

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 October 23, 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 October 23, 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: 2497 505 1645; 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, October 23, 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, OCTOBER 23, 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)

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

OPEN 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

- | | | |
|--|------------------------|---|
| <p>1. Consultant Agreements for Geotechnical Engineering On-Call Services for 2024-2025 - (Non-Federal) (Various Neighborhoods) with:</p> <p style="padding-left: 40px;">a. Budinger & Associates, Inc., (Spokane Valley, WA—not to exceed \$800,000.</p> <p style="padding-left: 40px;">b. GeoEngineers, Inc. (Spokane, WA)—not to exceed \$800,000.</p> <p>(Council Sponsor: Council President Kinnear)</p> <p>Dan Buller</p> | <p>Approve
All</p> | <p>OPR 2023-1067
ENG 2023115</p> <p>OPR 2023-1068
ENG 2023115</p> |
| <p>2. Low Bid of Cameron-Reilly, LLC (Spokane, WA) for the 2023 Street Maintenance Curb Ramps—\$1,175,715. An administrative reserve of \$117,571.50, which is 10% of the contract price, will be set aside. (Various Neighborhoods)</p> <p>(Council Sponsor: Council President Kinnear)</p> <p>Dan Buller</p> | <p>Approve</p> | <p>OPR 2023-1069
ENG 2022042</p> |

- | | | |
|--|------------------------|------------------------------|
| 3. Public Utility Access Easement and Temporary Construction Easement with Latah Creek Plaza, LLC in conjunction with the Marshall Road Transmission Main Phase 3—\$135,000. (Council Sponsor: Council President Kinnear)
Dan Buller | Approve | OPR 2023-1070
ENG 2022083 |
| 4. Interlocal Agreement between the City of Spokane, Spokane Transit Authority and Spokane County to carry out a grant award from the Federal Transit Administration as part of the Transit-Oriented Development Pilot Program.
(Council Sponsors: Council President Kinnear and Council Member Stratton)
Colin Quinn-Hurst | Approve | OPR 2023-1071 |
| 5. Multiple Family Housing Property Tax Exemption Conditional Agreement with Olga & Raisa Fox for the future construction of approximately 4 units, at Parcel Number 35081.4515, commonly known as 1222 East Marietta Avenue. (Council Sponsors: Council Members Bingle and Cathcart)
Amanda Beck | Approve | OPR 2023-1072 |
| 6. Agreement between the City and American Traffic Solutions, doing business as Verra Mobility, for continued operation of the photo enforcement program—\$1,123,800 annually. (Council Sponsor: Council President Kinnear)
Eric Olsen | Approve | OPR 2023-1073 |
| 7. Report of the Mayor of pending: | Approve &
Authorize | |
| a. 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 \$_____. | Payments | CPR 2023-0002 |
| b. Payroll claims of previously approved obligations through_____, 2023: \$_____. | | CPR 2023-0003 |
| 8. City Council Meeting Minutes: _____, 2023. | Approve
All | CPR 2023-0013 |

LEGISLATIVE AGENDA

SPECIAL BUDGET ORDINANCES

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinances amending Ordinance No. C36345 passed by the City Council December 12, 2022, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2023, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2023, and providing it shall take effect immediately upon passage," and declaring an emergency and appropriating funds in:

ORD C36452

American Rescue Plan Fund

- 1) Increase appropriation by \$391,484 funded from the city's direct allocation of the State and Local Fiscal Recovery Fund of the American Rescue Plan Act.
- 2) Reallocate the appropriation of \$4,000,000 previously appropriated for the purpose of affordable housing.
- 3) Reallocate the appropriation of \$1,200,000 previously appropriated for the purpose of mobile medical services.
- 4) Reallocate the appropriation of \$300,000 previously appropriated for the purpose of eviction defense.
- 5) Reallocate the appropriation of \$112,587 previously appropriated for the purpose of administrative support/legal evaluation.
- 6) Reallocate the appropriation of \$120,000 previously appropriated for the purpose of a community engagement coordinator.
- A) Of the reallocated and increased appropriation, \$6,124,071 is provided solely for homelessness services.

and

Housing Local Sales Tax Fund

- 1) Increase appropriation by \$4,000,000.
- A) Of the increased appropriation \$4,000,000 is provided solely for affordable housing projects.

