any of its amendments; or
- c.** Any similar common or statutory law of any jurisdiction.

4. Medical Expenses Or Payments

Any obligation of the insured under any "medical expenses" or medical payments coverage.

5. Nuclear Material

Damages arising out of:

- a.** The actual, alleged or threatened exposure of any person or property to; or
- b.** The "hazardous properties" of; any "nuclear material".

As used in this exclusion:

- a.** "Hazardous properties" includes radioactive, toxic or explosive properties;
- b.** "Nuclear material" means "source material", "special nuclear material" or "by-product material"; and
- c.** "Source material", "special nuclear material" and "by-product material" have

the meanings given them in the Atomic Energy Act of 1954 or any of its amendments.

6. Uninsured or Underinsured Motorists, No-Fault And Similar Laws

Any liability imposed on the insured, or the insured's insurer, under any of the following laws:

- a.** Uninsured motorists;
- b.** Underinsured motorists;
- c.** Auto no-fault or other first-party personal injury protection (PIP);
- d.** Supplementary uninsured/underinsured motorists (New York); or
- e.** Medical expense benefits and income loss benefits (Virginia).

7. War

Damages arising out of:

- a.** War, including undeclared or civil war; or
- b.** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c.** Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

8. Workers Compensation And Similar Laws

Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.

B. With respect to Coverage B:

1. Expected Or Intended Bodily Injury Or Property 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 persons or property.

2. Contractual Liability

"Bodily injury", "property damage", "personal injury" or "advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

3. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be liable by reason of:

- a. Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises for consumption on your premises;
- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

4. Employers Liability

"Bodily injury" to:

- a. An "employee" of the insured arising out of and in the course of:
 - (1) Employment by the insured; or
 - (2) Performing duties related to the conduct of the insured's business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of "bodily injury" described in Paragraph a. above.

This exclusion applies:

- a. Whether the insured may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the "bodily injury".

5. Pollution

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".
- b. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or any other person or organization test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up,

removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

6. Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is owned or operated by or rented or loaned to any insured.

7. Auto

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any "auto". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "auto".

This exclusion does not apply to "bodily injury" or "property damage" caused by an "occurrence" that takes place outside of the United States of America (including its territories and possessions), Puerto Rico and Canada.

8. Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership,

maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to a watercraft:

- a. While ashore on premises owned by or rented to any insured; or
- b. That is 50-feet long or less and that:
 - (1) You own; or
 - (2) You do not own and is not being used to carry any person or property for a charge.

9. Electronic Data

Damages claimed for the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

10. Damage To Property, Products Or Work

"Property damage" to:

- a. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person or organization, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- b. Premises you sell, give away or abandon if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations if the "property damage" arises out of those operations;
- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it;
- g. "Your product" arising out of "your product" or any part of it; or
- h. "Your work" arising out of "your work" or any part of it and included in the "products-completed operations hazard".

11. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property", or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you, or anyone acting on your behalf, to fulfill the terms of a contract or agreement.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

12. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a. "Your product";
- b. "Your work"; or
- c. "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

13. Violation Of Consumer Financial Protection Laws

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of a "consumer financial protection law", or any other "bodily injury", "property damage", "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such violation.

14. Unsolicited Communication

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

15. Access Or Disclosure Of Confidential Or Personal Information

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

16. Knowing Violation Of Rights Of Another

"Personal injury" or "advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal injury" or "advertising injury".

17. Material Published With Knowledge Of Falsity

"Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

18. Material Published Or Used Prior To Policy Period

- a. "Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period; or
- b. "Advertising injury" arising out of infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

19. Criminal Acts

"Personal injury" or "advertising injury" arising out of a criminal act committed by or at the direction of the insured.

20. Breach Of Contract

"Personal injury" or "advertising injury" arising out of a breach of contract.

21. Quality Or Performance Of Goods – Failure To Conform To Statements

"Advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

22. Wrong Description Of Prices

"Advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

23. Intellectual Property

"Personal injury" or "advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation:

- a. Copyright;
- b. Patent;

- c. Trade dress;
- d. Trade name;
- e. Trademark;
- f. Trade secret; or
- g. Other intellectual property rights or laws.

This exclusion does not apply to:

- a. "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or
- b. Any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation of another's copyright, "title" or "slogan" in your "advertisement".

24. Insureds In Media And Internet Type Business

"Personal injury" or "advertising injury" arising out of an offense committed by an insured whose business is:

- a. Advertising, "broadcasting" or publishing;
- b. Designing or determining content of web-sites for others; or
- c. An Internet search, access, content or service provider.

This exclusion does not apply to Paragraphs **a.(1), (2) and (3)** of the definition of "personal injury".

For the purposes of this exclusion:

- a. Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- b. The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

25. Electronic Chatrooms Or Bulletin Boards

"Personal injury" or "advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control.

26. Unauthorized Use Of Another's Name Or Product

"Personal injury" or "advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

C. With respect to Coverage C:**Newly Acquired, Controlled Or Formed Entities**

"Crisis management service expenses" arising out of a "crisis management event" that involves any organization you newly acquire or form and that occurred prior to the date you acquired or formed that organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis management event" after the date you acquired or formed such organization.

SECTION V – CONDITIONS**A. APPEALS**

1. If the insured or the insured's "underlying insurer" elects not to appeal a judgment which exceeds the "applicable underlying limit" or "self-insured retention", we may do so.
2. If we appeal such a judgment, we will pay all costs of the appeal. These payments will not reduce the applicable limits of insurance. In no event will our liability exceed the applicable limit of insurance.

B. BANKRUPTCY

1. Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this insurance.
2. In the event of bankruptcy or insolvency of any "underlying insurer", this insurance will not replace such bankrupt or insolvent "underlying insurer's" policy, and this insurance will apply as if such "underlying insurer" had not become bankrupt or insolvent.

C. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this insurance by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this insurance by mailing or delivering to such first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to such first Named Insured's last mailing address known to us.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this insurance is cancelled, we will send such first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If such first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

D. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. No change can be made in the terms of this insurance except with our consent. The terms of this insurance can be amended or waived only by endorsement issued by us and made a part of this policy.

E. CURRENCY

Payments for damages or expenses described in Paragraph 5. of Paragraph D., **DEFENSE AND SUPPLEMENTARY PAYMENTS**, of **SECTION I – COVERAGES** will be in the currency of the United States of America. At our sole option, we may make these payments in a different currency. Any necessary currency conversion for such payments will be calculated based on the rate of exchange published in the Wall Street Journal immediately preceding the date the payment is processed.

F. DUTIES REGARDING AN EVENT, OCCURRENCE, CLAIM OR SUIT

1. You must see to it that we are notified as soon as practicable of an "event" or "occurrence" which may result in a claim under this insurance. To the extent possible, notice should include:
 - a. How, when and where the "event" or "occurrence" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the names and addresses of any witnesses; and
 - c. The nature and location of any injury or damage arising out of the "event" or "occurrence".
2. If a claim is made or "suit" is brought against any insured which may result in a claim under this insurance, you must see to it that we receive written notice of the claim or "suit" as soon as practicable.

3. With respect to Coverage **A**, the insured must:
 - a. Cooperate with us in the investigation, settlement or defense of any claim or "suit";
 - b. Comply with the terms of the "underlying insurance"; and
 - c. Pursue all rights of contribution or indemnity against any person or organization who may be liable to the insured because of the injury, damage or loss for which insurance is provided under this policy or any policy of "underlying insurance".
4. With respect to Coverage **B**, the insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - b. Authorize us to obtain necessary records and other information;
 - c. Cooperate with us in the investigation, settlement or defense of any claim or "suit"; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which Coverage **B** may apply.
5. No insured will, except at that insured's own expense, voluntarily make a payment, assume any obligation, make any admission or incur any expense, other than for first aid for "bodily injury" covered by this insurance, without our consent.
6. Knowledge of an "event", "occurrence", claim or "suit" by your agent, servant or "employee" will not constitute knowledge by you, unless your insurance or risk manager, or anyone working in the capacity as your insurance or risk manager, or anyone you designate with the responsibility of reporting an "event", "occurrence", claim or "suit":
 - a. Has received notice of such "event", "occurrence", claim or "suit" from such agent, servant or "employee"; or
 - b. Otherwise has knowledge of such "event", "occurrence", claim or "suit".

G. DUTIES REGARDING A CRISIS MANAGEMENT EVENT

You must:

1. Notify us within 30 days of a "crisis management event" that may result in "crisis management service expenses".
2. Provide written notice of the "crisis management event" as soon as practicable. To the extent possible, notice should include:
 - a. How, when and where that "crisis management event" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the named and addresses of any witnesses;
 - c. The nature and location of any injury or damage arising out of that "crisis management event"; and
 - d. The reason that "crisis management event" is likely to involve damages covered by this insurance in excess of the "applicable underlying limit" or "self-insured retention" and involve regional or national media coverage.

H. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this insurance:

1. At any time during the policy period;
2. Up to three years after the end of the policy period; and
3. Within one year after final settlement of all claims under this insurance.

I. EXTENDED REPORTING PERIOD OPTION

1. When the "underlying insurance" applies on a claims-made basis, any automatic or basic "extended reporting period" in such "underlying insurance" will apply to this insurance.
2. When the "underlying insurance" applies on a claims-made basis and you elect to purchase an optional or supplemental "extended reporting period" in such "underlying insurance," that "extended reporting period" will apply to this insurance only if:
 - a. A written request to purchase an Extended Reporting Period endorsement for this insurance is made by you and received by us within 90 days after the end of the policy period;

- b. You have paid all premiums due for this policy at the time you make such request;
 - c. You promptly pay the additional premium we charge for the Extended Reporting Period endorsement for this insurance when due. We will determine that additional premium after we have received your request for the Extended Reporting Period endorsement for this insurance. That additional premium is not subject to any limitation stated in the "underlying insurance" on the amount or percentage of additional premium that may be charged for the "extended reporting period" in such "underlying insurance"; and
 - d. That Extended Reporting Period endorsement is issued by us and made a part of this policy.
3. Any Extended Reporting Period endorsement for this insurance will not reinstate or increase the Limits of Insurance or extend the policy period.
 4. Except with respect to any provisions to the contrary contained in Paragraphs 1., 2. or 3. above, all provisions of any option to purchase an "extended reporting period" granted to you in the "underlying insurance" apply to this insurance.

J. INSPECTIONS AND SURVEYS

1. We have the right but are not obligated to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

K. LEGAL ACTION AGAINST US

1. No person or organization has a right under this insurance:
 - a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this insurance unless all of its terms have been fully complied with.
2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that:
 - a. Are not payable under the terms of this insurance; or
 - b. Are in excess of the applicable limit of insurance.

An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

L. MAINTENANCE OF UNDERLYING INSURANCE

1. The insurance afforded by each policy of "underlying insurance" will be maintained for the full policy period of this Excess Follow-Form And Umbrella Liability Insurance. This provision does not apply to the reduction or exhaustion of the aggregate limit or limits of such "underlying insurance" solely by payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY** of **SECTION I – COVERAGES**. As such policies expire, you will renew them at limits and with coverage at least equal to the expiring limits of insurance. If you fail to comply with the above requirements, Coverage A is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with the above requirements.
2. The first Named Insured shown in the Declarations must give us written notice of any change in the "underlying insurance" as respects:
 - a. Coverage;
 - b. Limits of insurance;
 - c. Termination of any coverage; or
 - d. Exhaustion of aggregate limits.
3. If you are unable to recover from any "underlying insurer" because you fail to comply with any term or condition of the "underlying insurance", Coverage A is not invalidated. However, we will pay for any loss only to the extent that we would have paid had you complied with that term or condition in that "underlying insurance".

M. OTHER INSURANCE

This insurance is excess over any valid and collectible "other insurance" whether such "other insurance" is stated to be primary, contributing,

excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply as excess of this insurance.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization that qualifies as an insured under this insurance must apply on a primary basis, or a primary and non-contributory basis, then insurance provided under Coverage A is subject to the following provisions:

1. This insurance will apply before any "other insurance" that is available to such additional insured which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

N. PREMIUM

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4. below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of **SECTION II – WHO IS AN INSURED**.

O. PREMIUM AUDIT

The premium for this policy is the amount stated in Item 5. of the Declarations. The premium is a flat charge unless it is specified in the Declarations as adjustable.

P. PROHIBITED COVERAGE – UNLICENSED INSURANCE

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to provide insurance in such country or jurisdiction; or
 - b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Q. PROHIBITED COVERAGE – TRADE OR ECONOMIC SANCTIONS

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

R. REPRESENTATIONS

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

S. SEPARATION OF INSUREDS

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought.

T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and the insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us, and with respect to Coverage A, the "underlying insurer", enforce them.

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 that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the execution of that contract or agreement by such insured.

2. Reimbursement of any amount recovered will be made in the following order:
 - a. First, to any person or organization (including us or the insured) who has paid any amount in excess of the applicable limit of insurance;
 - b. Next, to us; and
 - c. Then, to any person or organization (including the insured and with respect to Coverage A, the "underlying insurer") that is entitled to claim the remainder, if any.
3. Expenses incurred in the process of recovery will be divided among all persons or organizations receiving amounts recovered according to the ratio of their respective recoveries.

U. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE

1. Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an individual Named Insured.
2. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

V. UNINTENTIONAL OMISSION OR ERROR

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.

W. WHEN LOSS IS PAYABLE

If we are liable under this insurance, we will pay for injury, damage or loss after:

1. The insured's liability is established by:
 - a. A court decision; or
 - b. A written agreement between the claimant, the insured, any "underlying insurer" and us; and
2. The amount of the "applicable underlying limit" or "self-insured retention" is paid by or on behalf of the insured.

SECTION VI – DEFINITIONS**A. With respect to all coverages of this insurance:**

1. "Applicable underlying limit" means the sum of:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance subject to the provisions in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY of SECTION I – COVERAGES**; and
 - b. The applicable limit of insurance of any "other insurance" that applies.

The limits of insurance in any policy of "underlying insurance" will apply even if:

- a. The "underlying insurer" claims the insured failed to comply with any term or condition of the policy; or
 - b. The "underlying insurer" becomes bankrupt or insolvent.
2. "Auto hazard" means all "bodily injury" and "property damage" to which liability insurance afforded under an auto policy of "underlying insurance" would apply but for the exhaustion of its applicable limits of insurance.
 3. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 4. "Event" means an "occurrence", offense, accident, act, error, omission, wrongful act or loss.

5. "Extended reporting period" means any period of time, starting with the end of the policy period of your claims-made insurance, during which claims or "suits" may be first made, brought or reported for that insurance.
6. "Medical expenses" means expenses to which any Medical Payments section of any policy of Commercial General Liability "underlying insurance" applies.
7. "Other insurance" means insurance, or the funding of losses, that is provided by, through or on behalf of:
 - a. Another insurance company;
 - b. Us or any of our affiliated insurance companies;
 - c. Any risk retention group;
 - d. Any self-insurance method or program, in which case the insured will be deemed to be the provider of such insurance; or
 - e. Any similar risk transfer or risk management method.

"Other insurance" does not include:

- a. Any "underlying insurance"; or
 - b. Any policy of insurance specifically purchased to be excess of the limits of insurance of this policy shown in the Declarations.
8. "Products-completed operations hazard":
 - a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all the work called for in your contract has been completed;
 - (b) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification listed in a policy of Commercial General Liability "underlying insurance" states that products-completed operations are subject to the General Aggregate Limit.
9. "Suit" means a civil proceeding which alleges damages. "Suit" includes:
 - a. An arbitration proceeding in which damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding to which the insured submits with our consent.
10. "Underlying insurance":
 - a. Means the policy or policies of insurance listed in the Schedule Of Underlying Insurance.
 - b. Includes any renewal or replacement of such policies if such renewal or replacement is during the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
 - c. Does not include any part of the policy period of any of the policies described in Paragraphs a. or b. above that began before, or that continues after, the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
11. "Underlying insurer" means any insurer which provides a policy of insurance listed in the Schedule Of Underlying Insurance.

B. With respect to Coverage **B** and, to the extent that the following terms are not defined in the "underlying insurance", to Coverage **A**:

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a.** Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b.** Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Advertising injury":

a. Means injury, other than "personal injury", caused by one or more of the following offenses:

- (1)** Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
- (2)** Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
 - (a)** Appropriates a person's name, voice, photograph or likeness; or
 - (b)** Unreasonably places a person in a false light; or
- (3)** Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".

b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph **a.** above.

3. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads,

including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

4. "Bodily injury" means:

- a.** Physical harm, including sickness or disease, sustained by a person; or
- b.** Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.

5. "Broadcasting" means transmitting any audio or visual material for any purpose:

- a.** By radio or television; or
- b.** In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
 - (1)** Radio or television programming being transmitted;
 - (2)** Other entertainment, educational, instructional, music or news programming being transmitted; or
 - (3)** Advertising transmitted with any such programming.

6. "Consumer financial identity information" means any of the following information for a person that is used or collected for the purpose of serving as a factor in establishing such person's eligibility for personal credit, insurance or employment or for the purpose of conducting a business transaction:

- a.** Part or all of the account number, the expiration date or the balance of any credit, debit, bank or other financial account;
- b.** Information bearing on a person's credit worthiness, credit standing or credit capacity;
- c.** Social security number;
- d.** Driver's license number; or
- e.** Birth date.

7. "Consumer financial protection law" means:

a. The Fair Credit Reporting Act (FCRA) and any of its amendments, including the Fair and Accurate Credit Transactions Act (FACTA);

- b.** California's Song-Beverly Credit Card Act and any of its amendments; or
- c.** Any other law or regulation that restricts or prohibits the collection, dissemination, transmission, distribution or use of "consumer financial identity information".
- 8.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9.** "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.
- 10.** "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a.** It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b.** You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.
- 11.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- 12.** "Loading or unloading" means the handling of property:
- a.** After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b.** While it is in or on an aircraft, watercraft or "auto"; or
- c.** While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
- 13.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads.
- b.** Vehicles maintained for use solely on or next to premises you own or rent.
- c.** Vehicles that travel on crawler treads.
- d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
- (1)** Power cranes, shovels, loaders, diggers or drills; or
- (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers.
- e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2)** Cherry pickers and similar devices used to raise or lower workers.
- f.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1)** Equipment designed primarily for:
- (a)** Snow removal;
- (b)** Road maintenance, but not construction or resurfacing; or
- (c)** Street cleaning;
- (2)** Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law, or other motor vehicle insurance law, where it is licensed or principally garaged. Such land vehicles are considered "autos".

- 14. "Occurrence" means:**
- a. With respect to "bodily injury" or "property damage":**
 - (1)** An accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in "bodily injury" or "property damage". All "bodily injury" or "property damage" caused by such exposure to substantially the same general harmful conditions will be deemed to be caused by one "occurrence"; or
 - (2)** An act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor, unless you are in the business or occupation of providing professional health care services;
 - b. With respect to "personal injury", an offense arising out of your business that results in "personal injury". All "personal injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits"; and**
 - c. With respect to "advertising injury", an offense committed in the course of advertising your goods, products and services that results in "advertising injury". All "advertising injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits".**
- 15. "Officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.**
- 16. "Personal injury":**
- a. Means injury, other than "advertising injury", caused by one or more of the following offenses:**
 - (1)** False arrest, detention or imprisonment;
 - (2)** Malicious prosecution;
 - (3)** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
 - (4)** Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or
 - (5)** Oral or written publication, including publication by electronic means, of material that:
 - (a)** Appropriates a person's name, voice, photograph or likeness; or
 - (b)** Unreasonably places a person in a false light.
 - b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.**
- 17. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.**
- 18. "Property damage" means:**
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will be deemed to occur at the time of the physical injury that caused it; or**
 - b. Loss of use of tangible property that is not physically injured. All such loss of use will be deemed to occur at the time of the "occurrence" that caused it.**
- For the purposes of this insurance, "electronic data" is not tangible property.
- 19. "Self-insured retention" is the greater of:**
- a. The amount shown in the Declarations which the insured must first pay under Coverage B for damages because of all**

"bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence"; or

- b. The applicable limit of insurance of any "other insurance" that applies.

20. "Slogan":

a. Means a phrase that others use for the purpose of attracting attention in their advertising.

b. Does not include a phrase used as, or in, the name of:

- (1) Any person or organization other than you; or
- (2) Any business, or any of the premises, goods, products, services or work, of any person or organization other than you.

21. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

22. "Title" means the name of a literary or artistic work.

23. "Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.

24. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed by you.

25. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

26. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

C. With respect to Coverage C:

1. "Crisis management advisor" means any public relations firm or crisis management firm approved by us that is hired by you to perform "crisis management services" in connection with a "crisis management event".

2. "Crisis management event" means an "event" or "occurrence" that your "executive officer" reasonably determines has resulted, or may result, in:

a. Damages covered by this Coverage **A** or Coverage **B** that are in excess of the total applicable limits of the "underlying insurance" or "self-insured retention"; and

b. Significant adverse regional or national media coverage.

3. "Crisis management service expenses" means amounts incurred by you, after a "crisis management event" first commences and before such event ends:

a. For the reasonable and necessary:

(1) Fees and expenses of a "crisis management advisor" in the performance for you of "crisis management services" solely for a "crisis management event"; and

- (2) Costs for printing, advertising, mailing of materials or travel by your directors, officers, employees or agents or a "crisis management advisor" solely for a "crisis management event"; and
- b. For the following expenses resulting from such "crisis management event", provided that such expenses have been approved by us:
 - (1) Medical expenses;
 - (2) Funeral expenses;
 - (3) Psychological counseling;
 - (4) Travel expenses;
 - (5) Temporary living expenses;
 - (6) Expenses to secure the scene of a "crisis management event"; or
 - (7) Any other expenses pre-approved by us.
- 4. "Crisis management services" means those services performed by a "crisis management advisor" in advising you or minimizing potential harm to you from a "crisis management event" by maintaining or restoring public confidence in you.
- 5. "Executive officer" means your:
 - a. Chief Executive Officer;
 - b. Chief Operating Officer;
 - c. Chief Financial Officer;
 - d. President;
 - e. General Counsel;
 - f. General partner (if you are a partnership); or
 - g. Sole proprietor (if you are a sole proprietorship);
 or any person acting in the same capacity as any individual listed above.



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 99 03 76 (A) - 001

POLICY NUMBER: UB-4W50450A-23-14-G

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
ENDORSEMENT – CALIFORNIA
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

The additional premium for this endorsement shall be 2.00 % of the California workers' compensation premium.

Schedule

Person or Organization

Job Description

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS WAIVER.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 3/10/2023

Policy No. UB-4W50450A-23-14-G

Endorsement No.
Premium

Insured: **Unico Mechancial Corp.**

Countersigned by _____

Insurance Company: **Travelers Property Casualty Co of America**

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

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2023-0897
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	SBO

Submitting Dept	POLICE
Contact Name/Phone	SHAWNA ERNST 370-8534
Contact E-Mail	SERNST@SPOKANEPOLICE.ORG
Agenda Item Type	Contract Item
Agenda Item Name	1620 - CELLEBRITE DIGITAL FORENSICS

Agenda Wording

Five-year contract with Carahsoft Technology for Cellebrite software access. This tool is used for digital forensic investigations.

Summary (Background)

Cellebrite products allow for the acquisition of digital evidence from iOS and Android devices. The tool is used by the SPD digital forensics lab in collaboration with SPD investigators. Cellebrite is used extensively in drug trafficking, homicide and sex crimes investigations. Five-year contract term with \$166,825 in year 1 and \$157,781 each year after. Grant funding being utilized in 1st year of contract.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense \$ 166,825.24(plus tax)

Select \$

Select \$

Select \$

Budget Account

1620-91812-21140-54820-99999

#

#

#

Approvals

Dept Head	MEIDL, CRAIG
Division Director	MEIDL, CRAIG
Finance	SCHMITT, KEVIN
Legal	HARRINGTON, MARGARET
For the Mayor	JONES, GARRETT

Council Notifications

Study Session\Other	PSCHC 5/1/2023
Council Sponsor	CM Cathcart/Bingle
Distribution List	spdfinance
	sernst

Additional Approvals**Purchasing**

Committee Agenda Sheet

Public Safety and Community Health

Submitting Department	Spokane Police Department
Contact Name & Phone	Shawna Ernst – 509-625-4106
Contact Email	sernst@spokanepolice.org
Council Sponsor(s)	CM Cathcart, CM Bingle
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Cellebrite Digital Forensics Renewal and Expansion
Summary (Background)	<p>Renew Cellebrite software for digital forensics and migrate to a five year contract to lock in current pricing. Funding for 2023 will come from the 2022/3 Washington State Financial Fraud and Identity Theft Grant and the upcoming Byrne Discretionary Grant (non-competitive grant).</p> <p>After a search warrant has been authorized, Cellebrite products allow for the acquisition of digital evidence from iOS and Android devices. The tool is used by the SPD digital forensics lab in collaboration with SPD investigators. Cellebrite is used extensively in drug trafficking, homicide and sex crimes investigations.</p> <p>Cellebrite allows for unlocking of encrypted devices and evidence acquisition from the most modern iOS and Android phones. Without Cellebrite, the SPD digital forensics lab would be unable to acquire evidence in many cases.</p> <p>This purchase would both renew the existing licensing and increase capacity in the SPD Digital Forensic lab by upgrading to Cellebrite Premium as a service, adding two additional Cellebrite UFEDs (Universal Forensic Extraction Device), and migrating to PathFinder for Teams which will empower detectives to evaluate forensic data for evidentiary purposes.</p> <p>Cellebrite Premium as a service will allow the department to acquire forensic data from more Android devices than is currently possible with our on-premise Cellebrite Premium. Adding two UFEDs will double the number of extractions that can be performed simultaneously. Digital Forensic evidence continues to grow and the lab needs to grow in order to keep up with demand.</p>
Proposed Council Action & Date:	Purchase Approval May 15th
Fiscal Impact:	
Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Partial approval, remaining funding coming from grants	
Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring	

Specify funding source: For 2023, funding will come from the Washington State Financial Fraud and Identity Theft Grant and the upcoming Byrne Discretionary Grant (non-competitive grant). Funding for future years will need to be integrated into the annual budget. The department will request use of Criminal Justice Assistance Funds for ongoing expenses.

Expense Occurrence One-time Recurring

Annual expense will be as follows:

2023: \$182,568.95 (*grant-funded*)

2024: \$158,196.06

2025: \$158,196.06

2026: \$158,196.06

2027: \$158,196.06

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

By migrating to a five year agreement, the City will have significant cost savings versus purchasing on an annual basis. This purchase will lock in 2023 pricing through the end of 2027.

Operations Impacts

What impacts would the proposal have on historically excluded communities?

This purchase will allow the department to collect digital evidence for cases across the Spokane community. This software is most frequently used by the TARU lab for cases related to homicide, sex crimes, and human trafficking. These types of crimes disproportionately impact victims of color and victims with disabilities. By solving these crimes, the department will improve safety for historically excluded communities and Spokane in general.

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 department launched a Lab Information Management System in September, 2022. That system will keep a record of all use of the Cellebrite forensic tools which can be cross-referenced against police reports and court information containing some demographics information (limited by FBI demographic reporting requirements).

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

The Lab Information Management System will keep a record of successful and unsuccessful use of Cellebrite tools to determine overall effectiveness.