(This action arises from the need to provide appropriation authority to fund critical services and accessibilities to the community.) (Council Sponsors: Council Members Bingle, Wilkerson and Zappone)

Matt Boston

NO EMERGENCY ORDINANCES

NO RESOLUTIONS & FINAL READING ORDINANCES

NO FIRST READING ORDINANCES

NO SPECIAL CONSIDERATIONS

NO HEARINGS

Motion to Approve Advance Agenda for October 23, 2023
(per Council Rule 2.1.2)

ADJOURNMENT

The October 23, 2023, Regular Legislative Session of the City Council is adjourned to October 30, 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 Human Resources at 509.625.6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or dmoss@spokanecity.org. Persons who are deaf or hard of hearing may contact Human Resources through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

NOTES



Agenda Sheet for City Council Meeting of: 10/23/2023

<u>Date Rec'd</u>	10/9/2023
<u>Clerk's File #</u>	OPR 2023-1067
<u>Renews #</u>	

<u>Submitting Dept</u>	ENGINEERING SERVICES	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	DAN BULLER 625-6391	<u>Project #</u>	2023115
<u>Contact E-Mail</u>	DBULLER@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	MASTER
<u>Agenda Item Name</u>	0370 – GEOTECHNICAL ENGINEERING ON-CALL CONTRACT 2024-2025 BUDINGER		

Agenda Wording

Consultant Agreement with Budinger & Associates, Inc., (Spokane Valley, WA) for Geotechnical Engineering On-Call Services for 2024-2025 - (Non-Federal) for an amount not to exceed \$800,000.00. (Various Neighborhood Councils)

Summary (Background)

This Consultant Agreement for Geotechnical Engineering On-Call Services is for a period of two years with a one-year renewal option. Task Assignments shall be prepared under this Agreement and scoped for individual project needs. Funding shall be from the individual projects.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense	\$ 800,000.00	<u>Budget Account</u>	# VARIOUS
Select	\$	#	
Select	\$	#	
Select	\$	#	

Approvals

<u>Dept Head</u>	BULLER, DAN
<u>Division Director</u>	FEIST, MARLENE
<u>Finance</u>	ORLOB, KIMBERLY
<u>Legal</u>	PICCOLO, MIKE
<u>For the Mayor</u>	JONES, GARRETT

Council Notifications

<u>Study Session\Other</u>	PIES 9/25/23
<u>Council Sponsor</u>	Kinnear

Distribution List

eraea@spokanecity.org
publicworksaccounting@spokanecity.org
kgoodman@spokanecity.org
ddaniels@spokanecity.org
dbuller@spokanecity.org
jradams@spokanecity.org
Signee: John Finnegan jfinnegan@budingerinc.com

Committee Agenda Sheet

PIES

Submitting Department	Public Works, Engineering
Contact Name	Dan Buller
Contact Email & Phone	dbuller@spokanecity.org 625-6391
Council Sponsor(s)	Lori Kinnear
Select Agenda Item Type	X Consent <input type="checkbox"/> Discussion Time Requested: _____
Agenda Item Name	On-call consultant contracts
Summary (Background)	<ul style="list-style-type: none"> Engineering Services has “on-call” contracts with various consultants for specialized engineering or related services (geotech engineering., surveying, historic resources, real estate acquisition, landscape architect, construction management, etc.) associated with the City’s public works projects. These firms are selected based on qualifications as required by RCW 39. These agreements typically last 2 years with an optional 3rd year extension. A request for qualifications (RFQ) will be advertised for these various consultants this fall. We expect to bring these contracts to you this fall. These contracts will range in size from \$200,000 to \$800,000, with most being toward the lower end of that range except geotech engineering which is at the upper end of that range. Funds expended under these contracts are reimbursed by the public works contract (generally water, sewer, storm sewer, streets or trail/sidewalk) for which the consultant is hired, generally using utility rates or state/federal loans/grants.
Proposed Council Action & Date:	For council consideration. The individual contracts will be placed on council agenda following completion of the RFQ process.
Fiscal Impact: Total Cost: \$200,000 - \$800,000 Approved in current year budget? X Yes <input type="checkbox"/> No N/A Funding Source X One-time <input type="checkbox"/> Recurring Specify funding source: Varies by project. Costs incurred under the proposed contracts will be paid as part of each public works project for which the consultant is used. Expense Occurrence X One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	
What impacts would the proposal have on historically excluded communities? Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.	

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 – This contract supports multiple public works projects and should not impact racial, gender identity, national origin, income level, disability, sexual orientation or other existing disparity factors.