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 purchase aligns with the following strategic plan objectives:

- 1.) Safe and Healthy: This purchase will improve the ability of Detectives to solve crimes against persons and drug-trafficking crimes, reducing threats to the safety and health of our community and keeping dangerous drugs off of our streets.

2.) Sustainable Resources: This purchase will enable the department to perform digital forensics analyses in-house which will save on costs associated with sending devices out to a third-party. The Department is in the process of moving the TARU digital forensics lab towards ANAB accreditation to ensure that the lab follows standard lab processes.



CITY OF SPOKANE
POLICE DEPARTMENT

CONTRACT

Title: **CELEBRITE SOFTWARE PURCHASE
AND MAINTENANCE**

This Contract Amendment is made and entered into by and between the **CITY OF SPOKANE POLICE DEPARTMENT** as ("City"), a Washington municipal corporation, and **CARAHSOFT TECHNOLOGY GROUP**, whose address is 11493 Sunset Hills Road, Suite 100, Reston, Virginia 20190 individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE.** The Company will provide Celebrite Software and Maintenance, in accordance with Company's Quote No. 35268843, attached as Exhibit B. Company has been selected through GSA Contract No. 47QSWA18D008F. In the event of a discrepancy between the documents this City Contract controls.

2. **CONTRACT TERMS.** The Contract shall begin May 1, 2023, and run through April 30, 2028, unless amended by written agreement or terminated earlier under the provisions.

3. **COMPENSATION.** Annual compensation under this Contract shall not exceed:

- Year 1-\$166,825.24, plus applicable tax;
- Year 2-\$157,781.46, plus applicable tax;
- Year 3-\$157,781.46, plus applicable tax;
- Year 4-\$157,781.46, plus applicable tax; and
- Year 5-\$157,781.46, plus applicable tax.

This is the maximum amount to be paid under this Contract for the work described in Section 1 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Contract.

4. **PAYMENT.** The Company shall send its application for payment to City of Spokane Police Department, West 1100 Mallon Avenue, Spokane, Washington, 99260. **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 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.

CARASOFT TECHNOLOGY GROUP

**CITY OF SPOKANE
POLICE DEPARTMENT**

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. 35268843

23-162

**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.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Program Title (Type or Print)
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Name of Certifying Official (Type or Print)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Signature
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Title of Certifying Official (Type or Print)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Date (Type or Print)

EXHIBIT B

GOVERNMENT - PRICE QUOTATION



CARAHSOFT TECHNOLOGY CORP



11493 SUNSET HILLS ROAD | SUITE 100 | RESTON, VIRGINIA 20190
 PHONE (703) 871-8500 | FAX (703) 871-8505 | TOLL FREE (888) 66CARAH
 WWW.CARAHSOFT.COM | SALES@CARAHSOFT.COM

LINE NO.	PART NO.	DESCRIPTION	LIST PRICE	QUOTE PRICE	GSA	QTY	EXTENDED PRICE
32	B-ANY-05-001-200-2u	Pathfinder Enterprise Subscription 2 users 200 Extractions *Number of users =Unlimited, Number of extractions =200* This also includes Pathfinder Subscription with part number S-UFD-17-044 Cellebrite Inc. - B-ANY-05-001-200-2u Start Date: 05/01/2027 End Date: 04/30/2028	\$40,000.00	\$39,496.22		1	\$39,496.22
33	Sales Tax	Sales Tax Cellebrite Inc.		\$13,027.83	OM	1	\$13,027.83
YEAR FIVE SUBTOTAL:							\$157,781.46
SUGGESTED SUBTOTAL:							\$631,125.84
TOTAL PRICE:							\$166,825.24
SHIPPING AMOUNT:							\$0.00
WA Tax:							\$15,014.27
TOTAL QUOTE:							\$181,839.51

**Quote based on GSA Contract No: 47QSWA18D008F

**Shipping charges to be paid on behalf of Carahsoft if purchased off GSA Contract

Serial Numbers: 1838093872, 488103949, 1445491071

5 year term to be paid annually

Billing Schedule Details:

1st year includes any hardware to be shipped on behalf of Cellebrite

1st Year: \$181,839.51- includes sales tax fees and all hardware costs.

2nd Year: \$157,781.46- includes sales tax fees

3rd Year: \$157,781.46- includes sales tax fees

4th Year: \$157,781.46- includes sales tax fees

5th Year: \$157,781.46- includes sales tax fees

Subscription is based off a 12-month term

Period of performance dates will be determined after a purchase order is received and fulfilled on behalf of Cellebrite.

This is a multi year quote with annual billing. If end user customer fails to obtain the funding necessary for any year beyond the original base year of the contract then Carahsoft is permitted to cancel this order without penalty or payment for any and all unfunded years of the contract.



Agenda Sheet for City Council Meeting of:
09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2023-0898
Renews #	

Submitting Dept	WASTEWATER MANAGEMENT	Cross Ref #	
Contact Name/Phone	JEFF DONOVAN 625-4638	Project #	
Contact E-Mail	JDONOVAN@SPOKANECITY.ORG	Bid #	RFQU 5914-23
Agenda Item Type	Contract Item	Requisition #	CR 25405
Agenda Item Name	4320-PERMIT STUDIES CONTRACT WITH HDR, INC.		

Agenda Wording

Consent to award Permit Studies Contract with HDR, Inc. This contract will support Ecology-required studies of the Spokane River. HDR was selected to complete this work under RFQu 5914-23.

Summary (Background)

The RPWRF was issued an updated NDPES permit in July 2022 from the Department of Ecology for discharge of treated wastewater to the Spokane River. The permit requires the City to complete a number of new studies, including a river sediment study, mixing zone study, and river study of trace metals and pH. HDR was selected to help complete these three studies. This initial scope of work is for the planning and approval phase of this work. Outcome of these studies will inform future permitting

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense \$ \$118,186.00

Select \$

Select \$

Select \$

Budget Account

4320.30210.35141.54201

#

#

#

Approvals

Dept Head GENNETT, RAYLENE

Division Director FEIST, MARLENE

Finance KECK, KATHLEEN

Legal SCHOEDEL, ELIZABETH

For the Mayor JONES, GARRETT

Council Notifications

Study Session\Other PIES 08/28/23

Council Sponsor CP Kinnear

Distribution List

hbarnhart@spokanecity.org

rpwrfaccounting@spokanecity.org

mmurray@spokanecity.org

Purchasing

Tax & Licenses

cwahl@spokanecity.org

rob.berman@hdrinc.com

Joseph.Descalso@hdrinc.com



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

tyson.schlect@hdrinc.com

jdonovan@spokanecity.org

Expenditure Control Form



- 1. All requests being made, including those against master agreements, must be accompanied by this form.
- 2. All requests requiring City Council approval exceeding \$100,000 must be accompanied by this form.
- 3. Route ALL requests to the Division Director first and then the CFO for signature.
- 4. The CFO will route for signature to the City Administrator.

Today's Date: 9/6/23 **Type of expenditure:** Consulting Services Goods Services
Department: Wastewater Management
Approving Supervisor: Raylene Gennett

Amount of Proposed Expenditure: \$118,160.00
 Is this against a master agreement? If yes, please provide the number: no

Funding Source Budget Account 4320.30210.35141.54201

Please verify correct funding sources. Indicate breakdown if more than one funding source.

Why is this expenditure necessary now?

The City's NPDES Permit requires these studies to be completed to meet deadlines set by Ecology

What are the impacts if expenses are deferred?

Violation of NPDES Permit requirements which could result in enforcement actions from Ecology

What alternative resources have been considered?

City staff were considered but lack the expertise and resources to complete this work

Description of the goods or service and any additional information?

HDR will provide planning for three separate studies: Sediment, Metals, And Mixing Zone studies

Person Submitting Form/Contact: Jeff Donovan (jdonovan@spokanecity.org)

Division Director:
Marlene Faust

CFO Signature:
Tonya Wallace

City Administrator Signature:

Garrett Jones (Sep 7, 2023 11:28 PDT)

Additional Comments:











Expenditure Control Form 2023 - HDR Permit Studies.pdf

Final Audit Report

2023-09-07

Created:	2023-09-06
By:	Heather Barnhart (hbarnhart@spokanecity.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAI3DPHUT4lpLMVUGTui8HZVDOrXeu0pG1

"Expenditure Control Form 2023 - HDR Permit Studies.pdf" History

-  Document created by Heather Barnhart (hbarnhart@spokanecity.org)
2023-09-06 - 9:33:33 PM GMT- IP address: 174.215.123.187
-  Document emailed to Marlene Feist (mfeist@spokanecity.org) for signature
2023-09-06 - 9:33:57 PM GMT
-  Email viewed by Marlene Feist (mfeist@spokanecity.org)
2023-09-06 - 10:25:52 PM GMT- IP address: 155.190.3.6
-  Document e-signed by Marlene Feist (mfeist@spokanecity.org)
Signature Date: 2023-09-06 - 10:26:01 PM GMT - Time Source: server- IP address: 155.190.3.6
-  Document emailed to Tonya Wallace (twallace@spokanecity.org) for signature
2023-09-06 - 10:26:03 PM GMT
-  Email viewed by Tonya Wallace (twallace@spokanecity.org)
2023-09-06 - 10:39:19 PM GMT- IP address: 198.1.39.252
-  Document e-signed by Tonya Wallace (twallace@spokanecity.org)
Signature Date: 2023-09-06 - 10:39:27 PM GMT - Time Source: server- IP address: 198.1.39.252
-  Document emailed to Garrett Jones (gjones@spokanecity.org) for signature
2023-09-06 - 10:39:29 PM GMT
-  Email viewed by Garrett Jones (gjones@spokanecity.org)
2023-09-07 - 2:02:33 AM GMT- IP address: 104.28.116.107
-  Document e-signed by Garrett Jones (gjones@spokanecity.org)
Signature Date: 2023-09-07 - 6:28:34 PM GMT - Time Source: server- IP address: 198.1.39.252

✔ Agreement completed.

2023-09-07 - 6:28:34 PM GMT

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	RPWRF
Contact Name	Jeff Donovan
Contact Email & Phone	jdonovan@spokanecity.org , 625-4638
Council Sponsor(s)	CM Lori Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Consent to award Permit Studies Contract with HDR, Inc.
Summary (Background)	<p>This contract will support Ecology-required studies of the Spokane River. HDR was selected to complete this work under RFQu 5914-23.</p> <p>The RPWRF was issued an updated NDPEs permit in July 2022 from the Department of Ecology for discharge of treated wastewater to the Spokane River. The permit requires the City to complete a number of new studies, including a river sediment study, mixing zone study, and river study of trace metals and pH. HDR was selected to help complete these three studies. This initial scope of work is for the planning and approval phase of this work. Outcome of these studies will inform future permitting decisions.</p> <p>The initial phase of this work, covered under this contract, is expected to go through August 2024, with the possibility of HDR being retained for future phases via a contract amendment. The completion of the studies and final reporting to Ecology are required by September 1, 2026.</p>
Proposed Council Action	Approval on Council consent agenda September 18 th , 2023
Fiscal Impact Total Cost: <u>\$118,186</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: Click or tap here to enter text. Expense Occurrence <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? The execution of these studies will allow RPWRF to assess its impact on the Spokane river and evaluate current processes, aiming for clean discharge to sustain a flourishing ecology and benefit historically excluded communities in the Spokane region. RPWRF aims to provide an equitable and positive environmental impact for all individuals, regardless of race, socioeconomic status, or other historically excluded factors in the area.	

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 – Demographic factors not expected to be impacted disproportionately as a result of this work.

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

City staff will review all plans before submittal to Department of Ecology. Department of Ecology is required to review and approve the plans prior to beginning the studies.

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 current City Purchasing Policy guidelines. RFQu 5914-23 was issued and HDR was deemed favorable and responsive to meet the City's needs. HDR was the only firm that bid on this work.



CITY OF SPOKANE – PURCHASING
& CONTRACTS
915 N. Nelson St.
Spokane, Washington 99202
(509) 625-6400

CITY OF SPOKANE
NOTICE OF INTENT TO AWARD CONTRACT

Date

Attn: Respondents to Request for Qualifications #5914-23 - NPDES Permit Studies and Support for Riverside Park Water Reclamation Facility

Thank you for your recent Proposal response to the Request for Qualifications identified above. After Proposal evaluation, an award recommendation to HDR Engineering Inc. has been made.

The Department requesting Proposals will be entering into contract negotiations with the above referenced Company. The resulting contract and award recommendation will be forwarded to the City Council for approval. If you would like to be notified of the exact City Council meeting date, or if you have questions related to this award recommendation, please contact Jeff Donovan at jdonovan@spokanecity.org.

The City of Spokane recognizes your effort in submitting a Proposal in order to compete for this contract. Thank you for taking the time to respond to our Request for Qualifications and we encourage you to participate in future solicitations.

Respectfully,

Connie Wahl, C.P.M., CPPB
Senior Procurement Specialist
Purchasing & Contracts
Department



City of Spokane
CONSULTANT AGREEMENT
**Title: NPDES Permit Studies
and Support Services**

This Consultant Agreement is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **HDR ENGINEERING, INC.**, whose address is 835 North Post Street, Spokane, Washington 99201 as (“Consultant”), individually hereafter referenced as a “Party”, and together as the “Parties”.

WHEREAS, the City Riverside Park Water Reclamation Facility (RPWRF) has a NPDES Waste Discharge Permit (“Permit”) issued by Washington State Department of Ecology (No. WA0024473), effective September 1, 2022; and

WHEREAS, pursuant to the Permit, the City is required to undertake various studies including Mixing Zone and Tracer Study, Receiving Water Trace Metals and pH Study, and Sediment Monitoring (“Studies”); and

WHEREAS, the City issued a Request for Qualifications No. 5914-23 and selected Consultant from the responses received; and

WHEREAS, the purpose of this Agreement is to memorialize the terms and conditions for the Studies, outlined above; and support for RPWRF.

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

1. TERM OF AGREEMENT.

The term of this Agreement begins on September 1, 2023, and ends on August 31, 2024, unless amended by written agreement or terminated earlier under the provisions. This Agreement may be renewed by agreement of the parties.

2. TIME OF BEGINNING AND COMPLETION.

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

3. SCOPE OF WORK.

The General Scope of Work for this Agreement is described in Consultant's Proposal, which is attached as Exhibit B and is made a part of this Agreement. In the event of a conflict or discrepancy in the contract documents, this Consultant Agreement controls.

The Work is subject to City review and approval, which will not be unreasonably withheld or delayed. The Consultant shall confer with the City periodically, and prepare and present information and materials (e.g. detailed outline of completed Work) requested by the City to determine the adequacy of the Work or Consultant's progress.

4. COMPENSATION.

Total compensation for Consultant's services under this Agreement shall not exceed **ONE HUNDRED EIGHTEEN THOUSAND ONE HUNDRED EIGHTY-SIX AND NO/100 DOLLARS (\$118,186.00)**, 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 Riverside Park Water Reclamation Facility, 4401 North Aubrey L. White Parkway, Spokane, WA 99205. **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 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 or material change of the insurance coverage(s) without thirty (30) 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 thirty (30) 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 Consultant has provided its certification, (Exhibit A), 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.

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments:

Exhibit A – Certificate Regarding Debarment

Exhibit B – Consultant’s Scope of Services, Schedule and Quote dated August 2023

23-157c

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.

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

EXHIBIT B



Agenda Sheet for City Council Meeting of:

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2023-0899
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	CR 25406

Submitting Dept	WASTEWATER MANAGEMENT
Contact Name/Phone	FRED BROWN 625-6307
Contact E-Mail	FBROWN@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4320-RENEWABLE NATURAL GAS INVESTMENT GRADE AUDIT

Agenda Wording
 Consent to award McKinstry Essention, LLC. (McKinstry), consulting contract. The term...

Summary (Background)
 The wastewater treatment plant digesters produce a biological gas product that could be treated and converted into renewable natural Gas (RNG). The consulting firm (McKinstry Essention, LLC) will conduct an audit (30% design) to determine the financial feasibility of producing RNG and selling it to the local natural gas utility company. This is through the WA state Energy Savings Performance Contracting (ESPC) allowed under WA RCW 39.359(a) and through the cooperative purchasing Contract 2

Lease? NO	Grant related? NO	Public Works? NO
Fiscal Impact		Budget Account
Expense	\$ \$114,473.00	# 4320-30210-35141-54101-99999
Select	\$	#
Select	\$	#
Select	\$	#

Approvals		Council Notifications	
Dept Head	GENNETT, RAYLENE	Study Session\Other	PIES 8/28/23
Division Director	FEIST, MARLENE	Council Sponsor	CM Kinnear
Finance	KECK, KATHLEEN	Distribution List	
Legal	SCHOEDEL, ELIZABETH	hbarnhart@spokanecity.org	
For the Mayor	JONES, GARRETT	rpwrfaccounting@spokanecity.org	
Additional Approvals		mmurray@spokanecity.org	
Purchasing		Tax & Licenses	
		fbrown@spokanecity.org	
		rgenett@spokanecity.org	

Expenditure Control Form



- 1. All requests being made, including those against master agreements, must be accompanied by this form.
- 2. All requests requiring City Council approval exceeding \$100,000 must be accompanied by this form.
- 3. Route ALL requests to the Division Director first and then the CFO for signature.
- 4. The CFO will route for signature to the City Administrator.

Today's Date: 9/6/23

Type of expenditure: Expense

Goods Services

Department: Wastewater Management Department

Approving Supervisor: Raylene Gennett

Amount of Proposed Expenditure: \$114,473.00

Is this against a master agreement? If yes, please provide the number:

Funding Source Department - 4320 30210 35141 54101 99999

Please verify correct funding sources. Indicate breakdown if more than one funding source.

Why is this expenditure necessary now?

Construction grants are available but have an application deadline. This audit is the first step.

What are the impacts if expenses are deferred?

The project would have to proceed without grant assistance.

What alternative resources have been considered?

The overall construction contract will cover the cost of the audit if we proceed.

Description of the goods or service and any additional information?

This is a financial feasibility audit (30% design).

Person Submitting Form/Contact: Frederic N Brown
Frederic N Brown (Sep 6, 2023 14:29 PDT)

Division Director:

Marlene Faust

CFO Signature:

Tonya Wallace

City Administrator Signature:

Garrett Jones (Sep 7, 2023 11:52 PDT)

Additional Comments:












Expenditure Control Form 2023.pdf


Final Audit Report

2023-09-07

Created:	2023-09-06
By:	Heather Barnhart (hbarnhart@spokanecity.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAqv5dT3gFaNbFB9y9Y7GwirRpFcBNhRGM

"Expenditure Control Form 2023.pdf" History

-  Document created by Heather Barnhart (hbarnhart@spokanecity.org)
2023-09-06 - 9:26:16 PM GMT- IP address: 174.215.123.187
-  Document emailed to fbrown@spokanecity.org for signature
2023-09-06 - 9:26:57 PM GMT
-  Email viewed by fbrown@spokanecity.org
2023-09-06 - 9:27:52 PM GMT- IP address: 198.1.39.252
-  Signer fbrown@spokanecity.org entered name at signing as Frederic N Brown
2023-09-06 - 9:29:04 PM GMT- IP address: 198.1.39.252
-  Document e-signed by Frederic N Brown (fbrown@spokanecity.org)
Signature Date: 2023-09-06 - 9:29:06 PM GMT - Time Source: server- IP address: 198.1.39.252
-  Document emailed to Marlene Feist (mfeist@spokanecity.org) for signature
2023-09-06 - 9:29:07 PM GMT
-  Email viewed by Marlene Feist (mfeist@spokanecity.org)
2023-09-06 - 10:26:04 PM GMT- IP address: 155.190.3.6
-  Document e-signed by Marlene Feist (mfeist@spokanecity.org)
Signature Date: 2023-09-06 - 10:26:32 PM GMT - Time Source: server- IP address: 155.190.3.6
-  Document emailed to Tonya Wallace (twallace@spokanecity.org) for signature
2023-09-06 - 10:26:33 PM GMT
-  Email viewed by Tonya Wallace (twallace@spokanecity.org)
2023-09-06 - 10:38:53 PM GMT- IP address: 198.1.39.252
-  Document e-signed by Tonya Wallace (twallace@spokanecity.org)
Signature Date: 2023-09-06 - 10:39:07 PM GMT - Time Source: server- IP address: 198.1.39.252

 Document emailed to Garrett Jones (gjones@spokanecity.org) for signature

2023-09-06 - 10:39:08 PM GMT

 Email viewed by Garrett Jones (gjones@spokanecity.org)

2023-09-07 - 2:02:31 AM GMT- IP address: 104.28.116.107

 Document e-signed by Garrett Jones (gjones@spokanecity.org)

Signature Date: 2023-09-07 - 6:52:23 PM GMT - Time Source: server- IP address: 198.1.39.252

 Agreement completed.

2023-09-07 - 6:52:23 PM GMT

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	RPWRF
Contact Name	Fred Brown
Contact Email & Phone	fbrown@spokanecity.org
Council Sponsor(s)	CM Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Renewable Natural Gas Investment Grade Audit
Summary (Background) *use the Fiscal Impact box below for relevant financial information	The wastewater treatment plant digesters produce a biological gas product that could be treated and converted into renewable natural Gas (RNG). The consulting firm (McKinstry Essention, LLC) will conduct an audit (30% design) to determine the financial feasibility of producing RNG and selling it to the local natural gas utility company.
Proposed Council Action	Consent Agenda September 18th
Fiscal Impact	
Total Cost: <u>\$114,473.00</u>	
Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
Funding Source <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring	
Specify funding source: Click or tap here to enter text.	
Expense Occurrence <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring	
Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? There will be no disproportionate impacts to historically excluded communities.	
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: The proposed expenditure is for critical utility infrastructure.	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? This audit will determine what equipment is necessary to produce RNG and how much it costs to purchase and install. The audit will also estimate a return of investment timeline to determine the financial feasibility of proceeding.	
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 is through the WA state Energy Savings Performance Contracting (ESPC) allowed under WA RCW 39.359(a) and through the cooperative purchasing Contract #220104, with The Interlocal Purchasing System (TIPS).	



City of Spokane
PERSONAL SERVICE AGREEMENT
Title: **INVESTMENT GRADE AUDIT –
RENEWABLE NATURAL GAS**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **McKINSTRY ESSENTION, LLC.**, whose address is 510 East Riverside Avenue, Suite 510, Spokane Valley, Washington 99202 as (“Company”), individually hereafter referenced as a “Party”, and together as the “Parties”.

The parties agree as follows:

1. PERFORMANCE.

The Company shall perform an Investment Grade Audit Proposal regarding Renewable Natural Gas using Washington State’s Energy Savings Performance Contracting (ESPC) allowed under Washington RCW 39.35 and through cooperative purchasing contract #220104 with The Interlocal Purchasing System (TIPS), which is attached as **Exhibit B**, along with McKinstry Essention, LLC’s., proposal dated August 3, 2023. In the event of a conflict between these documents and this City Contract, the terms of this contract will control.

2. TERM OF AGREEMENT.

The term of this Agreement begins on September 1, 2023, and shall run through December 31, 2024, unless amended by written agreement or terminated earlier under the provisions of this Agreement.

3. COMPENSATION / PAYMENT.

Total compensation for Company’s services under this Agreement shall not exceed **ONE HUNDRED FOURTEEN THOUSAND FOUR HUNDRED SEVENTY-THREE AND NO/100 DOLLARS (\$114,473.00)**, unless modified by a written amendment to this Agreement.

The Company shall submit its applications for payment to Riverside Park Water Reclamation Facility, 4401 North Aubrey L. White Parkway, Spokane, Washington 99205. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

4. TAXES, FEES AND LICENSES.

A. Company 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 Company’s sole responsibility to monitor and determine changes or

the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.

- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

5. 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 Company shall be responsible for contacting the State of Washington Business License Services at 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.

6. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.

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

7. 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.

8. INSURANCE.

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

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

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

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

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 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 forty-five (45) 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.

10. DEBARMENT AND SUSPENSION.

The Company has provided its certification (**see attached Exhibit A**) 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.

11. AUDIT.

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

12. ASSIGNMENT AND SUBCONTRACTING.

The Company 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 Company shall incorporate by reference this Agreement, except as otherwise provided. The Company shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Company from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

13. TERMINATION.

Either party may terminate this Agreement, with or without cause, by sixty (60) 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.

14. STANDARD OF PERFORMANCE.

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

15. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Company shall be safeguarded by the Company. The Company shall make such data, documents and files available to the City upon the City's request. If the City's use of the Company's records or data is not related to this project, it shall be without liability or legal exposure to the Company.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

16. ANTI KICK-BACK.

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

17. MISCELLANEOUS PROVISIONS.

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Company, 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 Company shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Company after the time the same shall

have become due nor payment to the Company for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Company. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this 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.

McKINSTRY ESSENTION, LLC.

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 Response and Scope of Work dated August 3, 2023, along with the TIPS Vendor Agreement re RFQ 220104.

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.

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

EXHIBIT B

TIPS VENDOR AGREEMENT

Between McKinstry Essention, LLC and
(Insert Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS), a Department of Texas Education Service Center Region 8 for **TIPS RFQ 220104 Energy Savings Performance Contract**

General Information

The Vendor Agreement (“Agreement”) made and entered into by and between The Interlocal Purchasing System (hereinafter “TIPS”) a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686 and the TIPS Vendor. This Agreement consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth shall control unless otherwise agreed by the parties in writing and by signature and date on the attachment.

A Purchase Order (“PO”), Agreement or Contract is the TIPS Member’s approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed between the Vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some, but not all, of the possible addendums.

Terms and Conditions

Freight

All quotes to Members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating “No Charge”, “\$0”, “included in price” or other similar indication. Otherwise, all shipping, freight or delivery charges shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member unless alternative shipping terms are agreed by TIPS as a result of the proposal award.

Warranty Conditions

All new supplies equipment and services shall include **manufacturer's minimum standard warranty** unless otherwise agreed to in writing. Vendor shall be legally permitted to sell all products offered for sale to TIPS Members if the offering is included in the Request for Proposal (“RFP”) category. All goods proposed and sold shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.

Agreements

Agreements for purchase will normally be put into effect by means of a contract, agreement, or purchase order(s) executed by authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used at the Member's discretion. Vendor accepts and understands that when a purchase order or similar purchase document is sent from a customer through TIPS to the Vendor, TIPS is recording the purchase and verifying whether the purchase is within the parameters of the TIPS Contract only. Vendor agrees that TIPS is not a legal party to the purchase order or similar purchase document and TIPS is not responsible for identifying fraud, mistakes, or misrepresentations for the specific order. Vendor agrees that any purchase order or similar purchase document issued from a customer to Vendor, even when processed through TIPS, constitutes a legal contract between the customer and Vendor only. A Vendor that accepts a purchase order or similar purchase document and fulfills an order, even when processed through TIPS, is representing that the vendor has carefully reviewed the purchase order or similar purchase document for legality, authenticity, and accuracy.

Tax exempt status

Most TIPS Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the TIPS Member shall apply.

Assignments of Agreements

No assignment of this Agreement may be made without the prior notification of TIPS. Written approval of TIPS shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

Disclosures

- Vendor and TIPS affirm that he/she, or any authorized employees or agents, has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
- The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

Term of Agreement and Renewals

The Agreement with TIPS is for approximately **five (5)** years with an option for renewal for an additional **one (1)** consecutive **year**. If TIPS offers the renewal extension year, the Vendor will be notified by email to the primary contact of the awarded Vendor and shall be deemed accepted by the Vendor unless the awarded Vendor notifies TIPS of its objection to the additional term. TIPS may or may not exercise the available extension(s) provided in the original solicitation beyond the base **five-year** term. Whether or not to offer the extension is at the sole discretion of TIPS.