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

Public Works follows the City's established procurement and public works bidding regulations and policies to bring items forward, and then uses contract management best practices to ensure desired outcomes and regulatory compliance.

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

The projects is consistent with our adopted six year programs as well as the annual budget and strategic initiative to advance street improvement activities.



City of Spokane

CONSULTANT AGREEMENT

**Title: 2024-2025 GEOTECHNICAL ENGINEERING
FOR NON-FED AID PROJECTS**

This Consultant Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **BUDINGER & ASSOCIATES, INC.**, whose address is 1101 North Fancher Road, Spokane, Valley, Washington, 99212 as ("Consultant"), individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the purpose of this Agreement is to 2024-2025 On-Call Geotechnical Engineering Services for Non-Fed Aid Projects to the City; and

WHEREAS, the Consultant was selected through a Request for Qualification 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 Consultant mutually agree as follows:

1. TERM OF AGREEMENT.

The term of this Agreement begins on January 1, 2024, and ends on December 31, 2025, unless amended by written agreement or terminated earlier under the provisions. The contract may be renewed for one (1) additional one-year contract period, subject to mutual agreement.

2. TIME OF BEGINNING AND COMPLETION.

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

3. SCOPE OF WORK.

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

This agreement covers yet to be defined geotechnical engineering work associated with the City of Spokane public works projects. Work initiation under this agreement shall occur as follows:

1. City personnel contact Consultant and describe overall project and needed geotechnical work.

2. Consultant responds to City contact in writing with a proposed scope of work and budget.
3. City personnel review and approve (or request revisions to) scope of work and budget. Once approved, a brief document referencing the Consultant prepared scope of work and budget.
4. Task assignment is signed and dated by Consultant, City project manager and City Engineering Services Director.
5. Work begins

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

4. COMPENSATION.

Total compensation for Consultant's services under this On-Call Agreement shall not exceed **EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$800,000.00)**, 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 Company shall submit its applications for payment to City of Spokane, Engineering Services Department, 998 E North Foothills Drive Spokane, WA 99207-2735. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

6. REIMBURSABLES

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

- A. City will reimburse the Consultant at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses or include a markup. Other direct charges may include, but are not limited to the following types of items: travel, printing, cell phone, supplies, materials, computer charges, and fees of subconsultants.
- B. The billing for third party direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant paid invoices, and other supporting documents used by the Consultant to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.
- C. The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts (excluding meals) supporting such travel expenses, and in

accordance with the City of Spokane Travel Policy, details of which can be provided upon request.

- D. **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- E. **Meals:** Meals will be reimbursed at the Federal Per Diem daily meal rate for the city in which the work is performed. *Receipts are not required as documentation.* The invoice shall state “the meals are being billed at the Federal Per Diem daily meal rate”, and shall detail how many of each meal is being billed (e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time.
- F. **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published General Services Administration (GSA) Index for the city in which the work is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.)
- G. **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred. Please note: payment for mileage for long distances traveled will not be more than an equivalent trip round-trip airfare of a common carrier for a coach or economy class ticket.
- H. **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).
- I. **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.
- J. **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred and may not include a mark up. Receipts are required for all miscellaneous expenses that are billed.
- K. **Subconsultant:** Subconsultant expenses will be reimbursed at the actual cost incurred and a four percent (4%) markup. Copies of all Subconsultant invoices that are rebilled to the City are required.

7. TAXES, FEES AND LICENSES.

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

- D. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

8. CITY OF SPOKANE BUSINESS LICENSE.

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

9. SOCIAL EQUITY REQUIREMENTS.

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

10. INDEMNIFICATION.

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

11. INSURANCE.

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

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

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

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

12. DEBARMENT AND SUSPENSION.

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

13. AUDIT.

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

14. INDEPENDENT CONSULTANT.

- A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant

employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.

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

15. KEY PERSONS.

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

16. ASSIGNMENT AND SUBCONTRACTING.

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

17. CITY ETHICS CODE.

- A. Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.
- B. Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two (2) years.
- C. Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations,

special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than \$25 may be distributed by the Consultant to a City employee if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

18. NO CONFLICT OF INTEREST.

Consultant confirms that the Consultant or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant's work. As used in this Section, the term Consultant includes any worker of the Consultant who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term "close family relationship" refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

19. ERRORS AND OMISSIONS, CORRECTIONS.

Consultant is responsible for professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement in the delivery of a final work product. The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional engineers or Consultants performing the same or similar services at the time said services are performed. The Final Work Product is defined as a stamped, signed work product. Consultant, without additional compensation, shall correct or revise errors or mistakes in designs, drawings, specifications, and/or other consultant services immediately upon notification by the City. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

20. INTELLECTUAL PROPERTY RIGHTS.

- A. Copyrights. The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant for the Work, whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use copy and distribute every document and all the materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs, and other storage facilities), software program or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.
- B. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Consultant created or produced separate

from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has identified in writing such material as pre-existing prior to commencement of the Work. If pre-existing materials are incorporated in the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.