“Start Date” for Term Calculation Purposes Only: Regardless of actual award/effective date of Contract, for Agreement “term” calculation purposes only, the Agreement “start date” is the last day of the month that Award Notifications are anticipated as published in the Solicitation

Example: *If the anticipated award date published in the Solicitation is March 24, 2022 but extended negotiations delay award until June 27, 2022 The end date of the resulting initial “five-year” term Agreement, (which is subject to an extension(s)) will still be March 31, 2027.*

“Termination Date”: The scheduled Agreement “termination date” shall be the last day of the month of the month of the Original Solicitation’s Anticipated Award Date plus **five years**.

Example: *If the original term is approximately five years, and the solicitation provides an anticipated award date of March 24, 2022, the expiration date of the original five-year term shall be May 31, 2027.*

Extensions: Any extensions of the original term shall begin on the next day after the day the original term expires.

Example Following the Previous Example: *If TIPS offers a one-year extension, the expiration of the extended term shall be March 31, 2028.*

TIPS may offer to extend Vendor Agreements to the fullest extent the original Solicitation permits but is not required to do so.

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order, executed Agreement or other written instruction issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties.

Invoices

Each invoice or pay request shall include the TIPS Member’s purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Payments

The TIPS Member will make payments directly to the Vendor, the Vendor Assigned Dealer or as agreed by the Vendor and the TIPS Member after receiving invoice and in compliance with applicable payment

statute(s), whichever is the greater time or as otherwise provided by an agreement of the parties.

Pricing

All pricing submitted to TIPS' Members shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer.

Participation Fees and Reporting of Sales to TIPS by Vendor

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the Solicitation. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Fees are due on all TIPS purchases reported by either Vendor or Member. Fees are due to TIPS upon payment by the Member to the Vendor, Reseller or Vendor Assigned Dealer. Vendor, Reseller or Vendor Assigned Dealer agrees that the participation fee is due to TIPS for all Agreement sales immediately upon receipt of payment including partial payment, from the Member Entity and must be paid to TIPS at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently, or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS. Thus, when an awarded Vendor, Reseller or Vendor Assigned Dealer receives any amount of payment, even partial payment, for a TIPS sale, the legally effective fee for that amount is immediately due to TIPS from the Vendor and fees due to TIPS should be paid at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently. **Fees for this RFQ is 1% of the sale price paid by the TIPS Member entity.**

Reporting of Sales to TIPS by Vendor

Vendor is required to report all sales under the TIPS contract to TIPS. When a public entity initiates a purchase with a TIPS Awarded Vendor, if the Member inquires verbally or in writing whether the Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether or not the Member is seeking a TIPS purchase. Once verified, the Vendor must include the TIPS Contract number on any communications and related sales documents exchanged with the TIPS Member entity. To report sales, the Vendor must login to the TIPS Vendor Portal online at https://www.tips-usa.com/vendors_form.cfm and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. Any overpayment of participation fees to TIPS by a Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. It is the Vendor's responsibility to identify which sales are TIPS Agreement sales and pay the correct participation fee due for TIPS Agreement sales. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date of overpayment will be non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline to notify if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC REGION 8.** Per Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

State of Texas Franchise Tax

By signature hereon, the Vendor hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a Purchase Order or contract modification occurs between the Vendor and the TIPS Member, TIPS must be notified within five (5) business days of receipt of change order.

Termination for Convenience of TIPS Agreement Only

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded Vendor may terminate the agreement with ninety (90) days prior written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the TIPS Member customer pursuant to this agreement. TIPS Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

TIPS Member Purchasing Procedures

Usually, purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and should indicate on the order that the purchase is per the applicable TIPS Agreement Number. Orders are typically emailed to TIPS at tipspo@tips-usa.com.

- Awarded Vendor delivers goods/services directly to the participating member.
- Awarded Vendor invoices the participating TIPS Member directly.
- Awarded Vendor receives payment directly from the participating member.

- Fees are due to TIPS upon payment by the Member to the Vendor. Vendor agrees to pay the participation fee to TIPS for all Agreement sales upon receipt of payment including partial payment, from the Member Entity or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS.

Licenses

Awarded Vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded Vendor. Awarded Vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded Vendor whose license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded Vendor sells or transfers all assets, rights or the entire portion of the assets or rights required to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. TIPS will consider Contract Assignments on a case by case basis. TIPS must be notified within five (5) business days of the transfer of assets or rights.

Site Requirements (*only when applicable to service or job*)

Cleanup: When performing work on site at a TIPS Member's property, awarded Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded Vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded Vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions: For work to be performed at schools, awarded Vendor agrees that no employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the TIPS Member. Awarded Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion. Awarded Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge. **Safety measures:** Awarded Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded Vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Safety Measures

Awarded Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes or policies.

Marketing

Awarded Vendor agrees to allow TIPS to use their name and logo within TIPS website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. The Vendor may submit an acceptable use directive for Vendor's names and logos with which TIPS agrees to comply. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to TIPS@TIPS-USA.COM.

Supplemental Agreements

The TIPS Member entity participating in the TIPS Agreement and awarded Vendor may enter into a separate Supplemental Agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement such as but not limited to, invoice requirements, ordering requirements, specialized delivery, etc. Any Supplemental Agreement or contract developed as a result of this Agreement is exclusively between the TIPS Member entity customer and the Vendor. TIPS, its agents, TIPS Members and employees not a party to the Supplemental Agreement with the TIPS Member customer, shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a Vendor submitting a Proposal requires TIPS and/or TIPS Member to sign an additional agreement, those agreements shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS' Agreement with Vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS review and approval may be at any time during the life of this Vendor Agreement. TIPS permits TIPS Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement so long as they do not materially conflict with this Agreement.

Survival Clause

All applicable sales, leases, Supplemental Agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

Legal obligations

It is the responding Vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in the applicable Solicitation that resulted in this Vendor Agreement and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the

accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing or TIPS transaction documentation with TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third- party auditing firm to investigate any possible non- compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to Region 8 ESC or TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the TIPS Member.

Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Choice of Law

The Agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Venue, Jurisdiction and Service of Process

Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue for any dispute resolution process, other than litigation, between TIPS and the Vendor shall be located in Camp or Titus County, Texas.

Project Delivery Order Procedures

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded Vendor under this Agreement when the TIPS Member desires goods or services awarded to the Vendor. Notification may occur via phone, the web, courier, email, fax, or in person. Upon notification of a pending request, the awarded Vendor shall acknowledge the TIPS

Member's request as soon as possible, but must make contact with the TIPS Member within two working days.

Status of TIPS Members as Related to This Agreement

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

Vendor's Resellers as Related to This Agreement

Vendor's Named Resellers ("Resellers") under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized Vendor's Resellers under this Agreement are the responsibility of the awarded Vendor. If Resellers fail to report sales to TIPS under your Agreement, the awarded Vendor is responsible for their contractual failures and shall be billed for the fees. The awarded Vendor may then recover the fees from their named reseller.

Support Requirements

If there is a dispute between the awarded Vendor and TIPS Member, TIPS or its representatives may, at TIPS sole discretion, assist in conflict resolution if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded Vendor's TIPS project files, documentation and correspondence related to the requesting TIPS Member's order. If there are confidentiality requirements by either party, TIPS shall comply to the extent permitted by law.

Incorporation of Solicitation

The TIPS Solicitation which resulted in this Vendor Agreement, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, are hereby incorporated by reference into this Agreement as if copied verbatim.

SECTION HEADERS OR TITLES

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

STATUTORY REQUIREMENTS

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

You certify that your company is not listed on and does not and will not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within three (3) business day of the change by a letter on Vendor's letterhead from and signed by an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

Attention: General Counsel
ESC Region 8/The Interlocal Purchasing System (TIPS)
4845 Highway 271 North
Pittsburg, TX, 75686
And by an email sent to bids@tips-usa.com

Insurance Requirements

The undersigned Vendor agrees to maintain the below minimum insurance requirements for TIPS Contract Holders:

General Liability	\$1,000,000 each Occurrence/ Aggregate
Automobile Liability	\$300,000 Includes owned, hired & non-owned
Workers' Compensation	Statutory limits for the jurisdiction in which the Vendor performs under this Agreement.
Umbrella Liability	\$1,000,000

When the Vendor or its subcontractors are liable for any damages or claims, the Vendor's policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the Member. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

Special Terms and Conditions

- **Orders:** All Vendor orders received from TIPS Members must be emailed to TIPS at tips@tips-usa.com. Should a TIPS Member send an order directly to the Vendor, it is the Vendor's responsibility to forward a copy of the order to TIPS at the email above within 3 business days and confirm its receipt with TIPS.
- **Vendor Encouraging Members to bypass TIPS agreement:** Encouraging TIPS Members to purchase directly from the Vendor or through another agreement, when the Member has requested using the TIPS cooperative Agreement or price, and thereby bypassing the TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.
- **Order Confirmation:** All TIPS Member Agreement orders are approved daily by TIPS and sent to the Vendor. The Vendor should confirm receipt of orders to the TIPS Member (customer) within 3 business days.
- **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing when effective. TIPS shall be notified when prices change in accordance with the award.

- **Back Ordered Products:** If product is not expected to ship within the time provided to the TIPS Member by the Vendor, the Member is to be notified within 3 business days and appropriate action taken based on customer request.

NOTE: It is always the Vendor's responsibility under the TIPS agreement to report all sales under the TIPS Agreement. When a public entity initiates a purchase with a TIPS Awarded Vendor, if the Member inquires verbally or in writing whether the Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether or not the Member is seeking a TIPS purchase. Once verified, the Vendor must include the TIPS Contract Number on all related quotes, invoices, and similar sales documents. It is the duty of the Vendor to submit documentation of all final purchases to TIPS for processing. This may only be done through the TIPS Vendor Portal or by emailing the sales documentation to TIPSP0@TIPS-USA.com, unless TIPS agrees to an alternative reporting method in writing. Failure to report a TIPS sale may result in termination of Vendor's TIPS Contract(s) and preclusion to responding to future solicitations.

The TIPS Vendor Agreement Signature Page is inserted here.

TIPS Vendor Agreement Signature Form

RFQ 220104 Energy Savings Performance Contracts

Company Name McKinstry Essention, LLC

Address 4201 Spring Valley Road, Suite 250

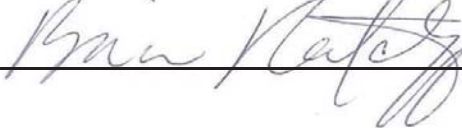
City Dallas State TX Zip 75244

Phone 972-532-4290 Fax 972-239-8835

Email of Authorized Representative BrianRa@mckinstry.com

Name of Authorized Representative Brian Ratcliff

Title Vice President - E&TS South


Signature of Authorized Representative 

Date 2/4/2021

TIPS Authorized Representative Name David Fitts

Title Executive Director

TIPS Authorized Representative Signature 

Approved by ESC Region 8 

Date 3/24/2022

NOTICE TO MEMBERS REGARDING ATTRIBUTE RESPONSES

TIPS VENDORS RESPOND TO ATTRIBUTE QUESTIONS AS PART OF TIPS COMPETITIVE SOLICITATION PROCESS. THE VENDOR'S RESPONSES TO ATTRIBUTE QUESTIONS ARE INCLUDED HEREIN AS "SUPPLIER RESPONSE." PLEASE BE ADVISED THAT DEVIATIONS, IF ANY, IN VENDOR'S RESPONSE TO ATTRIBUTE QUESTIONS MAY NOT REFLECT VENDOR'S FINAL ATTRIBUTE RESPONSE, WHICH IS SUBJECT TO NEGOTIATIONS PRIOR TO AWARD. PLEASE CONTACT THE TIPS OFFICE AT 866-839-8477 WITH QUESTIONS OR CONCERNS REGARDING VENDOR ATTRIBUTE RESPONSE DEVIATIONS. PLEASE KEEP IN MIND THAT TIPS DOES NOT PROVIDE LEGAL COUNSEL TO MEMBERS. TIPS RECOMMENDS THAT YOU CONSULT YOUR LEGAL COUNSEL WHEN EXECUTING CONTRACTS WITH OR MAKING PURCHASES FROM TIPS VENDORS.



220104 Addendum 1 McKinstry Essention LLC Supplier Response

Event Information

Number: 220104 Addendum 1
Title: Energy Savings Performance Contracts (ESPC)
Type: Request for Qualification
Issue Date: 1/6/2022
Deadline: 2/18/2022 03:00 PM (CT)
Notes:

IF YOU CURRENTLY HOLD TIPS CONTRACTS (170103) Energy Savings Performance Contracts ("170103") OR (200209) Energy Savings Performance Contracts ("200209"), YOU MUST RESPOND TO THIS SOLICITATION TO PREVENT LAPSE OF CONTRACT. THIS AWARDED CONTRACT WILL REPLACE YOUR EXPIRING TIPS CONTRACT.

Contact Information

Address: Region 8 Education Service Center
4845 US Highway 271 North
Pittsburg, TX 75686
Phone: +1 (866) 839-8477
Email: bids@tips-usa.com

McKinstry Essention LLC Information

Contact: Lindsay Garner
Address: 4201 Spring Valley Road, Suite 250
Dallas, TX 75244
Phone: (972) 532-4290
Fax: (972) 499-7949
Toll Free: (972) 532-4290
Email: LindsayG@mckinstry.com
Web Address: <http://www.mckinstry.com/>

By submitting your response, you certify that you are authorized to represent and bind your company.

Lindsay Garner

Signature

Submitted at 2/18/2022 8:39:05 AM

lindsayg@mckinstry.com

Email

Supplier Note

Thank you for this opportunity. Please reach out if you have any questions.

Requested Attachments

Agreement Signature Form

01. 220104 ESPC Agreement Signature Form_McKinstry Response.pdf

If you have not taken exception or deviation to the agreement language in the solicitation attributes, download the AGREEMENT SIGNATURE FORM from the "ATTACHMENTS" tab. This PDF document is a fillable form. Download the document to your computer, fill in the requested company information, print the file, SIGN the form, SCAN the completed and signed AGREEMENT SIGNATURE FORM, and upload here.

If you have taken exception to any of the agreement language and noted the exception in the deviations section of the attributes for the agreement, complete the AGREEMENT SIGNATURE FORM, but DO NOT SIGN until those deviations have been negotiated and resolved with TIPS management. Upload the unsigned form here, because this is a required document.

Confidentiality Claim Form

02. Confidentiality Claim Form_McKinstry Response.pdf

REQUIRED CONFIDENTIALITY FORM. Complete the form according to your company requirements, make any desired attachments and upload to the appropriate section under "Response Attachments" THIS FORM DETERMINES HOW ESC8/TIPS RESPONDS TO LEGAL PUBLIC INFORMATION REQUESTS.

Proposed Goods and Services

03. Proposed Goods and Services_McKinstry Response.pdf

Please upload one or more documents or sheets describing your offerings, line cards, catalogs, links to offerings OR list links to your offerings that illustrate the catalog of proposed lines of goods and or services you carry and offer under this proposal. It does not have to be exhaustive but should, at a minimum tell us what you are offering. It could be as simple as a sheet with your link to your online catalog of goods and services.

Reference Form

04. Reference Form_McKinstry Response.xlsx

The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

Current W-9 Tax Form

05. W-9 Form_McKinstry Response.pdf

You are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

Vendor Agreement

06. 220104 ESPC Vendor Agreement_McKinstry Response.pdf

The vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

OPTIONAL Information Requested

07. Optional Information Request – EEaaS_McKinstry Response.pdf

IF you agree to do so, Please upload the Optional Information Requested regarding ESaaS.

See attachment.

All Other Certificates

08. All Other Certificates_McKinstry Response.pdf

All Other Certificates (if applicable) must be scanned and uploaded. If vendor has more than one other certification scan into one document. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

Conflict of Interest Form CIQ- ONLY REQUIRED

09. Conflict of Interest_Not Applicable_McKinstry Response.pdf

IF A CONFLICT EXISTS PER THE INSTRUCTIONS

ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

Conflict of Interest Form for Vendors that are required to submit the form. The Conflict of Interest Form is included in the Base documents or can be found at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.

D/M/WBE Certification OPTIONAL

10. DMWBE Certification_Not Applicable_McKinstry Response.pdf

D/M/WBE Certification documentation may be scanned and uploaded if you desire to claim your status as one of the identified enterprises. (Disadvantaged Business Enterprise, Minority Business Enterprise and/or Woman Business Enterprise) If vendor has more than one certification scan into one document. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

Warranty

11. Warranty_McKinstry Response.pdf

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

Supplementary

12. Supplementary_McKinstry Response.pdf

Supplementary information may be scanned and uploaded. (Company information, brochures, catalogs, etc.) (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

Logo and Other Company Marks

13. Logo_McKinstry Response.jpg

If you desire, please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the Supplementary section or another non-required section under the "Response Attachment" tab. Preferred Logo

Format: 300 x 225 px - .png, .eps, .jpeg preferred

Certification of Corporate Offerer

14. Certification of Corporate Offerer_Not Applicable_McKinstry Response.pdf

Form- COMPLETE ONLY IF

OFFERER IS A CORPORATION

COMPLETE AND UPLOAD FORM IN ATTACHMENTS SECTION ONLY IF OFFERER IS A CORPORATION

Disclosure of Lobbying Activities

15. Disclosure of Lobbying Activities_Not Applicable_McKinstry Response.pdf

Standard Form LLL

ONLY IF you answered "I HAVE Lobbied per above" to attribute #66, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

Bid Attributes

1 Yes - No	Disadvantaged/Minority/Women Business Enterprise - D/M/WBE/Federal HUBZone (Required by some participating governmental entities). Vendor certifies that their firm is a D/M/WBE or HUBZone? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section. <input type="text" value="NO"/>
2 Yes - No	Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at https://comptroller.texas.gov/purchasing/vendor/hub/ . Proof may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section. <input type="text" value="No"/>
3 Yes - No	The Vendor can provide services and/or products to all 50 US States? <input type="text" value="No"/>
4 States Served:	If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX) <input type="text" value="AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY"/>
5 Company and/or Product Description:	This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.) <input type="text" value="For more than 60 years, McKinstry has helped transform the way the industry engineers, constructs and cares for the built environment, delivering some of the smartest, most efficient buildings. With a breadth of services across engineering, construction, facilities and technology we have the unique ability to impact and optimize every element of the built environment. The McKinstry family of companies provides full design, build, operate, and maintain (DBOM) services as well as ESCO services. McKinstry's professional staff and trades people deliver a variety of services including energy efficiency services and finance, issue management, and onsite facility management through McKinstry Essention, LLC; and mechanical engineering, construction, architectural metals, and 24/7 maintenance through McKinstry Co, LLC. We advocate collaborative and sustainable solutions designed to ensure improved systems efficiency, occupant comfort, reduce facility operational costs and optimize client profitability for the life of their building and systems. We have a wealth of experience with renewable energy systems, and offer our clients vendor-neutral solutions."/>
6 Primary Contact Name	Primary Contact Name <input type="text" value="Lindsay Garner"/>
7 Primary Contact Title	Primary Contact Title <input type="text" value="Senior Business Operations Analyst"/>
8 Primary Contact Email	Primary Contact Email <input type="text" value="LindsayG@mckinstry.com"/>

9	Primary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="2142086473"/>
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10	Primary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="9722398835"/>
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11	Primary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="2142086473"/>
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12	Secondary Contact Name Secondary Contact Name <input type="text" value="Fawn Staerkel"/>
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13	Secondary Contact Title Secondary Contact Title <input type="text" value="Director of Strategic Vertical Markets"/>
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14	Secondary Contact Email Secondary Contact Email <input type="text" value="FawnS@mckinstry.com"/>
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15	Secondary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="2069701918"/>
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16	Secondary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="9724997949"/>
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17	Secondary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="4806944810"/>
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18	Admin Fee Contact Name Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS. <input type="text" value="Lindsay Garner"/>
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19	Admin Fee Contact Email Admin Fee Contact Email LindsayG@mckinstry.com
20	Admin Fee Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 2142086473
21	Purchase Order Contact Name Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS. Lindsay Garner
22	Purchase Order Contact Email Purchase Order Contact Email LindsayG@mckinstry.com
23	Purchase Order Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 2142086473
24	Company Website Company Website (Format - www.company.com) http://www.mckinstry.com
25	Entity D/B/A's and Assumed Names Please identify all of your entity's assumed names and D/B/A's. Please note that you will be identified publicly by the legal name under which you responded to this solicitation unless you organize otherwise with TIPS after award. McKinstry Essention, LLC
26	Primary Address Primary Address 4201 Spring Valley Road, Suite 250
27	Primary Address City Primary Address City Dallas
28	Primary Address State Primary Address State (2 Digit Abbreviation) TX
29	Primary Address Zip Primary Address Zip 75244

30 Search Words:

Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)

Energy services, performance contracting, building automation, green building design, renewable energy, facility condition assessment, construction solutions, commissioning/start-up, re-commissioning, HVAC solutions, energy retrofit, retro-commissioning, carbon neutral, energy as a service, design build, central utility plant, combined heat and power, energy master plan, sustainability master plan, net zero master plan, carbon neutral master plan

31 Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?

Most of our members receive Federal Government grants or other funding and they make up a significant portion of their budgets. The Members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that include provisions from the federal regulations in 2 CFR part 200, etc. Your answers will determine if your award will be designated as eligible for TIPS Members to utilize federal funds with your company.

Do you want TIPS Members to be able to spend Federal funds, at the Member's discretion, with you?

Yes

32 Yes - No

Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:

(A) has its principal place of business in Texas;

OR

(B) employs at least 500 persons in Texas?

This question is required as a data gathering function for information to our members making purchases with awarded vendors. It does not affect scoring with TIPS.

No

33 Company Residence (City)

Vendor's principal place of business is in the city of?

Seattle

34 Company Residence (State)

Vendor's principal place of business is in the state of?

Washington

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TIPS Administration Fee

By submitting a proposal, I agree that all pricing submitted to TIPS shall include the Administration Fee, as designated in the solicitation or as otherwise agreed in writing which shall be remitted to TIPS by the Vendor, or the vendor's named resellers, and as agreed to in the Vendor Agreement. I agree that the fee shall not and will not be added by the Vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.

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Yes - No

Vendor agrees to remit to TIPS the required administration fee or, if resellers are named, Vendor agrees to guarantee the fee remittance by or for the reseller named by the vendor?

TIPS/ESC Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.

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TIPS Administration Fee Paid by Vendor - Not Charged Separately to Customer

Vendor understands and agrees that it owes TIPS a TIPS Administration Fee (published in the RFP/RCSP document) on every TIPS sale made under an awarded TIPS Contract. Vendor further understands and agrees that Vendor shall submit pricing to Member entity which includes and accounts for the TIPS Administration Fee and **shall never** separately charge the TIPS Member Customer the TIPS fee or add the TIPS Administration Fee line item to an invoice or similar purchase document. Submission of this proposal is Vendor's certification that Vendor agrees to this mandatory term.

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Years in Business as Proposing Company

Years in business as proposing company?

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Resellers:

Does the vendor have resellers that it will name under this contract? Resellers are defined as other companies that sell your products under an agreement with you, the awarded vendor of TIPS.

EXAMPLE: BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller.

(If applicable, Vendor should add all Authorized Resellers within the TIPS Vendor Portal upon award).

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Right of Refusal

The proposing vendor has the right not to sell under the awarded agreement with a TIPS member at vendor's discretion unless required by law.

4 **NON-COLLUSIVE BIDDING CERTIFICATE**

1 By submission of this bid or proposal, the Bidder certifies that:

- 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;
- 2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor:
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
- 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

4 **CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ - Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?**

2 Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO

If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS. The Form CIQ is one of the attachments to this solicitation.

There is an optional upload for this form provided if you have a conflict and must file the form

4 **Filing of Form CIQ**

3 If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above?

4 **Regulatory Standing**

4 I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question.

4 **Regulatory Standing**

5 Regulatory Standing explanation of no answer on previous question.

4 **Antitrust Certification Statements (Tex. Government Code § 2155.005)**

6 By submission of this bid or proposal, the Bidder certifies that:

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

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Suspension or Debarment Instructions

Instructions for Certification:

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participants,” “person,” “primary covered transaction,” “principal,” “proposal” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

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Suspension or Debarment Certification

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

Yes

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Non-Discrimination Statement and Certification

In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

(Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities)

All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender.

Not a negotiable term. Failure to agree by answering YES will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

Yes, I certify (Yes)

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2 CFR PART 200 Contract Provisions Explanation

Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members:

The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

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1 **2 CFR PART 200 Contracts**

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?

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2 **2 CFR PART 200 Termination**

Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

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3 **2 CFR PART 200 Clean Air Act**

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

5 4 2 CFR PART 200 Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

5 5 2 CFR PART 200 Federal Rule

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$250,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify that it is in compliance with the Clean Air Act?

5 6 2 CFR PART 200 Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

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2 CFR PART 200 Rights to Inventions

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor agree?

Yes

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2 CFR PART 200 Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of 2 CFR Part 200.322, “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does vendor agree?

Yes

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2 CFR PART 200 Ban on Foreign Telecommunications

Federal grant funds may not be used to purchase equipment, services, or systems that use “covered telecommunications” equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications” means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use “covered telecommunications”, as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor agree?

Yes

6 2 CFR PART 200 Contract Cost & Price

For contracts more than the simplified acquisition threshold currently set at \$250,000, a TIPS Member may, in very rare circumstances, be required to negotiate profit as a separate element of the price pursuant to 2 C.F.R. 200.324(b). Under those circumstances, Vendor agrees to provide information and negotiate with the TIPS Member regarding profit as a separate element of the price. However, Vendor certifies that the total price charged by the Vendor shall not exceed the Vendor's TIPS pricing and pricing terms proposed.

Does Vendor Agree?

6 1 FEMA Fund Certifications

Submission of this proposal is Vendor's certification that Vendor agrees to this term. Vendor certifies that **IF and when** Vendor accepts a TIPS purchase paid for in full or part with FEMA funds, Vendor certifies that:

(1) Vendor agrees to provide the TIPS Member, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to and rights to reproduce 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. The Vendor agrees to provide the FEMA Administrator or an authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. Vendor acknowledges and agrees that no language in this contract or the contract with the TIPS Member is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) The Vendor shall not use the Department of Homeland Security's seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(3) The Vendor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(4) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

(5) The Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Vendor's actions pertaining to this contract.

6 2 Certification of Compliance with the Energy Policy and Conservation Act

When appropriate and to the extent consistent with the law, Vendor certifies that it will comply with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq; 49 C.F.R. Part 18) and any mandatory standards and policies relating to energy efficiency which are contained in applicable state energy conservation plans issued in compliance with the Act.

Does Vendor agree?

**6
3** **Certification Regarding Lobbying**

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. 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.

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

(1) 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 any 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 a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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 grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

**6
4** **If you answered "I HAVE lobbied" to the above Attribute Question**

If you answered "I HAVE lobbied" to the above Attribute question, you must download the Lobbying Report "Standard From LLL, disclosure Form to Report Lobbying" which includes instruction on completing the form, complete and submit it in the Response Attachments section as a report of the lobbying activities you performed or paid others to perform.

**6
5** **Subcontracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.

6 6 ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?

ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement,

do you agree to comply with the following federal requirements?

Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

YES

6 7 Indemnification

The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

Yes, I Agree (Yes)

6 Remedies

8

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Do you agree to these terms?

6 Remedies Explanation of No Answer

9

7 Choice of Law

0

The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles. THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Do you agree to these terms?

7 Venue, Jurisdiction and Service of Process

1

Any proceeding, involving Region 8 ESC or TIPS, arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Any dispute resolution process other than litigation shall have venue in Camp County or Titus County Texas.

Do you agree to these terms?

**7
2** **Infringement(s)**

The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.

Do you agree to these terms?

Yes, I Agree

**7
3** **Infringement(s) Explanation of No Answer**

**7
4** **Contract Governance**

Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

Yes, I Agree (Yes)

**7
5** **Payment Terms and Funding Out Clause**

Payment Terms:

TIPS or TIPS Members shall not be liable for interest or late payment fees on past-due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

Do you agree to these terms?

Yes, I Agree (Yes)

7 Insurance and Fingerprint Requirements Information

6 Insurance

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

Fingerprint

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834 & 22.08341. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion:

- (1) will have continuing duties related to the contracted services; and
- (2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474.

See form in the next attribute to complete entitled:
Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

I certify that:

NONE (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

OR

SOME (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

None

7 **Texas Business and Commerce Code § 272 Requirements as of 9-1-2017**

8 SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES.

7 **Texas Government Code 2270 & 2271 Verification Form**

9 Texas Government Code 2270 & 2271 Verification Form

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2271 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Our entity further certifies that it is is not listed on and we do not do business with companies prohibited by Texas Government Code 2270 or that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

I swear and affirm that the above is true and correct.

8 **Logos and other company marks**

0 Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Potential uses of company logo:

- * Your Vendor Profile Page of TIPS website
- * Potentially on TIPS website scroll bar for Top Performing Vendors
- * TIPS Quarterly eNewsletter sent to TIPS Members
- * Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)

8
1 **Solicitation Deviation/Compliance**

Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?

8
2 **Solicitation Exceptions/Deviations Explanation**

If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.

TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.

8
3 **Agreement Deviation/Compliance**

Does the vendor agree with the language in the Vendor Agreement?

8
4 **Agreement Exceptions/Deviations Explanation**

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

8
5 **Felony Conviction Notice**

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.

Select A., B. or C.

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.

86 If you answered C. My Firm is owned or operated by a felon to the previous question, you are **REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.**

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)
2. The named person's role in the firm, and
3. Details of Conviction(s).

87 **Required Confidentiality Claim Form**

Required Confidentiality Claim Form

This completed form is required by TIPS. By submitting a response to this solicitation you agree to download from the "Attachments" section, complete according to the instructions on the form, then upload the completed form, with any confidential attachments, if applicable, to the "Response Attachments" section titled "Confidentiality Form" in order to provide to TIPS the completed form titled, "CONFIDENTIALITY CLAIM FORM". **THIS REQUIRED PROCESS IS THE ONLY WAY TO DEEM PROPOSAL DOCUMENTATION CONFIDENTIAL ANY OTHER CONFIDENTIAL DESIGNATION WILL BE DISREGARDED UNLESS THE DOCUMENT IS IDENTIFIED BY AND ATTACHED TO THE REQUIRED FORM.** By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for an award, until TIPS has an accurate, completed form from you.

Read the form carefully before completing and if you have any questions, email bids@tips-usa.com.

88 **Member Access to Vendor Proposal**

Notwithstanding any other information provided in this solicitation or Vendor designation of certain documentation as confidential or proprietary, Vendor's acceptance of this TIPS Contract constitutes Vendor's consent to the disclosure of Vendor's comprehensive proposal, including any information deemed confidential or proprietary, **to TIPS Members**. The proposing Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or any other party. By submitting this proposal, Vendor certifies the foregoing.

89 **Choice of Law clauses with TIPS Members**

If the vendor is awarded a contract with TIPS under this solicitation, the vendor agrees to make any Choice of Law clauses in any contract or agreement entered into between the awarded vendor and with a TIPS member entity to read as follows: "Choice of law shall be the laws of the state where the customer resides" or words to that effect.

90 **Venue of dispute resolution with a TIPS Member**

In the event of litigation or use of any dispute resolution model when resolving disputes with a TIPS member entity as a result of a transaction between the vendor and TIPS or the TIPS member entity, the Venue for any litigation or other agreed upon model shall be in the state and county where the customer resides unless otherwise agreed by the parties at the time the dispute resolution model is decided by the parties.

9 1 Indemnity Limitation with TIPS Members

Texas and other states restrict by law or state Constitution the ability of a governmental entity to indemnify others. TIPS requires that any contract entered into between a vendor and TIPS or a TIPS Member as a result of an award under this Solicitation limit the requirement that the Customer indemnify the Vendor by either eliminating any such indemnity requirement clauses in any agreements, contracts or other binding documents **OR** by prefacing all indemnity clauses required of TIPS or the TIPS Member entity with the following: "To the extent permitted by the laws or the Constitution of the state where the customer resides, ".

Agreement is a required condition to award of a contract resulting from this Solicitation.

9 2 Arbitration Clauses

Except for certain circumstances, TIPS forbids a mandatory arbitration clause in any contract or agreement entered into between the awarded vendor with TIPS or a TIPS member entity. Does the vendor agree to exclude any arbitration requirement in any contracts or agreement entered into between TIPS or a TIPS member entity through an awarded contract with TIPS?

9 3 Required Vendor Sales Reporting

By responding to this Solicitation, you agree to report to TIPS all sales made under any awarded Agreement with TIPS. Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. If awarded, you will be provided access to the Vendor Portal. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the Vendor Portal User Guide will walk you through the process of reporting sales to TIPS. Please refer to the TIPS Accounting FAQ's for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

9 4 Upload of Current W-9 Required

Please note that you are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

9 5 CERTIFICATION REGARDING BOYCOTTING CERTAIN ENERGY COMPANIES (Texas law as of September 1, 2021)

By submitting a proposal to this Solicitation, you certify that you agree, when it is applicable, to the following required by Texas law as of September 1, 2021:

If (a) company is not a sole proprietorship; (b) company has ten (10) or more full-time employees; and (c) this contract has a value of \$100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required. Pursuant to Tex. Gov't Code Ch. 2274 of SB 13 (87th session), the company hereby certifies and verifies that the company, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, does not boycott energy companies and will not boycott energy companies during the term of the contract. For purposes of this contract, the term "company" shall mean an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit. The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." See Tex. Gov't Code § 809.001(1).

**9
6 CERTIFICATION PROHIBITING DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES
(Texas law as of September 1, 2021)**

By submitting a proposal to this Solicitation, you certify that you agree, when it is applicable, to the following required by Texas law as of September 1, 2021:

If (a) company is not a sole proprietorship; (b) company has at least ten (10) full-time employees; (c) this contract has a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the contract is not excepted under Tex. Gov't Code § 2274.003 of SB 19 (87th leg.); and (e) governmental entity has determined that company is not a sole-source provider or governmental entity has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Tex. Gov't Code Ch. 2274 of SB 19 (87th session), the company hereby certifies and verifies that the company, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association. For purposes of this contract, "discriminate against a firearm entity or firearm trade association" shall mean, with respect to the entity or association, to: "(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association. See Tex. Gov't Code § 2274.001(3) of SB 19. "Discrimination against a firearm entity or firearm trade association" does not include: "(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association." See Tex. Gov't Code § 2274.001(3) of SB 19.

**9
7 CERTIFICATION REGARDING CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH
CRITICAL INFRASTRUCTURE (Texas law as of September 1, 2021)**

By submitting a proposal to this Solicitation, you certify that you agree to the following required by Texas law as of September 1, 2021:

Proposing Company is prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant to the company direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the Proposing Company for product warranty and support purposes. Company, certifies that neither it nor its parent company nor any affiliate of company or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (3) headquartered in China, Iran, North Korea, Russia, or a designated country. For purposes of this contract, "critical infrastructure" means "a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility." See Tex. Gov't Code § 2274.0101(2) of SB 1226 (87th leg.). The company verifies and certifies that company will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

**9
8 Acknowledgement**

By submitting this proposal, Vendor certifies that it has read, examined, and understands all portions of this solicitation including but not limited to all attribute questions, attachments, solicitation documents, bid notes, and the Vendor Agreement(s). Vendor certifies that, if found to be necessary by the proposing vendor, vendor has sought the advice of counsel in understanding all portions of the solicitation.

AMENDED

OPTIONAL INFORMATION REQUESTED

It has come to my attention that the correct name for the below process is Energy Efficiency as a Service (EEaaS)

I have modified the below document to use this commonly accepted term.

Additional Information Requested Regarding Energy Efficiency ~~Savings~~ as a Service (ESaaS) (EEaaS)

Vendors ***are not*** required to respond to the additional request for information related to Energy Efficiency ~~Savings~~ as a Service (ESaaS) (EEaaS) and qualifications to provide same.

Failure to respond to this additional information request for Energy Efficiency ~~Savings~~ as a Service (ESaaS) (EEaaS) will have **NO BEARING** on the evaluation of your qualifications to provide offer Energy Savings Performance Contracting (ESPC).

If it is later determined that governmental procurement of Energy Efficiency ~~Savings~~ as a Service (ESaaS) (EEaaS) is permitted, TIPS will timely issue a legally sufficient solicitation to address that need. All information gathered here will be used to aid TIPS in the solicitation process for contracts with companies that provide ESaaS.

Texas statutes do not specifically address **Energy Efficiency ~~Savings~~ as a Service (ESaaS) (EEaaS)** however TIPS recognizes that it is an option offered by many vendors that also offer Energy Savings Performance Contracting (ESPC).

Please provide in a separate sheet(s) or document if your company offers ~~ESaaS~~ EEaaS and how that service is offered to governmental entities. Please provide your detailed information related to your company's qualifications and your process as it relates to ~~ESaaS~~ EEaaS and governmental customers. Please list existing governmental customers currently contracted with you for ~~ESaaS~~ EEaaS. Please provide details on how this model is structured, how it differs from ESPC and how a governmental entity would benefit from ~~ESaaS~~ EEaaS as it compares with ESPC.

You may utilize the Confidentiality Form included in the RFQ to declare this information confidential if you choose to. Final determination of confidentiality of any information provided to TIPS as a department of the Texas governmental entity Texas Education Service Center Region 8 is at the discretion of the Texas Attorney General and subject to Texas Government Code §552. See <https://comptroller.texas.gov/about/policies/open-records/public-information-act.php>

Required Confidential Information Status Form

McKinstry Essention, LLC

Name of company

Brian Ratcliff, Vice President E&TS South

Printed Name and Title of Authorized Company Officer declaring below the confidential status of material

4201 Spring Valley Road, Suite 250 Dallas TX 75244 214-356-5910

Address City State ZIP Phone

ALL VENDORS MUST COMPLETE THE ABOVE SECTION

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), you must attach a copy of all claimed confidential materials to this COMPLETED form, name the combined PDF documents "CONFIDENTIAL", and upload the combined, confidential documents with your proposal submission. If a document is not attached, it will not be considered confidential. The copy uploaded will be the sole indicator of which material in your proposal, if any, you deem confidential in the event TIPS/ESC 8 receives a Public Information Request. If ESC 8 receives a request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For documents deemed confidential by you in this manner, ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law, including Attorney General determination. Notwithstanding any other information provided in this solicitation or Vendor designation of certain documentation as confidential or proprietary, Vendor's acceptance of this TIPS Vendor Agreement constitutes Vendor's consent to the disclosure of Vendor's comprehensive proposal, including any information deemed confidential or proprietary, to TIPS Members. The proposing Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or any other party.

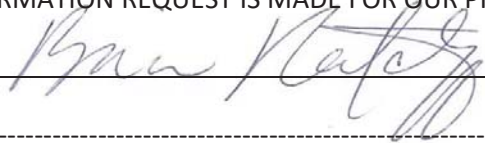
ALL VENDORS MUST COMPLETE ONE OF THE TWO OPTIONS BELOW

OPTION 1:

I **DO CLAIM** parts of my proposal to be confidential and **DO NOT** desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

IF CLAIMING PARTS OF YOUR PROPOSAL CONFIDENTIAL, YOU MUST ATTACH THE SHEETS TO THIS FORM AND LIST THE NUMBER OF TOTAL PAGES THAT ARE CONFIDENTIAL.

ATTACHED ARE COPIES OF 44 PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.

Signature  Date 2/4/2021

OR

OPTION 2:

I **DO NOT CLAIM** any of my proposal to be confidential, complete the section below.

Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Signature _____ Date _____

All Other Certificates

Texas Licenses/Certificates

Please refer to our Texas certificates and our tax permit below.

TEXAS BOARD OF PROFESSIONAL ENGINEERS CERTIFICATE OF REGISTRATION



TEXAS BOARD OF ARCHITECTURAL EXAMINERS CERTIFICATION



THE TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Certifies that

MCKINSTRY ESSENTION, LLC

is duly registered and authorized in accordance with all rules and regulations of the State of Texas

in testimony whereof this certificate has been issued by the authority of this Board

Registration No. BR 2151


Renewal of this registration is due on August 31, 2022

All Other Certificates

TEXAS USE TAX PERMIT

Form 00-366 (Rev. 1-15/9)

TEXAS USE TAX PERMIT



OFFICE OF THE COMPTROLLER
TEXAS
GLENN HEGAR
Texas Comptroller

This permit is issued in accordance with the law governing the type of business specified and is the authorization to conduct business in Texas. The permit may be revoked for a violation of the provisions of the applicable law and/or any rules adopted by the Comptroller to administer the law.


TEX. TAX CODE ANN. CH. 151

Taxpayer number
3-20499-7738-5

Effective date
01/01/2013

Taxpayer name and mailing address

MCKINSTRY ESSENTION, LLC
PO BOX 24567 ATTN: JOY CASEY
SEATTLE WA 98124-0567



GLENN HEGAR
Comptroller of Public Accounts

THIS PERMIT IS NON-TRANSFERABLE

Detach here and display your permit only.

Is the information printed on this permit correct?

If not, please tell us in the space below.

- If your taxpayer name and/or mailing address are incorrect, enter the correct information.
- If you have received a Federal Employer Identification Number (FEIN), enter the number.
- If you are no longer in business, enter the date of your last business transaction.

If your permit is correct, DO NOT return this form.

If any corrections are required, please enter the correct information on this form and return it to:

COMPTROLLER OF PUBLIC ACCOUNTS
111 E. 17th Street
Austin, TX 78774-0100

Keep this permit until you receive a corrected permit.

NOTE: This form cannot be used if there has been a change of ownership. For this change and to obtain a new permit, please contact your local Comptroller's field office. For the telephone numbers to call for assistance, see the back of this form.

TEXAS USE TAX PERMIT

Taxpayer name shown on the permit MCKINSTRY ESSENTION, LLC	Taxpayer number shown on the permit 3-20499-7738-5		
Please enter only the information that has to be corrected.			
Correct taxpayer name	Daytime phone (Area code and number)		
•	•		
Correct mailing address			
•			
City	State	ZIP code	FEI number
•	•	•	•

If you are no longer in business, enter the date of your last business transaction:

For additional information, see the back of this form.

<p>sign here Taxpayer or authorized agent</p>	Date
--	------

You have certain rights under Chapters 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at the address or phone number listed on this form.

Comptroller uses only
Job #s: MISCAPP
Microfilm
00991
ID
Reference number
Taxpayer number change
01000
Master name correction AND
Master mailing address change AND
Master phone number add/change
XUMAST
DOB tax permit
XUSTAT

All Other Certificates

State Licenses/Certificates

McKinstry's state licenses/certificates are listed in the chart below. A copy of any licenses/certificates are available upon request.

STATE	LICENSE NAME	LICENSE TYPE	REGISTERED AGENCY
Alabama	Alabama - Engineering Certificate of Authorization	Engineering License	Alabama State Board of Licensure for Professional Engineers
Alabama	Alabama Business Entity Summary	State Registrations	Alabama Secretary of State
Alaska	Alaska Certificate of Registration	State Registrations	Alaska Department of Commerce, Community, and Economic Development
Arizona	Arizona Engineering Registration	Engineering License	Arizona Board of Technical Registration
Arizona	Arizona Department of Revenue - TPT Tax License	Sales Tax License	Arizona Department of Revenue
Arizona	Arizona Good Standing & Authorization Certificate	State Registrations	Arizona Corporation Commission
Arkansas	Arkansas Engineering Certificate of Authorization	Engineering License	Arkansas Board of Licensure for PE's
Arkansas	Arkansas Sales Tax Permit	Sales Tax License	Arkansas Department of Finance and Administration
Arkansas	SOS Registration	State Registrations	Arkansas Secretary of State
California	California Business Entity Summary	State Registrations	California Secretary of State
Colorado	City of Boulder Sales Tax License	Sales Tax License	City of Boulder Department of Finance
Colorado	City of Centennial Retail Sales Tax License	Sales Tax License	City of Centennial
Colorado	City of Golden Sales Tax License	Sales Tax License	City of Golden
Colorado	Colorado Certificate of Good Standing	State Registrations	Colorado Secretary of State
Connecticut	Connecticut Business Registration	State Registrations	Connecticut Secretary of State
Delaware	Delaware Business Entity Summary	State Registrations	Delaware Department of State
Florida	Florida Resale Certificate	Sales Tax License	State of Florida DOR
Florida	Florida Business Entity Summary	State Registrations	Florida Department of State
Georgia	Georgia Engineer Firm License	Engineering License	Georgia State Board of Registration
Georgia	Georgia Certificate of Authority	State Registrations	Georgia Secretary of State
Hawaii	Hawaii Certificate of Authority	State Registrations	Department of Commerce and Consumer Affairs
Idaho	State of Idaho Engineering License	Engineering License	Board of Licensure of Professional Engineers and Professional Land Surveyors
Idaho	Idaho Certificate of Authority	State Registrations	Idaho Secretary of State
Illinois	State of Illinois Professional Engineering License	Engineering License	Illinois Department of Financial and Professional Regulation
Illinois	Illinois Business Entity Summary	State Registrations	Illinois Secretary of State

All Other Certificates

STATE	LICENSE NAME	LICENSE TYPE	REGISTERED AGENCY
Indiana	Indiana Foreign Registration Statement	State Registrations	Indiana Secretary of State
Iowa	Iowa Certificate of Authorization	State Registrations	Iowa Secretary of State
Kansas	Kansas Engineering Firm Registration	Engineering License	Kansas state Board of Technical Professions
Kansas	Kansas Certificate of Good Standing	State Registrations	Kansas Secretary of State
Kentucky	Kentucky Engineering Firm Permit	Engineering License	Kentucky Board of Licensure for Engineers
Kentucky	Kentucky Certificate of Authority	State Registrations	Kentucky Secretary of State
Maine	Maine Statement of Foreign Qualification to Conduct Business	State Registrations	Maine Secretary of State
Maryland	Maryland Engineering Firm License	Engineering License	Maryland Department of Labor
Maryland	Comptroller of Maryland Sales Tax License	Sales Tax License	Comptroller of Maryland
Maryland	Maryland Business Entity Summary	State Registrations	Maryland Department of State
Massachusetts	Massachusetts Business Entity Summary	State Registrations	Massachusetts Secretary of State
Michigan	Michigan Certificate of Authority	State Registrations	Department of Licensing and Regulatory Affairs
Minnesota	Minnesota Professional Engineering Firm Registration	Engineering License	Minnesota Board of AELSLAGID
Minnesota	Minnesota - Contractor Registration	State Registrations	Minnesota Department of Labor and Industries
Minnesota	Minnesota Certificate of Authority	State Registrations	Minnesota Secretary of State
Mississippi	Mississippi Engineering Certificate of Authorization	Engineering License	MS Board of Licensure
Mississippi	Mississippi Use Tax Account	Sales Tax License	Mississippi Department of Revenue
Mississippi	Mississippi Business Entity Summary	State Registrations	Mississippi Secretary of State
Missouri	Missouri Professional Engineering Corporation License	Engineering License	State of Missouri Department of Insurance, Financial Institutions and Professional Registration
Missouri	Missouri State Engineering License	Engineering License	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects
Missouri	Missouri Certificates of Registration & Good Standing	State Registrations	Missouri Secretary of State
Montana	State of Montana - Engineering License	Engineering License	Montana Department of Labor and Industry
Montana	Montana Certificate of Authorization	State Registrations	Montana Secretary of State
Nebraska	State of Nebraska Engineering License	Engineering License	Nebraska State Board of Engineers and Architects
Nebraska	Nebraska Business Entity Summary	State Registrations	Nebraska Secretary of State

All Other Certificates

STATE	LICENSE NAME	LICENSE TYPE	REGISTERED AGENCY
Nevada	State of Nevada Engineering Registration	Engineering License	Nevada Board of Professional Engineers and Land Surveyors
Nevada	State of Nevada Sales Tax License	Sales Tax License	Department of Taxation
Nevada	Nevada Business Entity Summary	State Registrations	Nevada Secretary of State
Nevada	State of Nevada Business License	State Registrations	State of Nevada
New Hampshire	New Hampshire Engineering COA	Engineering License	New Hampshire Board of Professional Engineers
New Hampshire	New Hampshire Certificate of Existence	State Registrations	New Hampshire Secretary of State
New Jersey	New Jersey Business Entity Summary	State Registrations	New Jersey Division of Revenue
New Mexico	New Mexico Registration	State Registrations	Office of the Secretary of State
New York	New York Business Entity Summary	State Registrations	New York Department of State
North Carolina	North Carolina Business Entity Summary	State Registrations	North Carolina Secretary of State
North Dakota	North Dakota Engineering Certificate of Commercial Practice	Engineering License	North Dakota State Board of Registration
North Dakota	North Dakota Business Entity Summary	State Registrations	North Dakota Secretary of State
Ohio	Ohio Engineering Firm Registration - co. 20	Engineering License	Ohio Board of Registration for Professional Engineers
Ohio	Ohio Certificate of Registration	State Registrations	Ohio Secretary of State
Oklahoma	Oklahoma Engineering License	Engineering License	
Oklahoma	Oklahoma Business Entity Summary	State Registrations	Oklahoma Secretary of State
Oregon	Oregon Business Entity Summary	State Registrations	Oregon Secretary of State
Pennsylvania	Pennsylvania Certificate of Registration	State Registrations	Pennsylvania Department of State
Rhode Island	Rhode Island Engineering Certificate of Authority	Engineering License	Rhode Island Board of Professional Engineers
Rhode Island	Rhode Island Business Entity Summary	State Registrations	Rhode Island Secretary of State
South Carolina	South Carolina Engineering Certificate of Authorization	Engineering License	South Carolina Department of Labor
South Carolina	South Carolina Certificate of Authority	State Registrations	South Carolina Secretary of State
South Dakota	South Dakota - Professional Engineering Registration	Engineering License	South Dakota Board of Technical Professions
South Dakota	South Dakota Contractor Tax Registration	Sales Tax License	South Dakota Department of Revenue
South Dakota	South Dakota Certificate of Authority	State Registrations	South Dakota Secretary of State
Tennessee	Tennessee Engineering Firm Registration	Engineering License	Department of Commerce
Tennessee	Tennessee Business Entity Summary	State Registrations	Tennessee Department of State

All Other Certificates

STATE	LICENSE NAME	LICENSE TYPE	REGISTERED AGENCY
Texas	Texas - Professional Engineering Certificate of Registration	Engineering License	Texas Board of Professional Engineers
Texas	State of Texas Sales Tax License	Sales Tax License	Office of the Comptroller
Texas	Texas Use Tax Permit	Sales Tax License	Office of the Comptroller
Texas	Texas - Professional Architectural Certificate of Registration	State Registrations	Texas Board of Architectural Examiners
Texas	Texas Business Entity Summary	State Registrations	Texas Office of the Comptroller
Utah	Utah Certificate of Existence	State Registrations	Utah Department of Commerce
Vermont	Vermont Certificate of Authority	State Registrations	Vermont Secretary of State
Virginia	Virginia Engineering License	Engineering License	Virginia Department of Professional and Occupational Regulation
Virginia	Virginia Certificate of Formation	State Registrations	Virginia State Corporation Commission
Washington	Washington Professional Engineering Registration	Engineering License	Board of Registration for Professional Engineers and Land Surveyors
Washington	Moscow ID Eco District I - Business License	State Registrations	State of Washington DOR
Washington	State of Washington - Master Business License	State Registrations	State of Washington DOR
Washington	Washington Certificate of Existence	State Registrations	Washington Secretary of State
Washington	Washington Legal Entity Registration	State Registrations	State of Washington DOR
Washington	Washington Reseller Permit	State Registrations	Washington State Department of Revenue
West Virginia	State of West Virginia	State Registrations	WV State Tax Department
Wisconsin	WI Architecture and Engineering Corp - Certificate of Authorization	Engineering License	Wisconsin Department of Safety and Professional Services
Wisconsin	Wisconsin Business Entity Summary	State Registrations	Wisconsin Department of Financial Institutions
Wisconsin	Wisconsin Business Tax Registration	State Registrations	Wisconsin Department of Revenue
Wyoming	Wyoming Engineering Certificate of Authorization	Engineering License	Wyoming Board of Professional Engineers
Wyoming	Wyoming Engineering License	Engineering License	Wyoming Board of Professional Engineers
Wyoming	Wyoming Certificate of Authority	State Registrations	Wyoming Secretary of State

Warranty

McKinstry Warranties/Guarantees

McKinstry's guarantee of performance allows us to commit to our clients that the equipment and systems installed will meet or exceed established performance standards. Our first priority will be to make certain that all newly installed equipment and systems will operate to ensure occupant safety, health, and comfort. The second priority will be to meet the project's operational and utility savings. If the equipment is maintained based on the manufacturer's guidelines, yet it does not meet the first and/or second priority, McKinstry will take the necessary steps to correct or improve equipment performance. If it is determined that the newly installed equipment has failed, we will find a final repair resolution or we will replace it.

McKinstry offers more options due to our network of buying power and our relationships with local equipment providers. We are able to reduce the initial cost of equipment, in addition to being able to arrange for extensions to the warranty period of the equipment. This combination of strong buying power and extended warranties gives us a value-added advantage we will pass on to you.

WARRANTY ENFORCEMENT ROLE

McKinstry can implement our Knowledge Response Center (KRC), an innovative 24x7 web-based system suite that allows clients to log and track warranty issues. The KRC utilizes InfoCentre™ to document relevant facility data and work flow processes in order to effectively and efficiently manage the warranty, and remote monitoring to enable the flow of real time and proactive site-specific information using the building automation systems. InfoCentre powers and serves as the information hub for our services – clients will be able to view warranty requests, note when the issue was logged, view progress on the issue, and receive confirmation when the issue is resolved. All this is handled seamlessly with minimal time commitment from the client organization. In addition, this process provides a single repository of archived information relevant to your specific facilities. Our standard warranty services include:

- Development and management of the warranty work order process;
- Management of the vendor dispatch process;
- Tracking and follow up on completion of work;
- Routine vendor performance reporting;
- Follow up with customer and project team on work satisfaction;
- Ongoing equipment status and warranty work reporting details; and
- Warranty preventative maintenance management and scheduling.

We will commission projects to ensure all equipment and systems installed will meet or exceed performance standards. We guarantee its installation and workmanship for one year against defects. Equipment typically carries the manufacturer's warranties, yet based on our relationship with vendors, we will extend warranties at no or low cost. Your warranty time period starts at date of substantial completion or occupancy. If equipment is used for temporary service, its warranty date typically will start when it is put into service.

COMMITMENT TO LONG-TERM PARTNERSHIP

McKinstry is very experienced in system performance and warranty concerns. We understand the value of equipment performing as intended. We routinely complete services—at no additional cost to the customer—after the original warranty expires to ensure our clients are satisfied and that the system operates as intended. McKinstry will provide TIPS with a singlepoint of contact for long-term accountability regarding maintenance and training on all new equipment installed as part of any project.



August 3, 2023

Raylene Gennett
4401 N Aubrey L White Pkwy
Spokane, WA 99205

Fred Brown
4401 N Aubrey L White Pkwy
Spokane, WA 99205

Subject: Investment Grade Audit Proposal | City of Spokane Renewable Energy Projects

Dear Raylene and Fred:

McKinstry Essention, LLC (McKinstry) is pleased to propose the following renewable energy projects for City of Spokane in response to the recent discussions between McKinstry and the city following the recent site visit. Based on those discussions, we understand that City of Spokane is interested in capturing renewable natural gas (RNG) using WA state’s Energy Savings Performance Contracting (ESPC) allowed under WA RCW 39.35(a) and selecting McKinstry Essention, LLC through cooperative purchasing contract #220104 with The Interlocal Purchasing System (TIPS).

PROJECT DESCRIPTION

This proposal will provide the guidelines for which McKinstry will provide the following tasks:

1. Complete an **Investment Grade Audit (IGA)** associated with the following location:
 - a. City of Spokane Water Reclamation Facility –4401 N Aubrey L White Pkwy, Spokane, WA 99205
2. Develop a comprehensive Energy Services Proposal for the identified systems below. Initial scoping concepts below will be vetted during the Investment Grade Audit:
 - a. **Renewable Natural Gas:**
 - i. **General Scope Description:** Methane biogas is produced in the anaerobic digesters. This gas is currently being used to fuel boilers or flared. The installation of an RNG station at the plant would allow productive use of the waste gas as a replacement of non-renewable fuels and allow for an added revenue stream for the city.
 - ii. Consider the use of tax credits and any other applicable grants; provide necessary project information to assist the city with applications for grant funding.
 - b. Complete an **Energy Services Proposal (ESP)** for RNG system referenced above. The ESP will include a project schedule, scope, Guaranteed Maximum Pricing and Energy generation for implementation in 2024:



City of Spokane IGA Proposal

The investment grade audit effort is intended to lead to the implementation of facility improvement measures. The audit will provide all details necessary for implementation of viable initiatives including preliminary design, cost, construction schedule and energy savings.

The ESP/IGA will be a product of the direction McKinstry receives, and it is anticipated that the information contained in the IGA and resulting Energy Services Proposal will form the basis of a proposal and contracting documents. The specific deliverables associated with this professional services endeavor can be found in Attachment A.

TIMELINE AND MILESTONES

McKinstry will initiate this scope of work upon receipt of written direction from City of Spokane. Formal progress review meetings will be conducted regularly throughout the study phase. During these review meetings, McKinstry will recommend measures based on preliminary analysis. The goal of these review meetings is to focus engineering efforts, budgeting, and savings assessment on those measures that possess a high probability for implementation. During this time, McKinstry will provide a detailed measurement and verification (M&V) plan based metered power and gas production.

McKinstry will target completion of the Investment Grade Audit within 180 days upon a signed contract from City of Spokane.

REQUESTED INFORMATION

For effective execution of this proposal, we ask that City of Spokane provide access to the following:

1. Historical utility bills for the last 24 to 36 months.
2. All mechanical, electrical, architectural, and structural drawings.
3. All operational and maintenance manuals, balancing records, & specifications.
4. Operational records related to the cost of maintaining specific equipment.
5. Information with regards to any on-going maintenance contracts.
6. Access to individuals that have relevant information pertaining to the day-to-day operation of energy using systems on site.
7. Prior energy studies for related systems, if applicable.
8. Any available hazardous material survey reports (i.e. Good Faith Survey).
9. Further requests for information may be needed during the course of the audit.

COST EFFECTIVENESS CRITERIA

It is City of Spokane's intent that McKinstry will implement all approved projects that meet the project cost effectiveness criteria listed below:



City of Spokane IGA Proposal

- The Net Present Value (NPV) of the proposed project will be neutral or positive over the term of the useful life of the equipment where the following may be included in the cash flow calculation:
 - Total project cost including the IGA cost, design, construction, fees, bonding, permits and taxes, less any available utility incentives, grants, or direct federal payments such as Investment Tax Credits or Congressional Directed Spending, for example.
 - Estimated impact to operational costs.
 - Renewable Natural Gas (RNG) sales proceeds based on quoted offers received from viable off takers such as Avista, if available, **or** the Henry Hub Natural Gas Future Price for June contracts as of April 19 (\$2.395/MMBtu).
 - Renewable Identification Number (RIN) sales proceeds projected using the historical average price of the appropriate fuel type D-Code RIN for the 24-month period between February 2021 and February 2023, as published by the Environmental Protection Agency (EPA) as of March 10, 2023 (D5, \$1.62; D3 \$2.87). For these purposes, the fuel type D Code is determined based on regulations in place on the date of the Energy Services Proposal.
 - Capital infusion from planned capital project budgets, cash reserves, or other sources.
 - Finance charges related to loans or other financing. Finance terms to be commensurate with City of Spokane’s debt capacity and term may not exceed the average useful life of the equipment.

- For the purposes of the financial cash flow models, McKinstry will work with City of Spokane to use appropriate financial rates such as escalation or inflation factors to show project NPV.

PROPOSED COSTS

All costs assessed in the Investment Grade Audit will be included in the final implementation costs. In the event McKinstry is unable to recommend projects that meet the criteria above, City of Spokane has no financial obligation to McKinstry. However, if the recommendations meet or exceed the cost effectiveness criteria listed above, and City of Spokane chooses not to enter into an agreement with McKinstry to implement the projects, City of Spokane will reimburse McKinstry for its time and expenses not to exceed the following:

SCOPE	DESCRIPTION	COST
Investment Grade Audit (IGA)	Perform Investment Grade Audit for the City of Spokane as identified above and deliver Energy Service Proposal (ESP).	\$114,473

TOTAL: \$114,473



City of Spokane IGA Proposal

Should City of Spokane decide not to proceed with the implementation of the project solely due to unexpected volatility in the market price of RNG or RIN's, City of Spokane will reimburse McKinstry for its time and expenses incurred to the date of the decision not to proceed.

Similarly, should City of Spokane opt for an alternative procurement model that excludes McKinstry, City of Spokane will reimburse McKinstry for its time and expenses incurred to the date of the decision not to proceed.

All associated information, including deliverables, will become the property of City of Spokane upon final receipt of payment. We appreciate the opportunity to continue serving City of Spokane as your energy partner. Please let us know if we can answer any questions or provide you with additional information.



Ira Nolander
Program Manager
McKinstry

cc: Christie Hoffpauer – McKinstry

City of Spokane IGA Proposal

ATTACHMENT A: INVESTMENT GRADE AUDIT DELIVERABLES

The Investment Grade Audit for City of Spokane will include the following elements:

1. A description of the systems which shall receive ESCO Equipment and ESCO Services;
2. The cost-effective Facility Improvement Measures (FIMs) to be installed or caused to be installed by the ESCO and a description of the FIMs analyzed but disqualified;
3. A description of the services that the ESCO will perform or cause to be performed on or in the infrastructure, including but not limited to engineering, construction management, the operations and maintenance procedures for use on ESCO Equipment, training for personnel, warranty service provided, and equipment maintenance provided;
4. The Maximum Allowable Project Cost, itemized in detail, which may be amended to represent actual costs;
5. Recommendations for replacement of existing equipment, along with recommendations for improvements to existing equipment and operating conditions;
6. The service standards appropriate for the infrastructure;
7. The baseline energy consumption, including the data, methodology and variables used to compute the baseline, and the baseline calendar period which shall not be less than twelve (12) months;
8. The estimated energy savings and energy cost savings that are expected to result from the installation of the ESCO Equipment and from the ESCO Service, and an explanation of the method used to make the estimate;
9. The method by which Energy Savings and Energy Cost Savings will be calculated during the term of the Energy Services Agreement;
10. A description of how project financing (if required) will be completed;
11. A description of how the Energy Savings will be guaranteed by the ESCO;
12. A description of how the ESCO proposes to be compensated;
13. The schedule for project completion;
14. The nature and extent of the work and equipment that the ESCO anticipates it will receive from other firms under subcontract;
15. Detailed Measurement and Verification (M&V) Plan
16. A project specific Diverse Business Inclusion Plan (Inclusion Plan), when applicable and where constraints or other factors prevent ESCO from applying its pre-submitted Inclusion Plan to the work, ESCPO may use the table below as guidance or a template for purposes of the project-specific inclusion plan:

City of Spokane IGA Proposal

PERFORMANCE OF WORK. McKinstry shall perform the scope of work (“Work”) specified herein. McKinstry shall furnish all services necessary to perform the Work and perform the Work to completion diligently, expeditiously and with adequate forces. Customer shall use its best efforts to provide all information, materials, documents, and assistance that is reasonably required for McKinstry to perform any and all aspects of the Work.

PAYMENTS. Customer shall pay McKinstry the compensation specified herein (“Price”) for the value of Work that McKinstry has completed, as the Work is completed. Customer shall pay McKinstry within thirty (30) days of receiving an invoice. McKinstry will be entitled to interest at the maximum rate allowed by law on all sums overdue and unpaid from the date due.

WARRANTIES. Customer shall receive a one (1) year warranty that covers labor and materials provided by McKinstry as part of the Work. This warranty commences on the date that the portion of the Work warranted is substantially complete. However, McKinstry makes no warranty whatsoever regarding components of the Work provided by third parties, and in such case the terms of the third party’s warranty, including manufacturers’ warranties, if any, shall apply between Customer and the third party. The warranties in this section are exclusive and in lieu of all other warranties, whether express or implied.

TERMINATION. Either Party may terminate this agreement upon fifteen (15) days written notice to the other Party. In such case the rights and obligations of each Party that arose prior to the termination date shall survive such termination, except that McKinstry shall have no obligation to perform Work after termination.

DISPUTES. In case of dispute between the Parties, the Parties will attempt to negotiate a resolution. If a dispute remains unresolved more than thirty (30) calendar days after the commencement of negotiation, then the Parties shall pursue mediation. If any dispute remains unresolved more than sixty (60) calendar days after the commencement of mediation, then either Party may commence binding arbitration. No litigation will be commenced by either Party unless all of the foregoing steps have been pursued to completion.

CHOICE OF LAW, VENUE. The validity, interpretation, and performance of this agreement shall be governed by the laws of the state in which the Work is performed. The venue for resolving any dispute shall be the county in which the Work is performed.

FORCE MAJEURE. Neither McKinstry nor Customer shall be considered in breach of this agreement to the extent that the Party’s performance is prevented by an event or events that are beyond the control of such party, including but not limited to acts of God, fire, earthquake, flood, storm, war, rebellion, revolution, insurrection, riot, strike, nuclear contamination, and/or acts or threats of terrorism.

NO WAIVER. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver.

INTELLECTUAL PROPERTY. Intellectual property provided by McKinstry to Customer as part of the Work are instruments of service owned by McKinstry and are not “work made for hire” as such term is defined under U.S. copyright law. When the Work is performed to completion, McKinstry grants to Customer a limited license to use the Intellectual Property to operate, maintain, renovate, and manage the subject matter of the Work.



City of Spokane IGA Proposal

DAMAGES LIMITATION. Neither party shall be liable for any consequential, indirect, special, incidental, exemplary, or similar, damages or losses, including loss of profits, whether based in contract or tort or any other theory, even if a party has been advised of the possibility of such damages. Furthermore, the total aggregate liability of either party, under any theory, is limited to the agreement Price.

INDEMNIFICATION. Each party shall indemnify and hold harmless the other party from and against all third party claims, damages, losses and expenses for bodily injury, sickness, disease, or death or destruction of tangible property but only to the extent directly caused by the negligent acts or omissions of the indemnitor.

SEVERABILITY, SURVIVAL. If any portion of this agreement shall be held invalid in whole or in part under any law, rule, regulation, or order, then such portion shall remain in effect only to the extent permitted, and the remaining portions of the agreement shall remain in full force and effect. Any invalid portions shall be substituted with an interpretation that most accurately reflects the Parties' intentions.

AMENDMENT. This agreement may not be amended except pursuant to a written amendment signed by an authorized signer of each Party.

COMPLETE AGREEMENT. This agreement, including the exhibits attached hereto, is a fully integrated agreement. Any legal terms and conditions appearing elsewhere in this agreement shall be ignored to the extent they contradict or are inconsistent with the terms and conditions contained in the foregoing list. All previous agreements between McKinstry and Customer as to the Work are superseded by this agreement.

MCKINSTRY

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

CUSTOMER

By: _____

Printed Name: _____

Title: _____

Date Signed: _____





Agenda Sheet for City Council Meeting of:

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	OPR 2023-0426
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	WATER & HYDROELECTRIC SERVICES
Contact Name/Phone	SETH MCINTOSH 8154
Contact E-Mail	SMCINTOSH@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4100 - CONTRACT AMENDMENT AND EXTENSION #1

Agenda Wording

Ninth Part 12D Comprehensive Assessment and Report for Upriver Dam Hydroelectric Project requires additional work therefore, requiring additional time and funds. A Seismic Hazard Evaluation Study needs to be done, which is more cost effective to add

Summary (Background)

As a Federal Energy Regulatory Commission (FERC) licensee, the City requires an Independent Consultant (IC) to perform its decennial Comprehensive Assessment (CA) of the Upriver Dam Hydro Project, as prescribed in the (CFR) title 18, Part 12, Subpart D. Additional funds in the amount of \$90,000.00 are required for the Seismic Evaluation Study and additional time extended to December 31, 2024.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense	\$ 90,000
Select	\$
Select	\$
Select	\$

Budget Account

TBD
#
#
#

Approvals

Dept Head	SAKAMOTO, JAMES
Division Director	MILLER, KATHERINE E
Finance	KECK, KATHLEEN
Legal	HARRINGTON, MARGARET
For the Mayor	JONES, GARRETT

Council Notifications

Study Session\Other	Finance & Admin August 21, 2023
Council Sponsor	CM Wilkerson

Distribution List

MFeist@spokanecity.org
SMcintosh@spokanecity.org
jfinger@spokanecity.org
lsearl@spokanecity.org
Lstone@geoengineers.com
Lflangas@geoengineersl.com
eschoedel@spokanecity.org

Committee Agenda Sheet

Finance & Administration Committee

Submitting Department	Water
Contact Name	Seth McIntosh
Contact Email & Phone	smcintosh@spokanecity.org
Council Sponsor(s)	CM Wilkerson
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested: 10
Agenda Item Name	Contract Amendment and Extension #1
Summary (Background) *use the Fiscal Impact box below for relevant financial information	Ninth Part 12D Comprehensive Assessment and Report for Upriver Dam Hydroelectric Project requires additional work therefore, requiring additional time and funds. A Seismic Hazard Evaluation Study needs to be done, which is more cost effective to add to the original contract. Additional funds are needed in the amount \$90K Extending the end date from December 31, 2023 to December 31, 2024.
Proposed Council Action	
Fiscal Impact	
Total Cost: <u>\$90,000.00 + tax</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 type="checkbox"/> Recurring Specify funding source: Click or tap here to enter text.	
Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring	
Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? N/A. The project is a study that meets regulatory requirements and involves no change to the City's current hydroelectric or water supply operations.	
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. There is no effect of the project outside City property, procedures, and personnel.	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? Costs will be tracked and compared. The evaluation is the most cost-effective approach at during the Part 12D project.	
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? Aligns with and is included in the City's contractual services budget.	



City of Spokane
CONTRACT AMENDMENT / EXTENSION #1
Title: **Part 12D Comprehensive Assessment and Report for Upriver Dam Hydroelectric Project – Phase 1**

This Contract Amendment / Extension is made and entered into by and between the **City of Spokane** as (“City”), a Washington municipal corporation, and **GeoEngineers, Inc.**, whose address is 523 East Second Avenue, Spokane, Washington 99202 as (“**Consultant**”), individually hereafter referenced as a “Party”, and together as the “Parties”.

*WHEREAS, the parties entered into a Contract wherein the **Consultant** agreed to provide the Part 12D Comprehensive Assessment and Report for Upriver Dam Hydroelectric Project – Phase I for the City; and*

WHEREAS, a change or revision of the Work has been requested, and the Contract time for performance needs to be extended, thus the original Contract needs to be formally Amended and Extended by this written document; and

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

1. CONTRACT DOCUMENTS.

The Contract, dated May 2, 2023, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

This Contract Amendment / Extension shall become effective on May 2, 2023, and shall end December 31, 2024.

3. ADDITIONAL WORK.

The Scope of Work in the original Contract is expanded to include the following additional Work:

A Seismic Hazard Evaluation Study Analysis needs to be performed prior to the Comprehensive Assessment for the best cost-effective approach.

4. COMPENSATION.

The City shall pay an additional amount not to exceed **NINETY THOUSAND AND NO/100 DOLLARS (\$90,000.00)**, and applicable sales tax, for everything furnished and done under this Contract Amendment / Extension. This is the maximum amount to be paid under this

Amendment / Extension, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this document.

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

GEOENGINEERS, 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:

GeoEngineers, Inc., - proposed scope of work dated June 16, 2023.

U2023-067a

June 16, 2023

City of Spokane
808 West Spokane Falls Boulevard
Spokane, Washington 99201

Attention: Jeanne Finger

Subject: Proposed Scope and Fee
Seismic Hazard Evaluation Study
City of Spokane
Upriver Dam
Spokane, Washington
File No. 0110-081-13

INTRODUCTION AND PROJECT UNDERSTANDING

We appreciate the opportunity to continue our work with the City of Spokane (City) on this project. This proposed scope and fee is based on the City's Request for Qualifications (RFQ 5820-23), our Statement of Qualifications (SOQ) dated February 13, 2023, preliminary review of documents provided by the City and communication with City personnel following the award of the project.

GeoEngineers has teamed with Black & Veatch (BV) as a subconsultant to provide a complete team with the depth of experience, bench of independent consultants (ICs) and technical knowledge commensurate with the requirements of the Upriver Dam's 9th Part 12D Inspection.

The Upriver Dam Hydroelectric Project is an approximately 230-foot-wide, concrete, gravity dam on the Spokane River, located at about river mile 80.2, approximately 5 miles upstream of downtown Spokane, Washington. The major project components include the concrete spillway dam, its right (north) and left (south) abutments, a fuse plug, a power canal, two powerhouses, and three mechanically stabilized earth (MSE) closure walls.

The Federal Energy Regulatory Commission (FERC) required that the City complete a Comprehensive Assessment (CA) in accordance with the updated Chapter 16 of the Engineering Guidelines for Part 12D inspections. Additionally, an Owner's Dam Safety Program (ODSP) audit will be completed concurrently with the inspection by an independent team. The project has been organized by the City into three Phases. Phase I includes the development of a strategy, response to a comment letter, preparing submittals for FERC review, and pre-coordination for the CA, ODSP and pre-inspection analyses. The purpose of Phase I is to organize and plan for the work to be completed in Phase II. Phase I is currently under contract and in progress.



Phase II will consist of executing the plan developed and approved during Phase I culminating in preparation of the Comprehensive Assessment Report (CAR) and ODSP for review by FERC. Phase III will include the follow-up investigations, evaluations, and resolution of comments/recommendations provided by FERC on the Phase II reports. This task was identified in Phase I to be expedited in advance of the other Phase II tasks.

We understand per FERC's letter (Johnson, 2023) that FERC has neither accepted nor rejected the 2020 Addendum to the Eighth Part 12D Report (HDR, 2020) due to issues identified with the seismic hazard analysis performed. FERC went on to state that the seismic hazard analysis memo (HDR, 2020) was "overly abbreviated, does not demonstrate that a site-specific seismic hazard was performed, and is not acceptable." FERC also noted that USGS tool (USGS UHS Tool) that appeared to be used to develop the controlling seismic event did not include the Spokane Fault, which activity has not been confirmed and which has the "southernmost portion of this inferred fault is as close as 5 km from Upriver Dam...and must be properly considered." FERC (Johnson, 2023) concludes, "Either provide an updated memo that thoroughly documents the work performed, including the consideration of Spokane Fault, or provide a new seismic hazard analysis."

We have reviewed the seismic hazard analysis memo found in HDR (2020) and have confirmed that the USGS UHS Tool was used to develop the controlling event, which allows us to conclude that the Spokane Fault was not included in the seismic hazard analysis developed by HDR (2020). The USGS UHS Tool uses the USGS seismic source characterization (SSC) model, which does not include the Spokane Fault, nor the Latah Fault and Cheney Zone, which are seismic sources that have been identified as possible faults near the city of Spokane. Consequently, we recommend an updated seismic hazard study be performed that incorporates an updated seismic source characterization model, which would include the consideration the Spokane Fault, Latah Fault and Cheney Zone as possible seismic sources.

SCOPE OF SERVICES

The following proposed scope of services will be the first portion of Phase II and will be used as an input into the CA. Our scope of services is based on our review of available information from our Phase I scope of work and discussions with the City. We have organized seismic hazard evaluation into the following tasks based on the purpose of each task.

Task 1. Data reconnaissance.

The purpose of this task is to complete the data compilation and review of the pertinent seismic fault source data, historical seismicity, and seismic sources of the local and regional seismicity. This includes the USGS 2023 Seismic Source Characterization (SSC) model and ground motion characterization (GMC) model, and data from existing publications, and other pertinent data and reports on local seismic sources not included in the 2023 SSC model including the Latah Fault, Spokane Fault and the Cheney Seismic Zone.

Task 2. Seismic source of characterization model (SSC).

The purpose of this task is to develop inputs that will be later used in Task 3. Probabilistic seismic hazard analysis (PSHA) and deterministic seismic hazard analysis (DSHA). The seismic source characterization will be informed with data from Task 1. It is assumed that the source model will consist of late Quaternary seismic faults within 200 km of Upriver Dam and the appropriate USGS 2023 background seismicity zones.

In addition, we will perform the source characterization of the Spokane Fault, Latah Fault, and the Cheney Zone. This characterization will include an evaluation of the seismic activity of these three sources based on United States Army Corps of Engineers (USACE) and United States Bureau of Reclamation (USBR) criteria for faults activity (USACE, 2016; USBR, 2015). If these sources are characterized as active or capable faults or sources, they will be included in the SSC model for the project site.

Task 3. Probabilistic seismic hazard analysis (PSHA) and Deterministic seismic hazard analysis (DSHA).

We propose that a modified version of seismic hazard software, HAZ45.3, and post-processing programs developed by Dr. Norm Abrahamson, will be used to perform the PSHA. The response of the Upriver Dam will be assumed to be dominated by the horizontal component of the ground motion. The 5 percent damping horizontal mean uniform hazard spectra (UHS) will be calculated for the 500-year, 1,000-year, 2,500-year, 5,000-year and 10,000-year return periods with the V_{s30} of 760 m/s. Generic site-class conversion factors will be provided to convert the rock spectrum to site-class specific spectrum. The ground motions will be calculated for RotD50 (Boore, 2010) unless otherwise appropriate. Total hazard curves for peak ground acceleration (PGA) and spectral periods between 0.05 and 10 seconds will be provided. Hazard curves by the individual seismic sources and deaggregation data and plots will be provided for PGA, 0.2 seconds, 1.0 seconds.

A DSHA will be performed for the Dam site using characteristic events identified from the seismic sources identified and used for the PSHA. For consistency, the same ground motion models (GMMs) and site conditions as used in the PSHA will be used. We anticipate two sources will be evaluated, the background seismicity and the closest known Quaternary fault source. The source with the largest estimated PGA will be used for developing the deterministic spectra. The 50th (median) and 84th (median + standard deviation) percentile deterministic spectra will be calculated for characteristic events.

Task 4. Design Criteria

The controlling maximum credible earthquake (MCE) spectrum will be selected and compared to the site-specific PSHA and 2018 USGS National Seismic Hazard Model (NSHM) mean UHS. At this point in the project GeoEngineers will meet with the City of Spokane to discuss the results and approach for proceeding with documentation and presentation of results.

Task 5. Technical Report and Final Report

Prepare a technical report in accordance with the FERC Chapter 13 Guidelines for Evaluation of Earthquake Ground Motions (FERC, 2018) summarizing the updated seismic source model, the results of the PSHA, recommended response spectrum(a), and in a seismic ground motion hazard report (electronic copy). Prepare a draft copy for review and comment from the City.

We will also engage Dr. Norm Abrahamson as a sub-contracted peer reviewer of the seismic hazard analysis. Dr. Norm Abrahamson has agreed to act in this role and provide a letter of review and concurrence following incorporation of his review comments. After receipt of one round of comments from N. Abrahamson, respond to and resolve comments and prepare/submit a final report (electronic copy). The letter of review will be included as a deliverable with the final technical report.



Task 6. Response to FERC Comments

After receipt of one round of comments from FERC, respond to and resolve comments and prepare/submit revised final report (electronic copy), as needed. We assume FERC comments will not require significant rework of the seismic hazard analysis based on our collaboration with Dr. Norm Abrahamson.

Task 7 Project Management and Meetings

Attend up to four one-hour virtual meetings/conference calls with the City to discuss progress of the work and present the results of the seismic hazard study and resolve comments on the study and draft report.

Deliverables/Schedule:

The following presents our proposed schedule for deliverables.

- Seismic Source Characterization Model – 12 weeks after notice-to-proceed (NTP).
- Design Criteria Selection – Provided 8 weeks after the seismic source model is developed.
- Draft Report – 8 weeks after the design criteria selection, will be submitted to Dr. Norm Abrahamson.
- Revised Report – 2 weeks after receiving Dr. Norm Abrahamson's comments. To be reviewed by Dr. Norm Abrahamson for final inspection.
- Final Report and review letter by Dr. Norm Abrahamson – 1 week after Dr. Norm Abrahamson finished his final review.

Exclusions:

The following are not included in this advance scope as it is currently undetermined if this analysis will be required for the STID.

- Time History Development
- Conditional Mean Spectra
- Vertical Spectra
- Ground Motion Response Analyses

References:

FERC (2018). Engineering Guidelines for the Evaluation of Hydropower Projects, FERC. Chapter 13 – Evaluation of Earthquake Ground Motions.

Johnson, D.L. (2023). FERC Comment Letter, Subject: Eight CSIR and Revised STID, Upriver Project. Addressed to: Seth McIntosh, City of Spokane. Dated 1/9/2023.

USACE (2016). Engineering and Design – Earthquake Design and Evaluation for Civil Works Projects. Regulations, Washington, D.C.: U.S. Army Corps of Engineers: ER 1110-2-1806

USBR. (2015). Chapter 13: Seismic Analysis and Design, of Design 1569 Standards No. 13 – Embankment Dams.

USGS UHS Tool: <https://earthquake.usgs.gov/hazards/interactive/>

TERMS, SCHEDULE, AND FEE ESTIMATE

We understand our services will be provided in accordance with mutually agreed upon terms and conditions. Our schedule will be based on the task durations noted in the deliverable schedule above. We can provide an updated schedule with specific dates when NTP is provided. The actual schedule will depend on coordination with the City and FERC. To allow for unknowns and potential delays in the schedule we request that notice to proceed be provided the week of July 10, 2023 to ensure our services are complete by the end of December 2023.

Our fee will be a lump sum of **\$90,000** for the services outlined above. We will bill monthly based on project progress between notice to proceed and December 2023.

There are no intended third-party beneficiaries arising from the services described in this proposal and no party other than the party executing this proposal shall have the right to legally rely on the product of our services without prior written permission of GeoEngineers.


This proposal is valid for a period of 60 days commencing from the first date listed above and subject to renegotiation by GeoEngineers, Inc., after the expiration date.

We appreciate the opportunity to continue our services with the City and appreciate your confidence in our firm. Please call if you have any questions regarding our understanding of the project or our fee.

Sincerely,
GeoEngineers, Inc.


Melanie A. Walling, PE
Senior Geotechnical Engineer


Devon T. McLay, PE
Senior Geotechnical Engineer


Lyle J. Stone, PE
Associate Geotechnical Engineer


Lindsay C. Flangas, PE
Principal Geotechnical Engineer

MAW:DTM:LJS:LCF:atk

One copy submitted electronically.

Proprietary Notice: The contents of this document are proprietary to GeoEngineers, Inc. and are intended solely for use by our client to evaluate GeoEngineers' capabilities and understanding of project requirements as they relate to performing the services proposed for a specific project. Copies of this document or its contents may not be disclosed to any other parties without the written consent of GeoEngineers.

Disclaimer: Any electronic form, facsimile or hard copy of the original document (email, text, table and/or figure), if provided and any attachments are only a copy of the original document. The original document is stored by GeoEngineers, Inc. and will serve as the official document of record.

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Agenda Sheet for City Council Meeting of:
09/11/2023

<u>Date Rec'd</u>	8/25/2023
<u>Clerk's File #</u>	ORD C36439
<u>Renews #</u>	

<u>Submitting Dept</u>	FINANCE, TREASURY & ADMIN	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	CHRIS JOHNSON 625-6074	<u>Project #</u>	
<u>Contact E-Mail</u>	CEJOHNSON@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	First Reading Ordinance	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0410 - TREASURY - BUSINESS REGISTRATION FEE - ANNUAL REVIEW		

Agenda Wording
Annual Review of Business Registration Fee amount of SMC 08.02.0206

Summary (Background)
Annual Review of Business Registration Fee amount of SMC 08.02.0206

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

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	MURRAY, MICHELLE	<u>Study Session\Other</u>	F&A Committee 8/21/2023
<u>Division Director</u>	WALLACE, TONYA	<u>Council Sponsor</u>	CM Wilkerson & CP Kinnear
<u>Finance</u>	MURRAY, MICHELLE	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE		
<u>For the Mayor</u>	JONES, GARRETT		
<u>Additional Approvals</u>			
<u>Purchasing</u>			

Committee Agenda Sheet Finance & Administration

Submitting Department	Finance, Treasury and Administration – Treasury Services
Contact Name & Phone	Chris Johnson (509) 625-6074
Contact Email	cejohnson@spokanecity.org
Council Sponsor(s)	CM Betsy Wilkerson
Select Agenda Item Type	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: <u>5 Min</u>
Agenda Item Name	Business Registration Fee - Annual Review
Summary (Background)	Annual Review of Business Registration Fee amount per SMC 08.02.0206.
Proposed Council Action & Date:	N/A
Fiscal Impact:	
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: Revenue generating via license fee increase.	
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? 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	

ORDINANCE NO. C36439

An ordinance providing an increase in City business registration fees; amending SMC Section 08.02.0206(A) and 08.02.0206(B) of the Spokane Municipal Code.

WHEREAS, section 08.02.0206(K) of the Spokane Municipal Code provides for an annual review to make adjustment in business registration fees; and

WHEREAS, the annual fee adjustment amount is based on the previous years' increase in the Consumer Price Index (CPI); and

WHEREAS, the CPI figures for July – July (CPI-U = 3.2%; CPI-W = 2.6%) would result in a 3.1% increase in the basic registration fee.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That SMC Section 08.02.0206 of the Spokane Municipal Code is amended as follows:

Section 08.02.0206 Business Registrations

- A. A regular business registration fee is one hundred twenty-seven dollars (~~(\$120)~~ (\$127) per twelve-month period. Beginning on January 1, (~~(2023)~~ 2024), the regular business registration basic fee shall be one hundred thirty-one (\$131) per twelve-month period.
- B. The basic fee for a nonresident business registration is one hundred twenty-seven dollars (~~(\$120)~~ (\$127) dollars per twelve-month period. Beginning on January 1, (~~(2023)~~ 2024), the basic fee for a nonresident business registration shall be one hundred thirty-one (\$131) per twelve-month period.
- C. In addition to the basic registration fee, each business registrant must pay an additional fee of \$15 per unit per license year subject to the exception in subsection (F) of this section.
- D. In addition to the basic registration fee, each business must pay an additional fee for each personnel, per license year, as follows (all personnel of a business are charged the same amount corresponding to the respective category of the total number of personnel defined below):

1. Businesses with fewer than six personnel in total: Ten dollars per person.
 2. Businesses with six to ten personnel in total: Fifteen dollars per person.
 3. Businesses with more than ten personnel in total: Twenty dollars per person.
- E. Whenever there is a change of ownership, the holder of the registration must notify the Washington State business licensing service within thirty days of such event. The new owner must file an application with the Washington State business licensing service to acquire a new registration, as provided in chapter 08.01 SMC.
- F. For businesses qualifying under SMC 08.01.190(A) (low gross income businesses) for a reduced registration fee, the reduced business registration fee is one-half the basic registration fee, but all applicable personnel, inspection, or other applicable fees or charges apply in full.
- G. For businesses qualifying under SMC 08.01.190(B) (nonprofit organizations) for a reduced registration fee, the reduced business registration fee is one-half the basic registration fee. Nonprofit businesses are exempt from personnel fees.
- H. For businesses qualifying under SMC 08.01.190(C) (social purpose corporations) for a reduced registration fee, the reduced business registration fee is one-half the basic registration fee.
- I. For businesses qualifying under SMC 08.01.190(D) (Certified B Corporations) for a reduced registration fee, the reduced business registration fee is one-half the basic registration fee.
- J. Any Certified B Corporation certified by B Lab is exempt from personnel fees.
- K. Annual Fee Adjustment.
Effective January 1, 2011, and the first of January of each year thereafter, the business registration fee set forth in this section may be adjusted by the Chief Financial Officer by an amount equal to the consumer price index adjustment of the previous July – July U.S. All City Average (CPI-U and CPI-W). The newly determined amount shall be rounded up to the nearest dollar. In addition, the proposed adjusted

fees shall be presented to the City Council for approval by ordinance and a copy of the approved fees filed with the Chief Financial Officer before becoming effective. The annual fee adjustment provided for in this section shall not apply to the personnel fee started in SMC 08.02.0206(C).

L. For businesses qualifying under SMC 08.01.190 E, there shall be no business registration fee.

M. ~~((For initial business registrations filed from the effective date of this section until December 31, 2022, the business registration fee stated in SMC 08.02.0206(A) and the personnel fee stated in SMC 08.02.0206(C) are each reduced by 50%.))~~

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date



Agenda Sheet for City Council Meeting of:
09/11/2023

Date Rec'd	7/28/2023
Clerk's File #	ORD C36440
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	SOLID WASTE COLLECTION
Contact Name/Phone	CHRIS AVERYT 625-6540
Contact E-Mail	CAVERYT@SPOKANECITY.ORG
Agenda Item Type	First Reading Ordinance
Agenda Item Name	4500 REVISION OF ORDINANCES 13.02 & 10.70

Agenda Wording
Revision of Ordinances 13.02.0310 Collection Schedule-Container Placement Deadlines and 10.70.040 Exemptions to adjust Solid Waste Collection residential and commercial routes to start one hour earlier than currently stated.

Summary (Background)
The Department of Labor & Industries has made recent changes in the rules surrounding employee exposure to ambient heat and wildfire smoke. Solid Waste Collection field employees spend a considerable amount of time outside of their trucks during the day. This revision would allow the flexibility for routes to start one hour earlier, as deemed necessary, for increased employee safety and operational efficiency.

Lease? NO	Grant related? NO	Public Works? NO
Fiscal Impact		Budget Account
Select \$		#
Select \$		#
Select \$		#
Select \$		#

Approvals		Council Notifications	
Dept Head	AVERYT, CHRIS	Study Session\Other	PIES 7/24/2023
Division Director	FEIST, MARLENE	Council Sponsor	CP Kinnear & CM Stratton
Finance	MURRAY, MICHELLE	Distribution List	
Legal	PICCOLO, MIKE	caveryt@spokanecity.org	
For the Mayor	JONES, GARRETT	rschoonover@spokanecity.org	
Additional Approvals		rhughes@spokanecity.org	
Purchasing		eschoedel@spokanecity.org	
		rhulvey@spokanecity.org	

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Solid Waste Collection
Contact Name	Chris Averyt
Contact Email & Phone	caveryt@spokanecity.org / 509.625.6540
Council Sponsor(s)	CM Kinnear & CM Stratton
Select Agenda Item Type	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: 5 minutes
Agenda Item Name	Revision of Ordinance 13.02 & 10.70
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>Requesting a revision of Ordinances <i>13.02.0310 Collection Schedule – Container Placement Deadlines</i> and <i>10.70.040 Exemptions</i> to allow the Solid Waste Collection Department to change residential and commercial route start times to one hour earlier than stated in the current ordinance.</p> <p>This request is in the interest of employee safety and recent changes to the Department of Labor & Industry’s rules addressing outdoor ambient heat and wildfire exposure. Exposure to high temperatures and wildfire smoke adds to an already physically demanding occupation. All field employees, especially those assigned to rear-load routes, spend a considerable amount of time outside of their trucks during the day, whether it is to move dumpsters, pick up extra trash, or perform pre-trip and post-trip inspections.</p> <p>As a trial this summer, the department moved start times up by 30 minutes, while staying within the rules outlined by the current ordinance. Revising this ordinance will give flexibility moving forward to start routes an hour earlier, improving operational efficiencies and reducing employee exposure to high temperatures and poor air quality during the worst part of the day.</p>
Proposed Council Action	Approval of Requested Ordinance Revisions
Fiscal Impact Total Cost: <u>n/a</u> 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: <u>n/a</u> Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? <u>n/a</u>	

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?

The department keeps monthly reports for on-job injuries and accidents/incidents resulting in property damage. The data collected during the hottest and/or smokiest months of the year can be reviewed and compared to previous years to see if injuries and accidents/incidents have been reduced. Overtime can be monitored to determine if there is a decline related to the earlier start times.

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 the City's Safety & Risk Management Department's rules/policies which were written to meet the requirements of Washington Administrative Codes (WAC):

Wildfire Smoke Exposure – Emergency Rule (implemented on 7/23/2021)

Outdoor Heat Exposure – Emergency Rule (implemented on 06/01/2021)

ORDINANCE NO. C36440

AN ORDINANCE relating to Noise Control, amending SMC section 13.02.0310, to chapter 13.02, and amending SMC section 10.70.040 to chapter 10.70 of the Spokane Municipal Code; and setting an effective date.

WHEREAS, per new emergency rules adopted by Washington State Department of Labor & Industries under WAC 296-62-09510, the City needs to adjust the timing for Solid Waste Collection activities;

- - Now, Therefore,

The City of Spokane does ordain:

Section 1. That SMC section 13.02.0310 is amended to read as follows:

13.02.0310 Collection Schedule – Container Placement Deadlines

A. Collection services are scheduled in three work shifts:

1. Night Schedule.

Collection occurs after ten p.m. until six-thirty a.m. of the collection day.

- a. For purposes of reference, the collection day for night service is reckoned as that calendar day that starts before midnight, although the night shift actually continues into a new calendar day after midnight.
- b. Night schedule is primarily for the central city collection area.
- c. Some containers are placed out in right-of-way areas for collection.
- d. The deadline for container placement for pickup is eight p.m.
- e. After collection, containers must be returned to their regular storage area promptly, but no later than seven a.m. or two hours after collection by the department, whichever occurs last.
- f. The above rules apply to both refuse and recycling containers.

2. Early Day Schedule.

Collection occurs any time after (~~six~~) five a.m. of the collection day.

- a. Early day schedule is primarily for commercial container customers outside the central city collection area.

- b. The deadline for all commercial container placement for pickup is ((~~six~~)) five a.m.
- c. After collection, containers must be returned to their storage area promptly, but no later than two hours after collection by the department.
- d. The above rules apply to both refuse and recycling containers.

3. Regular Day Schedule.

Regular day schedule is primarily for residential automated cart customers outside the central city collection area.

- a. The deadline for container placement for pickup is ((~~seven~~)) six a.m.
- b. Collection occurs any time after ((~~seven~~)) six a.m. of the collection day.
- c. After collection, containers not regularly stored at the container pickup location must be removed from the pickup location and returned to their regular storage area, out of general curbside, sidewalk or pickup area visibility promptly, but no later than nine p.m. in the evening of the collection day.

B. Collection times for recycling are the same as general mixed solid waste, unless different specific arrangements are made with the customer, except residential recycling customers (single-family and multi-unit dwellings) served by the night schedule for general solid waste will receive early day service for recycling pickup.

- 1. Said residential customers must have recycling containers at the collection pickup location no later than ((~~seven~~)) six a.m. of the collection day.
- 2. All containers must be removed from the curb by nine p.m. in the evening of the collection day.

Section 2. That SMC section 10.70.040 is amended to read as follows:

10.70.040 Exemptions

- A. The City exempts from the provisions of this chapter those sounds set forth in WAC 173-60-050 unless otherwise specially prohibited under this chapter.
- B. Activities which receive a special event permit under [chapter 10.39 SMC](#) and provided the provisions of SMC 10.70.110 are met.

C. Sounds created by the official operation of public safety emergency equipment, and Solid Waste Collection activities per SMC 13.02.0310.

Section 3. Effective Date.

PASSED BY THE CITY COUNCIL ON _____, 2024.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date



Agenda Sheet for City Council Meeting of:

09/18/2023

Date Rec'd	9/5/2023
Clerk's File #	ORD C35425
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	DEVELOPMENT SERVICES CENTER
Contact Name/Phone	ELDON BROWN X6305
Contact E-Mail	EBROWN@SPOKANECITY.ORG
Agenda Item Type	First Reading Ordinance
Agenda Item Name	4700 - NEW FIRST READING ORDINANCE ON AMENDED ROSS CT STREET VACATION

Agenda Wording

New First Reading Ordinance on Amended Ross Ct Street Vacation

Summary (Background)

In 2016 the Riverview Retirement Community applied to vacate portions of Ross Ct. and City Council granted that vacation subject to conditions. (Ordinance C35425). Those conditions have finally been met and staff wishes to send the ordinance back to City Council for a new 1st and final reading of the ordinance. Ordinance C35425 has been modified in order to change the limits of the vacation to accommodate a public turn-around in the right-of-way.

Lease? NO Grant related? NO Public Works? NO

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

Approvals		Council Notifications	
Dept Head	PALMQUIST, TAMI	Study Session\Other	PIES Committee 7/24/23
Division Director	MACDONALD, STEVEN	Council Sponsor	CMs Bingle & Cathcart
Finance	ORLOB, KIMBERLY	Distribution List	
Legal	RICHMAN, JAMES	tpalmquist@spokanecity.org	
For the Mayor	JONES, GARRETT	ebrown@spokanecity.org	
Additional Approvals		edjohnson@spokanecity.org	
Purchasing		sbishop@spokanecity.org	
		kkuchlenz@spokanecity.org	

City of Spokane
Department of Engineering Services
808 West Spokane Falls Blvd.
Spokane, WA 99201-3343
(509) 625-6700

ORDINANCE NO. C35425

An ordinance vacating a portion of Ross Court,

WHEREAS, a petition for the vacation of a portion of Ross Court, 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 the right-of-way located in the SE ¼ of Section 09, Township 25 North, Range 43 East, Willamette Meridian, and further described below, is hereby vacated. Parcel number not assigned.

That portion of North Ross Court Described below

~~((lying north of Lots 1 through 5, WALKER'S SUBDIVISION OF THE SOUTH HALF OF LOT 12, ROSS PARK, as recorded in Volume "E" of Plats, Page 88, records of Spokane County, extended northerly to the South line of the plat of WILKINSON SUBDIVISION OF PART OF BLOCK 12 OF ROSS PARK ADDITION, as recorded in Book 3 of Plats, Page 63, records of Spokane County, EXCEPT Parcel "A" further described below;~~

Parcel "A"

~~A parcel of land being a portion of Southwest Quarter of Section 9, Township 25 North, Range 43 East, Willamette Meridian, County of Spokane, State of Washington, more particularly described as follows:~~

~~COMMENCING AT the southeast corner of HOLE'S SUBDIVISION OF BLOCK 13, ROSS PARK, as recorded in Volume "D" of Plats, Page 78, records of Spokane County, said point being on the Northerly right of way of Upriver Drive and being common with the Southwest corner of WALKER'S SUBDIVISION OF THE SOUTH HALF OF LOT 12, ROSS PARK, as recorded in Volume "E" of Plats, Page 88, records of Spokane County;~~

~~Thence North 47°47'23" East along the Northerly right of way of Upriver Drive, a distance of 23.93 feet to the TRUE POINT OF BEGINNING;~~

~~Thence continuing along said Northerly right of way North 47°47'23" East a distance of 64.01 feet;~~

~~Thence North 43°01'21" West a distance of 334.23 feet;~~

~~Thence along a tangent curve to the left with a radius of 302.00 feet, through a central angle of 62°53'44" (the long chord of which bears North 74°28'13" West a distance of 315.12 feet), for an arc length of 331.52 feet;~~

~~Thence South 74°04'55" West a distance of 512.89 feet;~~

~~Thence along a tangent curve to the left with a radius of 232.00 feet, through a central angle of 40°28'19" (the long chord of which bears South 53°50'46" West a distance of 160.49 feet), for an arc length of 163.88 feet to a point on the Northwesterly right of way of that right of way as dedicated by Resolution recorded in Auditor's file number 6037563;~~

~~Thence along said Northwesterly right of way South 33°36'36" West a distance of 9.71 feet;~~

~~Thence South 56°23'24" East a distance of 64.00 feet;~~

~~Thence North 33°36'36" East a distance of 9.71 feet;~~

~~Thence along a tangent curve to the right with a radius of 168.00 feet, through a central angle of 40°28'19" (the long chord of which bears North 53°50'46" East a distance of 116.22 feet), for an arc length of 118.67 feet;~~

~~Thence North 74°04'55" East a distance of 512.89 feet;~~

~~Thence along a tangent curve to the right with a radius of 238.00 feet, through a central angle of 62°53'44" (the long chord of which bears South 74°28'13" East a distance of 248.34 feet), for an arc length of 261.26 feet;~~

~~Thence North 33°36'36" East a distance of 6.34 feet;~~

~~Thence along a tangent curve to the right with a radius of 127.00 feet, through a central angle of 40°28'19" (the chord of which bears North 53°50'46" East for a distance of 87.86 feet), an arc length of 89.71 feet;~~

~~Thence North 74°04'55" East a distance of 574.93 feet;~~

~~Thence along a tangent curve to the right with a radius of 187.00 feet, through a central angle of 40°07'09" (the chord of which bears South 85°51'30" East for a distance of 128.28 feet), an arc length of 130.94 feet;~~

~~Thence along a compound curve to the right with a radius of 238.00 feet, through a central angle of 22°46'35" (the chord of which bears South 54°24'38" East for a distance of 93.99 feet), an arc length of 94.61 feet;~~

~~Thence South 43°01'21" East a distance of 333.32 feet to the TRUE POINT OF BEGINNING.~~

~~CONTAINING: approximately 90415.84 square feet or 2.076 acres of land, more or less.)~~

COMMENCING AT THE SOUTHEAST CORNER OF LOT 12, WILKINSON SUBDIVISION OF PART OF BLOCK 12 OF ROSS PARK ADDITION ACCORDING TO PLAT RECORDED IN BOOK 3 OF PLATS, PAGE 63, THENCE ALONG THE SOUTH LINE OF SAID LOT 12, S 55'59'48" W, 37.47 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE SOUTH LINE OF LOTS 8 THROUGH 12, S 55'59'48" W, 194.61 FEET TO THE EASTERLY RIGHT OF WAY LINE OF NORTH CENTER STREET; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE, S 34'19'12" E, 50.00 FEET TO A POINT ON THE NORTH LINE OF LOT 5, WALKER'S SUBDIVISION OF THE SOUTH HALF OF LOT 12, ROSS PARK ACCORDING TO PLAT RECORDED IN BOOK E OF PLATS, PAGE 88; THENCE ALONG THE NORTH LINE OF 1 THROUGH 5 OF SAID PLAT OF WALKER'S SUBDIVISION, N 55'59'48" E, 194.35 FEET; THENCE N 34'01'12" W, 50.00 FEET TO THE TRUE POINT OF BEGINNING.

Section 2. An easement is reserved and retained over and through the entire vacated area for the utility services of Avista Utilities, and the City of Spokane to protect existing and future utilities.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to Form:

Assistant City Attorney

Mayor

Date: _____

Effective Date: _____

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Developer Services
Contact Name	Eldon Brown
Contact Email & Phone	dbrown@spokanecity.org 509-625-6305
Council Sponsor(s)	Jonathan Bingle, Michael Cathcart
Select Agenda Item Type	<input type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Right-of-way Vacation of Ross Ct.
Summary (Background)	<p>Back in 2016 the Riverview Retirement Community applied to vacate portions of Ross Ct. and City Council granted that vacation subject to conditions. (Ordinance C35425). Those conditions have finally been met and staff wishes to send the ordinance back to City Council for a new 1st and final reading of the ordinance.</p>
Proposed Council Action	
Fiscal Impact	
Total Cost: <small>Click or tap here to enter text.</small>	
Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring	
Specify funding source: <small>Click or tap here to enter text.</small>	
Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring	
Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities?	
NA	
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?	
NA	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?	
NA	
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?	
NA	

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

09/18/2023

Date Rec'd

9/5/2023

Clerk's File #

ORD C36441

Renews #**Submitting Dept**

PLANNING & ECONOMIC DEVELOPMENT

Cross Ref #**Contact Name/Phone**

TYLER KIMBRELL X6733

Project #**Contact E-Mail**

TKIMBRELL@SPOKANECITY.ORG

Bid #**Agenda Item Type**

First Reading Ordinance

Requisition #**Agenda Item Name**

0650 – SHORELINE MASTER PROGRAM AQUACULTURE UPDATE

Agenda Wording

Amending Spokane Municipal Code (SMC) Sections 17E.060.470, 17E.060.690, and 17C.190.500.

Summary (Background)

The proposed amendments to the Shoreline Master Program (SMP) (SMC 17E.060.470 and SMC 17E.060.690) and the Use Category Description for Agriculture (SMC 17C.190.500) will permit fish rearing facilities on the shorelines of the Latah Creek (aka Hangman Creek) within the SMP shoreline environment designations of "Natural" and "Urban Conservancy."

Lease? NO

Grant related? NO

Public Works? NO

Fiscal Impact**Budget Account**

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

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

GARDNER, SPENCER

Study Session\Other

PIES 8/28/23

Division Director

MACDONALD, STEVEN

Council Sponsor

CP Kinnear and CM Stratton

Finance

ORLOB, KIMBERLY

Distribution List**Legal**

SCHOEDEL, ELIZABETH

smacdonald@spokanecity.org

For the Mayor

JONES, GARRETT

sgardner@spokanecity.org

Additional Approvals

tblack@spokanecity.org

Purchasing

rbenzie@spokanecity.org

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

ORDINANCE NO C36441

An ORDINANCE relating to shoreline regulations to accommodate aquaculture amending Spokane Municipal Code (SMC) Section 17C.190.500 Agriculture; Section 17E.060.470 Aquaculture; and Section 17E.060.690 Shoreline Primary Use.

WHEREAS, the City of Spokane adopted a Comprehensive Plan in May of 2001 that complies with the requirements of the Growth Management Act (GMA) as set forth in RCW 36.70A, including a shoreline element meeting the requirements of RCW 36.70A.480.

WHEREAS, the Chapter 14 Shorelines, an element of the City's Comprehensive Plan, includes goals and policies supporting the preservation of natural resources for fisheries and promotes the State's goal of increasing aquaculture activities; and,

WHEREAS, The Coeur D'Alene Tribe, in partnership with the Spokane Tribe of Indians, the Confederated Tribes of the Colville Reservation, the Upper Columbia United Tribes and the State of Washington implemented a large-scale feasibility study for reintroduction of Chinook and Sockeye Salmon into the block habitats of the Upper Columbia River.

WHEREAS, the proposed actions are consistent with and supported by the Spokane Comprehensive Plan as outlined in the Plan Commission Findings of Fact, Conclusions, and Recommendations (Exhibit A); and,

WHEREAS, by virtue of the public process outlined in Exhibits A and B, interested agencies and the public have had opportunities to participate throughout the process and all persons wishing to comment on the amendment were given opportunity to be heard; and,

WHEREAS, the City has complied with RCW 36.70A.370 in the adoption of this Ordinance; and,

WHEREAS, on June 20, 2023, the Washington State Department of Commerce and appropriate state agencies were given the required 60-day notice before adoption of proposed changes to the Unified Development Code pursuant to RCW 36.70A.106; and,

WHEREAS, on June 28, 2023, notice of intent to adopt was issued through the City of Spokane Gazette Pursuant to SMC 17G.025.010; and,

WHEREAS, on June 14, 2023, a request for SEPA agency comments was issued for the draft text amendments to the Shoreline Master Program. The comment period ended on June 28, 2023. One letter was received from the Spokane Tribe of Indians. The letter is available for review in the Planning Services Staff Report (Exhibit B); and,

WHEREAS, on July 10, 2023, a SEPA Determination of Nonsignificance was issued by the direct of Planning Services. Two letters were received, one from the Spokane Tribe of Indians and the other from Citizen Action for the Latah Valley. The letters are available for review in the Planning Services Staff Report (Exhibit B); and,

WHEREAS, prior to the Plan Commission joint public hearing with the WA State Department of Ecology, a legal notice was published in the *Spokesman-Review* on July 12 and July 19, 2023; and,

WHEREAS, prior to the Plan Commission joint public hearing with the WA State Department of Ecology, a legal notice of a joint public hearing was published in the *Spokesman-Review* on July 19, 2023; and.

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

WHEREAS, a legal notice of a joint 30-day public comment period with the WA State Department of Ecology was published in the *Spokesman-Review* on July 19, 2023. The comment period was open from July 21, 2023 through August 21, 2023; and,

WHEREAS, on July 26, 2023, the Plan Commission held a public hearing on the proposed amendments. Two people testified at the joint public hearing; and,

WHEREAS, on July 26, 2023, the Plan Commission voted to recommend the City Council adopt the proposed amendments (see Exhibit A); and,

WHEREAS, the City Council adopts the recitals set forth herein as its findings and conclusions in support of the adoption of this ordinance and further adopts the findings, conclusions, and recommendations from the Planning Services Staff Report (Exhibit B) and the City of Spokane Plan Commission Findings of Fact, Conclusions, and Recommendations (Exhibit A) for the same purposes; and,

WHEREAS, the effective date of this Ordinance shall be the date on which it is approved by the Washington State Department of Ecology as provided in RCW 90.58.090;

NOW, THEREFORE, the City of Spokane Does ordain:

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

Section 1. That Section 17C.190.500 SMC is amended to read as follows

Section 17C.190.500 Agriculture

A. Characteristics.

Agriculture includes activities that raise, produce or keep plants or animals.

B. Accessory Uses.

Accessory uses include dwellings for proprietors and employees of the use and animal training.

C. Examples.

Examples include breeding or raising of fowl or other animals; dairy farms; stables; riding academies; fish rearing facilities; kennels or other animal boarding places; farming, truck gardening, forestry, tree farming; and wholesale plant nurseries.

D. Exceptions.

1. Processing of animal or plant products, including milk, and feed lots are classified as Manufacturing and Production.
2. Livestock auctions are classified as Wholesale Sales.
3. Sale of products produced on site is permitted; provided, that structures for this purpose are limited to five hundred square feet of total floor area per site.
4. Plant nurseries that are oriented to retail sales are classified as Retail Sales and Service.
5. Fish rearing facilities are only permitted in accordance with SMC 17E.060.470.

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

Section 2. That Section 17E.060.470 SMC is amended to read as follows

Section 17E.060.470 Aquaculture

~~((Aquaculture activities are presently not in use, nor are they an anticipated activity within the shoreline jurisdiction. Therefore, these activities are not applicable to the City of Spokane. If the City should determine in the future that aquaculture will be allowed in the shoreline jurisdiction, regulations will be established by amendment to the SMP and to all other applicable City of Spokane development regulations.))~~

A. Definition

Aquaculture means the rearing or farming of fish, shellfish, or other aquatic plants and animals and may include accessory uses. Examples of accessory uses include, but are not limited to pump houses, office space, on-site staff housing, maintenance buildings, storage buildings, equipment sheds, and aquaculture research and diagnostics laboratories.

B. Aquaculture is allowed for the purpose of enhancing or restoring salmonid populations and fisheries, for enhancing or restoring native aquatic plants, or for educational purposes, or for sport harvest and sustenance purposes.

C. Aquaculture is limited to the Urban Conservancy Environment and Natural Environment environmental designation and the Latah Creek shoreline district.

D. Aquaculture is not permitted in areas where it would result in a net loss of ecological functions, adversely impact aquatic macroinvertebrates, or significantly conflict with navigation and other water-dependent uses.

E. Aquaculture facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

Section 3. That Section 17E.060.690 SMC is amended to read as follows

Section 17E.060.690 Shoreline Primary Use

A. In addition to this section, shoreline uses are subject to the regulations in Article V, Part I, General Requirements for Shoreline Use.

B. Refer to SMC 17E.060.300 for uses and activities that are exempt from obtaining a shoreline substantial development permit. An exemption from the shoreline substantial development permit process is not an exemption from compliance with the Shoreline Management Act or provisions of these Shoreline Regulations, or from any other regulatory requirements. To be authorized, all uses and activities must be consistent with the policies and regulations of the entire SMP and the Act.

C. To be permitted in the Shoreline Jurisdiction, a use must be permitted in both the shoreline environment and the underlying zone in which it is located.

D. Uses not listed in Table 17E.060-4 or Title 17C may only be authorized as a conditional use.

E. Legend for Table 17E.060-4:

1. Permitted Uses – “P”

Uses permitted are listed in Table 17E.060-4 with a “P”. These uses are allowed if they comply with the development standards of these Shoreline Regulations and Title 17C. A shoreline substantial development permit or an exemption from such permit is required, pursuant to SMC 17E.060.290 and SMC 17E.060.300.

2. Limited Uses – “L”

Uses allowed that are subject to limitations are listed in Table 17E.060-4 with an “L”. These uses are allowed if they comply with the limitations as listed in the footnotes following the table and the development standards of these Shoreline Regulations and title 17C SMC. A shoreline substantial development permit or an exemption from such permit is required.

3. Conditional Uses – “CU”

Uses that are allowed if approved through the shoreline conditional use review process are listed in Table 17E.06-4 with a “CU.” These uses are allowed provided they comply with the conditional use approval criteria for that use, the development standards of these Shoreline Regulations and Title 17C. Uses listed with a “CU” that also have a footnote number in the table are subject to the standards cited in the footnote.

4. Uses Not Permitted – “N”

Uses listed in Table 17E.060-4 with an “N” are not permitted. Existing uses in categories listed as not permitted are subject to the standards in Chapter 17C.210 SMC, Land Use Standards Non Conforming Situations, and SMC 17E.060.380, Nonconforming Structures and Uses.

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

TABLE 17E.060-04							
SHORELINE PRIMARY USES							
Use is:		Shoreline Environments					
P:	Permitted (with shoreline substantial development permit or exemption)	NE	UCE	SRE	LUE	IUE	WTPE
N:	Not permitted						
L:	Allowed, but special limitations						
CU:	Conditional use review required						
Agriculture							
Low intensity agriculture		N	L[1]/CU	N	N	N	N
High intensity agriculture		N	N	N	N	N	N
Aquaculture							
Aquaculture		(N) P	(N) P	N	N	N	N
Boating Facilities							
Marinas		N	N	N	N	N	N
Launch ramps for small non-motorized watercraft		CU	CU	CU	CU	N	CU
Capital Facilities and Utilities							
Maintenance of existing utilities or facilities		P	P	P	P	P	P
New construction or expansion of existing utilities or facilities		L[2]/CU	L[2]/CU	L[2]/CU	L[2]/CU	L[2]/CU	L[2]/CU
Over-water or underwater utility crossings		CU	CU	CU	CU	CU	CU
New bridges solely for pipelines		N	N	N	N	N	N
Facilities which constitute the final termination or destination of a transmission line		N	N	N	N	N	N

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

Expansions or upgrades of existing wastewater treatment plant facilities and accessory uses	N	N	N	N	N	CU
New wastewater treatment plant facilities and pumping stations	N	N	N	N	N	L[2]/CU
New wastewater treatment outfall infrastructure	CU	CU	CU	CU	CU	P
New wireless communication support tower	N	N	N	N	N	N
Commercial Development						
Water-dependent commercial uses	N	P	N	P	P	N
Water-related commercial uses	N	P	N	P	P	N
Water-enjoyment commercial uses	N	P	N	P	P	N
Non-water-oriented commercial uses	N	L[3]	N	L[3]	L[3]	N
Forest Practices						
Forest practices	N	N	N	N	N	N
Industrial Development						
Water-dependent industrial uses	N	CU	N	CU	CU	N
Water-related industrial uses	N	CU	N	CU	CU	N
Non-water-oriented industrial uses	N	L[4]/CU	N	L[4]/CU	L[4]/CU	N
High-impact industrial uses	N	N	N	N	N	N
Institutional						
Water-dependent institutional	CU	CU	CU	CU	CU	N
Water-related institutional	CU	CU	CU	CU	CU	N
Water-enjoyment institutional	CU	CU	CU	CU	CU	CU
Non-water-oriented institutional	L[5]/CU	L[5]/CU	L[5]/CU	L[5]/CU	L[5]/CU	N

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

In-stream Structures						
In-stream structures	L[6]/CU	CU	CU	CU	CU	CU
Mining						
Mining	N	N	N	N	N	N
Recreational Development						
Water-dependent recreational	CU	CU	CU	CU	CU	N
Water-related recreation	CU	CU	CU	CU	CU	CU
Water-enjoyment recreation	L[7]/CU	CU	CU	CU	CU	CU
Non-water-oriented recreation	N	CU	CU	CU	CU	N
Residential Development						
Single-family residences	CU	P	P	P	P	N
Two-family residences	N	P	P	P	P	N
Three-family residences	N	P	P	P	P	N
Multi-family residences (4 or more dwelling units)	N	CU	CU	CU	CU	N
Accessory dwelling unit (ADU)	CU	P	P	P	P	N
Detached accessory structures	CU	P	P	P	P	N
Group living	N	CU	CU	CU	CU	N
Subdivision						
All subdivisions (including binding site plans)	L[8]/CU	CU	CU	CU	CU	N
Parking						
Commercial parking or parking facility as primary use	N	N	N	N	N	N
Parking, accessory to a permitted use	P	P	P	P	P	P
Transportation						

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

New streets or street expansions that are part of the City of Spokane designated regional arterial network	L[9]/CU	L[9]/CU	L[9]/CU	L[9]/CU	L[9]/CU	L[9]/CU
New local access streets or street expansions serving permitted shoreline uses	L[10]/CU	L[10]	L[10]	L[10]	L[10]	L[10]
Pedestrian and bicycle linkages to existing or planned transportation networks	L[11]/CU	P	P	P	P	P
Maintenance roads, accessory to a permitted use	P	P	P	P	P	P
Railroads and Rail Corridors						
New rail lines	L[12]/CU	L[12]/CU	L[12]/CU	L[12]/CU	L[12]/CU	L[12]/CU
Expansion of existing rail lines	P	P	P	P	P	P

**NOT EFFECTIVE UNTIL APPROVED BY DEPARTMENT OF ECOLOGY PER RCW
90.58.090**

Passed the City Council _____

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date: _____

* Date of State Approval

**CITY OF SPOKANE PLAN COMMISSION
FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS
REGARDING SHORELINE MASTER PROGRAM AQUACULTURE UPDATE**

A recommendation of the City of Spokane Plan Commission to the City Council to approve amendments to the City's shoreline regulations to accommodate aquaculture. The proposal amends SMC Section 17C.190.500 Agriculture; Section 17E.060.470 Aquaculture; and Section 17E.060.690 Shoreline Primary Use.

FINDINGS OF FACT:

- A. The City of Spokane adopted a Comprehensive Plan in May of 2001 that complies with the requirements of the Growth Management Act (GMA) as set forth in RCW 36.70A, including a shoreline element meeting the requirements of RCW 36.70A.480.
- B. Chapter 14: Shorelines of the City of Spokane's Comprehensive Plan recognizes aquaculture uses as a statewide interest and identifies the goal of preserving natural resources of the shoreline for fisheries.
- C. The Coeur d'Alene Tribe, in partnership with the Spokane Tribe of Indians, the Confederated Tribes of the Colville Reservation, the Upper Columbia United Tribes and the State of Washington implemented a large-scale feasibility study for reintroduction of Chinook and Sockeye salmon into blocked habitats of the Upper Columbia River.
- D. The proposed text amendments permit the fish rearing facilities that will serve as the primary aquaculture program for the support of the feasibility studies.
- E. Outreach and public communication began in Spring 2023 and included the following:
 - 1. A project webpage
 - 2. A Plan Commission workshop on July 12, 2023
 - 3. Notice of intent to adopt & SEPA checklist request for comments on June 14, 2023, through June 28, 2023
 - 4. SEPA determination of non-significance notice on July 10, 2023
 - 5. A joint WA Department of Ecology and City of Spokane 30-day comment period from July 21, 2023 through August 21, 2023
 - 6. A joint WA State Department of Ecology and City of Spokane Plan Commission Public Hearing on July 26, 2023
- F. Public comment, as well as agency and department comments, received prior to the July 26, 2023, Plan Commission Hearing were included in the staff report as Exhibit D.
- G. On July 12, 2023 the City of Spokane Plan Commission held a workshop to discuss draft language, received updates, and review and evaluation with city staff alternatives to proposed text changes.

Findings of Fact, Conclusion, and Recommendation

- H. On June 20, 2023, the Washington State Department of Commerce and appropriate state agencies were give the required 60-day notice before adoption of proposed changes to the Unified Development Code pursuant to RCW 36.70A.106.
- I. On June 28, 2023, notice of intent to adopt was issued through the City of Spokane Gazette pursuant to SMC 17G.025.010.
- J. On June 14, 2023, a request for SEPA agency comments was issued for the draft text amendments to the Shoreline Master Program. The comment period ended on June 28, 2023. One letter was received from the Spokane Tribe of Indians.
- K. A SEPA Determination of Nonsignificance was issued by the director of Planning Services on July 10, 2023. Two letters were received, one from the Spokane Tribe of Indians and the other from Citizen Action for the Latah Valley.
- L. A legal notice of public hearing was published in the *Spokesman-Review* on July 12, 2023 and July 19, 2023.
- M. A legal notice of a joint public hearing with the Washington State Department of Ecology was published in the *Spokesman-Review* on July 19, 2023.
- N. A legal notice of a joint 30-day public comment period with the Washington State Department of Ecology was published in the *Spokesman-Review* on July 19, 2023. The comment period is open from July 21, 2023 through August, 21, 2023.
- O. The proposed text amendments were drafted and reviewed consistent with the requirements of RCW 36.70A.370 to assure protection of private property rights.
- P. Amendments to the Unified Development Code Title 17 are subject to the review and recommendation by the City of Spokane Plan Commission.
- Q. The Plan Commission held a joint public hearing with the Washington State Department of Ecology on July 26, 2023, to obtain public comments on the proposed amendments. Two people testified at the joint public hearing.
- R. The City of Spokane Plan commission adopts the findings and analysis set forth in the staff report prepared for the proposal.
- S. The City of Spokane Plan Commission finds that the proposed text amendments meet the decision criteria established in SMC 17G.025.010(G).

CONCLUSIONS:

Based upon the draft text amendments, staff report and analysis (which is hereby incorporated into these findings, conclusions, and recommendations), SEPA review, agency and public comments received, and public testimony presented, the Spokane Plan Commission makes the following conclusions with respect to the Shoreline Master Program and Use Category Descriptions:

Findings of Fact, Conclusion, and Recommendation

1. The Plan Commission finds that the proposed amendments bear a substantial relation to the public health, safety, welfare, and protection of the environment pursuant to the requirements outlined in SMC 17G.025.010(G).
2. The proposed text amendments will implement the goals and policies of the City of Spokane Comprehensive Plan and the Shoreline Management Act of 1971.
3. Interested agencies and the public have had extensive opportunities to participate throughout the process and persons desiring to comment were given an opportunity to comment.
4. SEPA review was completed for the proposal, and pursuant to SEPA, any adverse environmental impacts associated with the draft regulations will be mitigated by enforcement of the City's development regulations.
5. The Plan Commission finds that the proposed amendments are consistent with the applicable provisions of the Comprehensive Plan, particularly the following adopted goals and policies:
 - a. *Chapter 14: SMP 1.1 Coordinated Planning*
 - b. *Chapter 14: SMP 1.6 Policy Priorities*
 - c. *Chapter 14: SMP 4.1 Preservation of Natural Resources*
 - d. *Chapter 14: SMP 7.1 Cooperation and Consultation*
 - e. *Chapter 14: SMP 10.2 Native Plant Restoration*
 - f. *Chapter 14: SMP 11.37 Open Space and Wildlife Habitat Preservation*
 - g. *Chapter 14: SMP 11.52 Protection of Ecosystem-Wide Processes*

RECOMMENDATION:

In the matter of the ordinances pertaining to aquaculture uses on the shorelines of Latah Creek, amending the Unified Development Code of the City of Spokane.

As based on the above listed findings and conclusions, by unanimous vote of seven in favor to zero not in favor, the Spokane Plan Commission takes the following actions:

1. Recommends to the Spokane City Council the **APPROVAL** of the proposed amendments to Section 17C.190.500 Agriculture.
2. Recommends to the Spokane City Council the **APPROVAL** of the proposed amendments to Section 17E.060.470 Aquaculture.
3. Recommends to the Spokane City Council the **APPROVAL** of the proposed amendments to Section 17E.060.690 Shoreline Primary Use.

Findings of Fact, Conclusion, and Recommendation

4. Authorizes the President to prepare and sign on the Commission's behalf a written decision setting forth the Plan Commission's findings, conclusions, and recommendations on the proposed amendments.

Greg Francis

[Greg Francis \(Jul 31, 2023 19:43 PDT\)](#)

**Greg Francis, President
Spokane Plan Commission**

Date: Jul 31, 2023


PC Findings and Conclusions SMP Aquaculture Update

Final Audit Report

2023-08-01

Created:	2023-07-31
By:	Jackie Churchill (jchurchill@spokanecity.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGYAeuockHiNfmX7mMCOYhRuRBXfpWYPa

"PC Findings and Conclusions SMP Aquaculture Update" History

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STAFF REPORT

PLANNING AND ECONOMIC DEVELOPMENT SERVICES DEPARTMENT

To:	City Plan Commission	
Subject:	Shoreline Master Program – Aquaculture Update	
Staff Contact:	Tirrell Black Principal Planner tblack@spokanecity.org	Tyler Kimbrell Planner II tkimbrell@spokanecity.org
Report Date:	July 19, 2023	
Hearing Date:	July 26, 2023	
Recommendation:	Approval	

I. SUMMARY

Shoreline Master Program amendments updating SMC 17E.060.470, SMC 17E.060.690, and SMC 17C.190.500 allowing aquaculture facilities in the Urban Conservancy and Natural Environment shoreline designations within the Latah Creek shoreline district and amending the definition of Residential Agriculture to include fish rearing facilities. These changes are necessary for the construction of fish rearing facilities and their accessory uses to help restore salmonid populations to the Spokane River.

II. BACKGROUND

The Shoreline Management Act of 1971 (SMA), passed by the legislature in 1971 and adopted by voters in 1972, has an overarching goal “to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” The SMA requires local government to develop Shoreline Master Programs which give preference to uses which:

1. Recognize and protect the statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

Shoreline Master Programs (SMPs) are local land-use policies and regulations that guide use of Washington shorelines, SMPs apply to both public and private uses. Their main goals are to protect natural resources, provide public access to public waters and shores, and plan for water dependent uses. The Washington State Department of Ecology assists cities in developing and updating their SMPs.

For this locally initiated aquaculture amendment to the City of Spokane’s SMP a joint review process is being utilized to streamline the adoption process for amending the SMP. A joint review process requires that a joint hearing be conducted with a Department of Ecology representative and a 30-day public comment period be had to collect and respond to community concern. Following the 30-day comment period and after responding to those comments the Department of Ecology will make a determination of consistency prior to City Council action.

The proposed amendment to the SMP as read in Exhibit A, making aquaculture a permitted use in the Urban Conservancy Environment and the Natural Environment shoreline designations in the Latah Creek shoreline district, comes as a response

to the proposed fish rearing facility by the Coeur d'Alene Tribe. This project was added to Plan Commissions work plan on June 5, 2023 by Resolution 2023-0041. A project description provided by the Tribe can be reviewed in Exhibit B.

III. PROCESS

DEVELOPMENT CODE AMENDMENT PROCEDURE

Article III Section 21, Amendments and Repeals, of the City of Spokane Charter provides for the ability of amendments of the Charter and Spokane Municipal Code through ordinances. Title 17 is known as the Unified Development Code (UDC) and is incorporated into the Spokane Municipal Code to implement the City's Comprehensive Plan, and by reference, the requirements of the Washington State Growth Management Act (GMA). Section [17G.025.010](#) establishes the procedure and decision criteria that the City uses to review and amend the UDC. The City may approve amendments to the UDC if it is found that a proposed amendment is consistent with the provisions of the Comprehensive Plan, and bears a substantial relation to public health, safety, welfare, and protection of the environment.

Role of the City Plan Commission

The proposed text amendments require a review process set forth in Section 17G.025.010(F) SMC. The Plan Commission is responsible for holding a public hearing and forwarding its findings, conclusions, and recommendations to the City Council. Utilizing the decision criteria in 17G.025 SMC, the Plan Commission may recommend approval, modification, or denial of the proposal.

The Plan Commission may incorporate the facts and findings of the staff report as the basis for its recommendation to the City Council or may modify the findings as necessary to support their final recommendation.

Role of City Council

The City Council will also conduct a review process considering the proposed text amendment, public comments and testimony, the staff report, and the Plan Commission's recommendation. The final decision to approve, modify, or deny the proposed amendment rests with the City Council. Proposals adopted by ordinance after public hearings are official amendments to the Spokane Municipal Code.

COMMUNITY ENGAGEMENT

Project webpage	May 2023 – Present
Plan Commission workshop	July 12, 2023
Notice of Intent to adopt & SEPA checklist request for comments	June 14, 2023 – June 28, 2023
SEPA DNS (determination of non-significance) issued	July 10, 2023
Ecology 30-day comment period	July 21, 2023 – August 21, 2023
Plan Commission Public Hearing	July 26, 2023

SEPA REVIEW

As outlined in Section 17G.025.010 SMC, notices of proposals to amend the UDC are distributed and interested parties should be made aware of such proposals during the Plan Commission review, including the SEPA checklist and determination. Similarly, a public notice published in the *Spokesman-Review* fourteen days prior to the Plan Commission public hearing is required.

This proposal was properly noticed pursuant to Section 17G.025.010(E). See **Exhibit C** for the SEPA Determination of Non-significance issued on July 10, 2023.

COMMENTS RECEIVED

- Two letters from the Spokane Tribe of Indians Tribal Historic Preservation Officer were received recommending a case-by-case review at time of project permit application, noting that at time of project application there may be a requirement for cultural surveys or monitoring.
- A letter of support from the Citizen Action for Latah Valley was received.

Letters are available in Exhibit D.

IV. ANALYSIS

PROPOSAL DESCRIPTION

Current SMP policy states that aquaculture activities are not in use nor are they anticipated, and should they become relevant, the SMP and other applicable development regulations will be amended. The Coeur d'Alene Tribe has proposed a fish rearing facility along the Latah Creek shoreline and therefore it is reasonably assumed that there is demand for aquaculture uses in the City.

This proposal will amend the definition of Residential Agriculture SMC 17C.190.500, the aquaculture section of the SMP SMC 17E.060.470, and the shoreline primary use table located in SMC 17E.060.690.

Aquaculture Uses

The proposed amendments to SMC 17C.190.500, 17E.060.470, and 17E.060.690 (Exhibit A) are necessary for allowing fish rearing facilities in the Urban Conservancy and Natural Environment shoreline designations in the Latah Creek shoreline district. A definition, goals, and policies from the City's Comprehensive Plan related to environment designations can be reviewed in Exhibit E. The proposed amendments align the definition of Residential Agriculture zoning, and the aquaculture uses to ensure that compatibility with use types is achieved. The proposed amendments to the aquaculture and primary use sections of the SMP ensure that the protection of statewide and local interests are maintained while ensuring projects are not overburdened with regulations.

IMPLEMENTATION OF COMPREHENSIVE PLAN GOALS AND POLICIES

Section [17G.025.010](#) SMC establishes the review criteria for text amendments to the Unified Development Code. In order to approve a text amendment, City Council shall consider the findings and recommendations of the Plan Commission along with the approval criteria outlined in the Code. The applicable criteria are shown below in *bold and italic* with staff analysis following the complete list. Review of the Comprehensive Plan goals and policies indicates that the proposal meets the approval criteria for internal consistency set forth in SMC 17G.025.010(G). Excerpts of the applicable goals and policies, and their Comprehensive Plan discussion points, are contained in **Exhibit E**.

17G.025.010(G) Approval criteria

1. **The proposed amendment is consistent with the applicable provisions of the comprehensive plan.**

Staff Analysis: The proposed amendments to the SMP are consistent with the City of Spokane's Comprehensive Plan, Chapter 14: Shorelines. The following policies are cited in support:

Chapter 14: SMP 1.1 Coordinated Planning

Chapter 14: SMP 1.6 Policy Priorities

Chapter 14: SMP 4.1 Preservation of Natural Resources

Chapter 14: SMP 7.1 Cooperation and Consultation

Chapter 14: SMP 10.2 Native Plant Restoration

Chapter 14: SMP 11.37 Open Space and Wildlife Habitat Preservation

Chapter 14: SMP 11.52 Protection of Ecosystem-Wide Processes

2. **The proposed amendment bears a substantial relation to public health, safety, welfare, and protection of the environment.**

Staff Analysis: The SMP is tasked with protecting the ecological integrity, access, and prioritizing water-based uses of the shoreline. The proposed amendments allowing aquaculture are in-line with the goals of the State through the SMA and the City's goals through the SMP and Chapter 14 of the City's Comprehensive Plan. The prioritization of public access and environmental protection bears a substantial relation to public health, safety, welfare, and protection of the environment, and the proposed amendments bolster those priorities.

V. DISCUSSION

The proposed text amendments will permit aquaculture to be an allowed use in the City of Spokane leading to more salmonid restoration projects and will assist in bringing salmon back to the Spokane River. The proposed text amendments do not anticipate all potential aquaculture uses. Should a use be proposed that does not currently meet the policies, goals, and development regulations of the SMP, changes will be considered as appropriate.

At their workshop on July 12, 2023 Plan Commission indicated that they would like to review the shoreline environment designations. The shoreline environment designations and their policies, goals, and definitions can be reviewed in Exhibit E. The City's shoreline goals and policies can be reviewed in Chapter 14: Shorelines of the [Comprehensive Plan](#).

VI. CONCLUSION

Based on the facts and findings presented herein, staff concludes that the requested text amendments to the Unified Development Code satisfy the applicable criteria for approval as set forth in SMC Section 17G.025.010. To comply with RCW 36.70A.370 the proposed text amendments have been evaluated to ensure proposed changes do not result in unconstitutional takings of private property.

VII. STAFF RECOMMENDATION

Following the close of public testimony and deliberation regarding conclusions with respect to the review criteria and decision criteria detailed in SMC 17G.025.010, Plan Commission will need to make a recommendation to City Council for approval or denial of the requested code amendments to the Unified Development Code.

Staff **recommends approval** of the requested text amendments to the SMP and Use Category Definition and recommends that the Plan Commission adopt the facts and findings of the staff report.

VIII. LIST OF EXHIBITS

- A. Proposed text amendments to the SMP and Use Category Descriptions
- B. Coeur d'Alene Tribe Salmonid Aquaculture Facility Overview
- C. SEPA DNS
- D. Comment Letters
- E. Comprehensive Plan Goals & Policies

EXHIBIT A

[Title 17C](#) Land Use Standards

[Chapter 17C.190](#) Use Category Descriptions

Article VI. Other Categories

[Section 17C.190.500](#) Agriculture

A. Characteristics.

Agriculture includes activities that raise, produce or keep plants or animals.

B. Accessory Uses.

Accessory uses include dwellings for proprietors and employees of the use and animal training.

C. Examples.

Examples include breeding or raising of fowl or other animals; dairy farms; stables; riding academies; [fish rearing facilities](#); kennels or other animal boarding places; farming, truck gardening, forestry, tree farming; and wholesale plant nurseries.

D. Exceptions.

1. Processing of animal or plant products, including milk, and feed lots are classified as Manufacturing and Production.
2. Livestock auctions are classified as Wholesale Sales.
3. Sale of products produced on site is permitted; provided, that structures for this purpose are limited to five hundred square feet of total floor area per site.
- [4.](#) Plant nurseries that are oriented to retail sales are classified as Retail Sales and Service.
- [4-5.](#) [Fish rearing facilities are only permitted in accordance with SMC 17E.060.470.](#)

Date Passed: Tuesday, May 31, 2005

Effective Date: Wednesday, July 6, 2005

ORD C33636 Section 3

Section 17E.060.470 Aquaculture

~~Aquaculture activities are presently not in use, nor are they an anticipated activity within the shoreline jurisdiction. Therefore, these activities are not applicable to the City of Spokane. If the City should determine in the future that aquaculture will be allowed in the shoreline jurisdiction, regulations will be established by amendment to the SMP and to all other applicable City of Spokane development regulations.~~

A. Definition

Aquaculture means the rearing or farming of fish, shellfish, or other aquatic plants and animals and may include accessory uses. Examples of accessory uses include, but are not limited to: pump houses, office space, on-site staff housing, maintenance buildings, storage buildings, equipment sheds, and aquaculture research and diagnostics laboratories.

B. Aquaculture is allowed for the purpose of enhancing or restoring salmonid populations and fisheries, for enhancing or restoring native aquatic plants, for educational purposes, or for sport harvest and sustenance purposes.

C. Aquaculture is limited to the Urban Conservancy Environment and Natural Environment environmental designation and the Latah Creek shoreline district.

D. Aquaculture is not permitted in areas where it would result in a net loss of ecological functions, adversely impact aquatic macroinvertebrates, or significantly conflict with navigation and other water-dependent uses.

E. Aquaculture facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

Date Passed: Monday, November 3, 2008

Effective Date: Monday, July 26, 2010

ORD C34326 Section 2

Section 17E.060.690 Shoreline Primary Use

- A. In addition to this section, shoreline uses are subject to the regulations in Article V, Part I, General Requirements for Shoreline Use.
- B. Refer to [SMC 17E.060.300](#) for uses and activities that are exempt from obtaining a shoreline substantial development permit. An exemption from the shoreline substantial development permit process is not an exemption from compliance with the Shoreline Management Act or provisions of these Shoreline Regulations, or from any other regulatory requirements. To be authorized, all uses and activities must be consistent with the policies and regulations of the entire SMP and the Act.
- C. To be permitted in the Shoreline Jurisdiction, a use must be permitted in both the shoreline environment and the underlying zone in which it is located.
- D. Uses not listed in Table 17E.060-4 or Title 17C may only be authorized as a conditional use.
- E. Legend for Table 17E.060-4:

1. Permitted Uses – “P”

Uses permitted are listed in Table 17E.060-4 with a “P”. These uses are allowed if they comply with the development standards of these Shoreline Regulations and Title 17C. A shoreline substantial development permit or an exemption from such permit is required, pursuant to [SMC 17E.060.290](#) and [SMC 17E.060.300](#).

2. Limited Uses – “L”

Uses allowed that are subject to limitations are listed in Table 17E.060-4 with an “L”. These uses are allowed if they comply with the limitations as listed in the footnotes following the table and the development standards of these Shoreline Regulations and title 17C SMC. A shoreline substantial development permit or an exemption from such permit is required.

3. Conditional Uses – “CU”

Uses that are allowed if approved through the shoreline conditional use review process are listed in Table 17E.06-4 with a “CU.” These uses are allowed provided they comply with the conditional use approval criteria for that use, the development standards of these Shoreline Regulations and Title 17C. Uses listed with a “CU” that also have a footnote number in the table are subject to the standards cited in the footnote.

4. Uses Not Permitted – “N”

Uses listed in Table 17E.060-4 with an “N” are not permitted. Existing uses in categories listed as not permitted are subject to the standards in Chapter 17C.210 SMC, Land Use Standards Non Conforming Situations, and [SMC 17E.060.380](#), Nonconforming Structures and Uses.

Over-water or underwater utility crossings	CU	CU	CU	CU	CU	CU
New bridges solely for pipelines	N	N	N	N	N	N
Facilities which constitute the final termination or destination of a transmission line	N	N	N	N	N	N
Expansions or upgrades of existing wastewater treatment plant facilities and accessory uses	N	N	N	N	N	CU
New wastewater treatment plant facilities and pumping stations	N	N	N	N	N	L[2]/CU
New wastewater treatment outfall infrastructure	CU	CU	CU	CU	CU	P
New wireless communication support tower	N	N	N	N	N	N
Commercial Development						
Water-dependent commercial uses	N	P	N	P	P	N
Water-related commercial uses	N	P	N	P	P	N
Water-enjoyment commercial uses	N	P	N	P	P	N
Non-water-oriented commercial uses	N	L[3]	N	L[3]	L[3]	N
Forest Practices						
Forest practices	N	N	N	N	N	N
Industrial Development						

Water-dependent industrial uses	N	CU	N	CU	CU	N
Water-related industrial uses	N	CU	N	CU	CU	N
Non-water-oriented industrial uses	N	L[4]/CU	N	L[4]/CU	L[4]/CU	N
High-impact industrial uses	N	N	N	N	N	N
Institutional						
Water-dependent institutional	CU	CU	CU	CU	CU	N
Water-related institutional	CU	CU	CU	CU	CU	N
Water-enjoyment institutional	CU	CU	CU	CU	CU	CU
Non-water-oriented institutional	L[5]/CU	L[5]/CU	L[5]/CU	L[5]/CU	L[5]/CU	N
In-stream Structures						
In-stream structures	L[6]/CU	CU	CU	CU	CU	CU
Mining						
Mining	N	N	N	N	N	N
Recreational Development						
Water-dependent recreational	CU	CU	CU	CU	CU	N
Water-related recreation	CU	CU	CU	CU	CU	CU
Water-enjoyment recreation	L[7]/CU	CU	CU	CU	CU	CU
Non-water-oriented recreation	N	CU	CU	CU	CU	N
Residential Development						

Single-family residences	CU	P	P	P	P	N
Two-family residences	N	P	P	P	P	N
Three-family residences	N	P	P	P	P	N
Multi-family residences (4 or more dwelling units)	N	CU	CU	CU	CU	N
Accessory dwelling unit (ADU)	CU	P	P	P	P	N
Detached accessory structures	CU	P	P	P	P	N
Group living	N	CU	CU	CU	CU	N
Subdivision						
All subdivisions (including binding site plans)	L[8]/CU	CU	CU	CU	CU	N
Parking						
Commercial parking or parking facility as primary use	N	N	N	N	N	N
Parking, accessory to a permitted use	P	P	P	P	P	P
Transportation						
New streets or street expansions that are part of the City of Spokane designated regional arterial network	L[9]/CU	L[9]/CU	L[9]/CU	L[9]/CU	L[9]/CU	L[9]/CU
New local access streets or street expansions serving permitted shoreline uses	L[10]/CU	L[10]	L[10]	L[10]	L[10]	L[10]
Pedestrian and bicycle linkages to existing or	L[11]/CU	P	P	P	P	P

planned transportation networks						
Maintenance roads, accessory to a permitted use	P	P	P	P	P	P
Railroads and Rail Corridors						
New rail lines	L[12]/CU	L[12]/CU	L[12]/CU	L[12]/CU	L[12]/CU	L[12]/CU
Expansion of existing rail lines	P	P	P	P	P	P

Date Passed: Monday, April 19, 2021

Effective Date: Sunday, May 23, 2021

ORD C36034 Section 8

EXHIBIT B

Coeur d'Alene Tribe

Salmonid Aquaculture Facility Overview



Primary Contacts:

Thomas Biladeau, Anadromous Division Lead

thomas.biladeau@cdatribe-nsn.gov

(208)686-6307

Ralph Allan Jr., Fish & Wildlife Program Manager

ralph.allan@cdatribe-nsn.gov

(208)686-6307

Background

The Coeur d'Alene Tribe, in partnership with the Spokane Tribe of Indians, the Confederated Tribes of the Colville Reservation, the Upper Columbia United Tribes and the State of Washington, are implementing a large-scale feasibility study for reintroduction of Chinook and Sockeye salmon into blocked habitats of the Upper Columbia River. These studies require a consistent supply of hatchery-reared juvenile salmon, of which are acclimated to and released into waters within the study area. The proposed facility will serve as the primary aquaculture program for support of the feasibility studies.

Scope of Work

The project will be located on Coeur d'Alene Tribe property at the physical address of 3515 S. Inland Empire Way, Spokane, Washington 99224, parcel #25361. Ground water will be the primary source of water provided by three (3) production wells located on the parcel, as well as a limited amount of surface water from the adjacent stream. Maximum sustained production of ground water for facility use is dependent on production rates and recharge, of which are currently being evaluated. Surface water use from Hangman Creek is estimated to be 500 gallons per minute (1.11 cfs). Treatment of all incoming surface water will incorporate at minimum UV sterilization and fine sediment filtration. Surface water availability will be intermittent and unreliable. Periods of flashy runoff during the winter and early spring will restrict water withdrawals, as will periods of base flows in the late summer and early fall. Water use for the facility is intended to be non-consumptive, and returned to the source after passing through the facility. Effluent treatment will adhere to Washington Department of Ecology standards.

Property Description

Total size of the property is 47 acres, of which 19 acres are identified for construction. Construction within the stream or riparian protection zones will be avoided. All buildings, with the exception of a 10' X 20' storage shop have been demolished and removed from the property. There are currently no municipal water or sewer services on the property, although the Coeur d'Alene Tribe is open to the option of hooking up to Spokane city water and sewer for municipal use.

Fish Production Goals

The Coeur d'Alene Tribe is proposing a facility that can sustain a maximum of the following fish on station at any given time. We understand water availability and rearing densities will dictate production at the facility. Therefore, the list below is ranked by priority.

1. 75,000 yearling Chinook salmon up to 20 fish per pound
2. 175,000 eyed eggs/subyearling Chinook salmon up to 50 fish per pound
3. 60,000 eyed eggs/subyearling Sockeye salmon up to 50 fish per pound
4. 150 adult salmon short-term holding facilities

These fish will require a separate water supply and treatment to minimize cross contamination and pathogen spread throughout the facility. The facility should include separate rooms or buildings with bio-control measures for each of the three (3) juvenile salmon aquaculture programs identified above, and a separate outdoor facility to hold adult salmon.

EXHIBIT C



NONPROJECT DETERMINATION OF NONSIGNIFICANCE

FILE NO(s): Shoreline Master Program Aquaculture Update (non-project)

PROPONENT: City of Spokane

DESCRIPTION OF PROPOSAL: This proposal will amend the Shoreline Master Program (SMP) of the Spokane Municipal Code (SMC) 17E.060.470 and 17E.060.690 to allow aquaculture uses. The proposal will also amend the Use Category Description for Agriculture under SMC 17C.190.500 to align with the changes to the SMP. The exact amendments to the code will be available online at the following address: my.spokanecity.org/aquacultureupdate.

LOCATION OF PROPOSAL, INCLUDING STREET ADDRESS, IF ANY: This proposal has a City-wide impact

LEAD AGENCY: City of Spokane


DETERMINATION:

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW [43.21C.030\(2\)\(c\)](#). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

- [] There is no comment period for this DNS.
- [] This DNS is issued after using the optional DNS process in section 197-11-355 WAC. There is no further comment period on the DNS.
- [X] This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for at least 14 days from the date of issuance (below). **Comments regarding this DNS must be submitted no later than 4:00 p.m. on July 26, 2023 if they are intended to alter the DNS.**

Responsible Official: Spencer Gardner **Position/Title:** Director, Planning Services

Address: 808 W. Spokane Falls Blvd., Spokane, WA 99201 **Phone:** 509-625-6097

Date Issued: July 10, 2023 **Signature:** 

APPEAL OF THIS DETERMINATION

After a determination has become final, appeal may be made to:

Responsible Official: City of Spokane Hearing Examiner

Address: 808 W. Spokane Falls Blvd., Spokane, WA 99201

Email: hearingexaminer@spokanecity.org **Phone:** 509-625-6010

Deadline: 21 days from the date of the signed DNS
12:00 p.m. on July 31, 2023



The appeal must be on forms provided by the Responsible Official, and make specific factual objections. Appeals must be accompanied by the appeal fee. Contact the Responsible Official for assistance with the specifics of a SEPA appeal.

SEPA City Nonproject DNS SMP Aquaculture Update

Final Audit Report

2023-07-10

Created:	2023-07-10
By:	Tyler Kimbrell (tkimbrell@spokanecity.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAO8vCE-MldpcYZY4YN1wRVJMrSuRgMVFm

"SEPA City Nonproject DNS SMP Aquaculture Update" History





-  Document created by Tyler Kimbrell (tkimbrell@spokanecity.org)
2023-07-10 - 7:52:46 PM GMT
-  Document emailed to Spencer Gardner (sgardner@spokanecity.org) for signature
2023-07-10 - 7:53:09 PM GMT
-  Email viewed by Spencer Gardner (sgardner@spokanecity.org)
2023-07-10 - 8:18:30 PM GMT
-  Document e-signed by Spencer Gardner (sgardner@spokanecity.org)
Signature Date: 2023-07-10 - 8:18:38 PM GMT - Time Source: server
-  Agreement completed.
2023-07-10 - 8:18:38 PM GMT

EXHIBIT D



July 14, 2023

RE: Support for lower Hangman Creek fish hatchery project of the Coeur d'Alene Tribe

Dear Planning Commission members,

The organizers and supporters of Citizen Action for Latah Valley can not think of a more worthy project to support that reflects the values of this area of Spokane as well demonstrates a mindset of preservation through action than the Coeur d'Alene Tribe's proposal to establish a fish hatchery along the lower Hangman Creek. It rings even more resonance when you hold that the land of which the hatchery would be located was part of the tribe's traditional stewardship at a time when the salmon could run freely in the greater Spokane River watershed.

The Latah Valley is a very special place that possesses many unique attributes. The layers of geologic and human history are vast and complex along with the current reality of the Hangman Creek corridor being a vital and vibrant wildlife corridor for dozens of animal species. The lineage and investment of working the soil to produce food is also a special thing about this area. The opportunity to enhance and perhaps become a catalyst for evolving the overall health of the Latah Valley through the reintroduction of salmon is just what the area needs and deserves.

The Latah Valley is under tremendous pressure through both the decisions of the past, present, and future regarding retail and housing development. Neglected infrastructure advancements, lack of financial management for needed infrastructure, and no current leadership or vision for the Latah Valley leave the area vulnerable to the erosion of quality of life along with the erosion of the physical health of the land and water. The supporters of CALV recognize not only the needs of the human population for this area but of the place itself, Hangman Creek included, must be protected for its own sake and for the enjoyment and other interests of people.

Thankfully there are others besides the Coeur d'Alene Tribe who also see this including Spokane's Parks and Recreation. They have a vision for the area through their recently adopted master plan which includes the preservation of wildlands. Having the Coeur d'Alene Tribe operate their fish hatchery facility is very much in alignment to what Parks and others have in mind when it comes to conservation and ecological improvements in the Latah Valley.

Citizen Action for Latah Valley looks forward to supporting and participating however we can with making the tribe's salmon reintroduction into Hangman Creek a success.

In Solidarity,

Molly, Adam, and Kai

Leadership - Citizen Action for Latah Valley



**Spokane Tribe of Indians
Tribal Historic Preservation Officer**

P.O Box 100 Wellpinit WA 99040

June 26, 2023

To: Tyler Kimbrell, Planner

RE: Notice of Intent to Adopt Changes to the Shoreline Master Program

Mr. Kimbrell,

Thank you for contacting the Tribe's Historic Preservation Office. We appreciate the opportunity to provide a cultural consult for your project. The intent of this process is to preserve and protect all cultural resources whenever protection is feasible.

As you know that the Spokane Tribe use of these area's was extensive in years prior to arrival of euro- Americans clearly the Spokane area was a great place of cultural and economic importance to our tribe.

Recommendation: Case by Case review on each project and may require cultural surveys or monitoring.

Should additional information become available or scope of work change our assessment may be revised.

Again, thank you for this opportunity to comment and consider this a positive action that will assist in protecting our shared heritage.

If questions arise, please contact me at (509) 258 – 4222.

Regards,

Randy Abrahamson
Tribal Historic Preservation Officer (T.H.P.O.)



**Spokane Tribe of Indians
Tribal Historic Preservation Officer**

P.O Box 100 Wellpinit WA 99040

July 13, 2023

To: Jackie Churchill, Planning & Economic Development

RE: Shoreline Master program Aquaculture Aquaculture Amendment

Ms. Churchill,

Thank you for contacting the Tribe's Historic Preservation Office. We appreciate the opportunity to provide a cultural consult for your project. The intent of this process is to preserve and protect all cultural resources whenever protection is feasible.

As you know that the Spokane Tribe use of these area's was extensive in years prior to arrival of euro- Americans clearly the Spokane area was a great place of cultural and economic importance to our tribe.

Recommendation: Case by Case review on each project and may require cultural surveys or monitoring.

Should additional information become available or scope of work change our assessment may be revised.

Again, thank you for this opportunity to comment and consider this a positive action that will assist in protecting our shared heritage.

If questions arise, please contact me at (509) 258 – 4222.

Regards,

Randy Abrahamson
Tribal Historic Preservation Officer (T.H.P.O.)

EXHIBIT E

SHORELINE MASTER PROGRAM AQUACULTURE UPDATE

EXHIBIT E: COMPREHENSIVE PLAN GOALS AND SHORELINE ENVIRONMENT DESIGNATIONS

SMP 1.1 Coordinated Planning - Coordinate shoreline planning between the City of Spokane, agencies with jurisdiction, adjoining jurisdictions, the State of Washington, and the State of Idaho into which the river basin extends.

SMP 1.6 Policy Priorities - Give preference to those shoreline activities which fulfill long range Comprehensive Plan goals and the Shoreline Management Act policy priorities

SMP 4.1 Preservation of Natural Resources - Preserve and properly utilize the natural resources of the shorelines, including scenic vistas, aesthetics, vegetation, and vital estuarine areas for fisheries and wildlife protection.

SMP 7.1 Cooperation and Consultation - Ensure constant cooperation and consultation with affected agencies, tribes, and the City of Spokane Historic Preservation Department for projects that could potentially impact cultural and historical resources.

SMP 10.2 Native Plant Restoration - Maintain and restore native plant communities within the Shoreline Jurisdiction

SMP 11.37 Open Space and Wildlife Habitat Preservation - Encourage new development to contribute to the creation or preservation of open space and/or fish and wildlife habitat along the shorelines of the Spokane River and Latah Creek through the use of tools such as conservation futures, conservation easements, transferable development rights, and planned unit developments.

SMP 11.52 Protection of Ecosystem-Wide Processes – Provide for the protection of preservation of ecosystem-wide processes, ecological functions, and cultural resources, including but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas when siting in-stream structures.

NATURAL ENVIRONMENT (NE)

Purpose

The purpose of the "natural" environment is to protect shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. This environment allows only very low intensity uses in order to maintain the ecological functions and ecosystem-wide processes.

Designation Criteria

Assign a "natural" environment designation to shoreline areas if any of the following characteristics apply:

- the shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;
- the shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or
- the shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

This designation delineates those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments that are sensitive to human development. Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, unstable bluffs, and ecologically intact shoreline habitats. Ecologically intact shorelines can include both large (covering multiple properties) and small (within one property) areas which retain the majority of their natural shoreline functions. Generally, these are free of structural shoreline modification, structures, and intensive uses, and can include forested areas which have native vegetation, diverse plant communities, and large woody debris.

Management Policies

1. Give preference to uses that would not substantially degrade the ecological functions or natural character of the shoreline area.
2. Prohibit the following new uses in the shoreline area:
 - commercial,
 - industrial,
 - non-water oriented recreation, and
 - Roads, utility corridors, and parking areas that can be feasibly located outside of "natural" designated shorelines.
3. Allow, as a conditional use, single-family residential development, provided the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.
4. Consider allowing very low intensity agricultural uses when such use is subject to appropriate limitations or conditions to assure the use does not expand or alter practices in a manner inconsistent with the purpose of this designation.
5. Allow scientific, historical, cultural, educational research uses, and low intensity water-oriented uses, provided that no significant ecological impact on the area will result.

6. Prohibit new development or significant vegetation removal which would reduce the capability of vegetation to perform normal ecological functions.
7. Prohibit the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions.

URBAN CONSERVANCY ENVIRONMENT (UCE)

Purpose

The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

Designation Criteria

Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring the ecological functions of the area and that are not generally suitable for water-dependent uses if any of the following characteristics apply:

- they are suitable for water-related or water-enjoyment uses;
- they are open space, flood plain or other sensitive areas that should not be more intensively developed;
- they have potential for ecological restoration;
- they retain important ecological functions, even though partially developed; or
- they have the potential for development that is compatible with ecological restoration.

Management Policies

1. Allow shoreline uses in the "urban conservancy" environment as follows:
 - Water-oriented uses should be given priority over non-water-oriented uses.
 - Primary allowed uses are those that preserve the natural character of the area or promote preservation of open space, flood plain, or sensitive lands either directly or over the long term.
 - Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the urban conservancy environment and setting.
2. Establish standards for shoreline stabilization measures, vegetation conservation, water quality and shoreline modifications that ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
3. Implement, when feasible, public access and public recreation objectives if significant ecological impacts can be mitigated.

SHORELINE RESIDENTIAL ENVIRONMENT (SRE)

Purpose

The "shoreline residential" environment is designed to accommodate existing, small lot residential development and accessory structures. The shoreline residential environment may also provide appropriate public access and recreational uses.

Designation Criteria

Assign a "shoreline residential" environment designation to shoreline areas if they are predominantly small-lot single-family or multi-family residential development or are planned and platted for such residential development.

Management Policies

1. Provide consistent and integrative regulatory standards that assure no net loss of ecological functions and that take into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
2. Provide public access and joint use for community recreational facilities in multi-family residential development, multi-lot residential development, and recreational developments.
3. Provide for adequate access, utilities, and public services to serve existing needs and planned future development.

LIMITED URBAN ENVIRONMENT (LUE)

Purpose

The purpose of the "limited urban" environment is to accommodate a range and mixture of water-oriented residential, commercial, and institutional uses at moderate intensity and density levels, while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded. Water dependent utilities and industrial uses are also accommodated. In addition, this designation provides for appropriate physical and visual public access and recreation uses. This environment is suitable for residential development, while allowing for non-residential uses with height limitations and at a significantly lower scale of intensity than is found in the Intensive Urban Environment. This environment is intended for development that creates a unique urban waterfront environment, enhances aesthetic appeal, provides public access, and allows compatible uses.

Designation Criteria

Assign a "limited urban" environment designation to shoreline areas that are intended to accommodate further urban growth and infill development and that are appropriate for a mix of water-oriented residential, institutional, and limited commercial uses. Water-dependent utility and industrial uses may be accommodated. This environment may include a range and mix of uses similar to those found in the Intensive Urban Environment, but at a significantly lower scale of intensity. This environmental designation may serve as a transition between higher intensity and lower intensity environmental designations.

Management Policies

1. Prioritize shoreline uses in the "limited urban" environment as follows:
 - First priority should be given to water-dependent uses.
 - Second priority should be given to water-related and water-enjoyment uses.
2. Non-water oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. Such

specific situations should be identified in a shoreline use analysis or special area planning as identified in WAC 173-26-200.

3. Essential public facility uses, such as utilities, should be allowed only if water dependent or necessitated by economic feasibility or functionality requirements and adequate land is not available in the urban intensive environment designated areas.
4. Provide consistent and integrative regulatory standards that assure no net loss of ecological functions or processes.
5. Ensure that essential public facilities, such as utilities, are designed to the level of lowest impact and least disruption to the physical and visual environment whether above or below ground.
6. Provide public access and joint use for community recreational facilities in multi-family residential development, multi-lot residential development, and recreational developments.
7. Provide for adequate access, utilities, and public services to serve existing needs and planned future development.
8. Consider the potential for displacement of non-water oriented uses with water-oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.
9. Assure no net loss of shoreline ecological functions as a result of new development, and where applicable, require that new development include environmental cleanup and restoration of the shoreline to comply with state and federal law.
10. Encourage the preservation and restoration of the natural character of the shoreline area.
11. Require, where feasible, visual and physical public access to the river in public and private development or redevelopment within the shoreline area.
12. Promote aesthetic considerations through the development of sign control regulations, appropriate development siting, screening, architectural standards, and maintenance of vegetative buffers.

INTENSIVE URBAN ENVIRONMENT (IUE)

Purpose

The purpose of the “intensive urban” environment is to ensure optimum, intensive public utilization of shorelines by providing high-intensity public use and managing development so that it enhances and maintains the shorelines for a variety of urban uses. Existing ecological functions within the shoreline area must be protected, and areas that have been previously degraded must be restored. Urban use of shorelines in this environment should be limited to water-oriented uses in developed areas with adequate building setbacks from the top of the riverbanks. Priority will be given to public access, both visual and physical. Pedestrian paths and cycle paths should connect to access points. Public ownership of land should be maintained and expanded along both riverbanks.

Designation Criteria

Assign the “intensive urban” environment designation to shoreline areas at the heart of the city that are appropriate and planned for a multiplicity of high-intensity water oriented urban, residential, commercial, office, and industrial land uses. The density and intensity of uses within this environment are balanced with a mix of open space and recreational and cultural facilities.

Management Policies

1. Prioritize shoreline uses in the “intensive urban” environment as follows:

- First priority should be given to water-dependent uses.
 - Second priority should be given to water-related and water-enjoyment uses.
 - Non-water oriented uses should not be allowed except as part of mixed use (water-dependent, water-related, and/or water-enjoyment) developments.
 - Non-water oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in a shoreline use analysis or special area planning.
2. Encourage full utilization of shoreline areas within the existing intensive urban environment before allowing further expansion of the environment boundaries.
 3. Consider the potential for displacement of non-water oriented uses with water-oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.
 4. Encourage the redevelopment of degraded or poorly used intensive urban shoreline areas to accommodate future water-oriented uses.
 5. Assure no net loss of shoreline ecological functions as a result of new development, and where applicable, require that new development include environmental cleanup and restoration of the shoreline to comply with state and federal law.
 6. Require, where feasible, visual and physical public access to the river in public and private development or redevelopment within the shoreline area.
 7. Promote aesthetic considerations through the development of sign control regulations, appropriate development siting, screening, architectural standards, and maintenance of vegetative buffers.
 8. Retain and enhance the unique ecological and geologic features of the river, falls, banks, and limited adjacent greenbelt throughout the environment.
 8. Retain and enhance the unique ecological and geologic features of the river, falls, banks, and limited adjacent greenbelt throughout the environment.

WASTEWATER TREATMENT PLANT ENVIRONMENT (WTPE)

Purpose

The purpose of the “wastewater treatment plant” environment is to create a unique designation that specifically corresponds with and addresses wastewater treatment plants. This designation focuses on providing this essential public facility while at the same time addressing the concerns of mitigation measures, aesthetic enhancements, location, and restoration opportunities.

Designation Criteria

This designation applies to Wastewater Treatment Plant properties within the Shoreline Jurisdiction.

Management Policies

1. Ensure the plant is meeting all applicable federal, state, and local standards for emissions and pollutants.
2. Assure no net loss of shoreline ecological functions as a result of Wastewater Treatment Plant improvements or expansion.
3. Mitigate aesthetic impacts to the surrounding environment through low impact design and, as much as feasible, restoration of the natural character of the shoreline area.
4. Allow expansion and major upgrades of the plant within the Shoreline Jurisdiction by conditional use only.

5. Locate future Wastewater Treatment Plant facilities, including pumping stations, outside of the Shoreline Jurisdiction, with the exception of outfall infrastructure, unless no other feasible option is available.
6. Re-designate a Wastewater Treatment Plant Environment to its surrounding designation(s) should the plant relocate.
7. Require improvements to and mitigation of the aesthetic aspects of the plant, including landscaping and odor reduction.