- C. The City may make and retain copies of such documents for its information and reference with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City or others, on extensions of the project or on any other project, and the City releases the Consultant from liability for any unauthorized reuse of such documents.

21. CONFIDENTIALITY.

Notwithstanding anything to the contrary, City will maintain the confidentiality of Company's materials and information only to the extent that is legally allowed in the State of Washington. City is bound by the State Public Records Act, RCW Ch. 42.56. That law presumptively makes all records in the possession of the City public records which are freely available upon request by anyone. In the event that City gets a valid public records request for Company's materials or information and the City determines there are exemptions only the Company can assert, City will endeavor to give Company notice. Company will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Company does not get a timely injunction preventing the release of the records, the City will comply with the Public Records Act and release the records.

22. DISPUTES.

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

23. TERMINATION.

- A. For Cause: The City or Consultant may terminate the Agreement if the other party is in material breach of this Agreement, and such breach has not been corrected to the other party's reasonable satisfaction in a timely manner. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered

impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.

- C. For Convenience: Either party may terminate this Agreement without cause, upon thirty (30) days written notice to the other party.
- D. Actions upon Termination: if termination occurs not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to the actual termination date, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- E. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided however, that the City shall indemnify and hold the Consultant harmless from any claims, losses, or damages to the extent caused by modifications made by the City to the Consultant's work product.

24. EXPANSION FOR NEW WORK.

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

25. MISCELLANEOUS PROVISIONS.

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.

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

requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.

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

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

BUDINGER & ASSOCIATES, 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: Exhibit A – Certificate Regarding Debarment
Exhibit B – Scope of Services

23-199

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/> 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

NADINE WOODWARD
MAYOR



CITY OF SPOKANE - PURCHASING
808 W. Spokane Falls Blvd.
Spokane, Washington 99201-3316
(509) 625-6400

REQUEST FOR QUALIFICATIONS

2024-2025 GEOTECHNICAL ENGINEERING FOR NON- FED AID PROJECTS

City of Spokane, Washington

DUE DATE: **MONDAY, OCTOBER 2, 2023**
No later than 1:00 p.m.

DELIVERY: via email to: jradams@spokanecity.org

1. INTRODUCTION

1.1 BACKGROUND AND PURPOSE

The City of Spokane, through its Department of Engineering Services (hereinafter “City”) is initiating this Request for Qualifications (RFQ) to solicit Proposals from Firms with expertise in geotechnical engineering.

This will be an on-call type contract for up to \$800,000. There is no guaranteed minimum amount of work that will be directed to the consultant as a result of the contract that will be awarded pursuant to this RFQ.

1.2 FUNDING

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

A portion of the funding for this project may come from state or federal sources. Where applicable, the contract awarded as a result of this procurement will incorporate the requirements of state or federal funding programs.

1.3 PERIOD OF PERFORMANCE

The period of performance of the contract resulting from this RFQ is tentatively scheduled to begin on or about January 1, 2024 and to end on December 31, 2025 with an optional one-year extension.

1.4 DEFINITIONS

Definitions for the purposes of this RFQ include:

City – The City of Spokane, a Washington State municipal corporation, that is issuing this RFQ.

Firm or Consultant – Individual or company whose Proposal has been accepted by the City and is awarded a fully executed, written contract.

Proposal – A formal offer or statement of qualifications submitted in response to this solicitation.

Proposer -- Individual or company submitting a Proposal in order to attain a contract with the City.

Request for Qualifications (RFQ) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFQ is to permit the consultant community to provide qualifications for evaluation.

1.5 CONTRACTING WITH CURRENT OR FORMER CITY EMPLOYEES

Specific restrictions apply to contracting with current or former City officers and employees pursuant to the Code of Ethics in chapter 1.04 of the Spokane Municipal Code. Proposers should familiarize themselves with the requirements prior to submitting a Proposal that includes current or former City officers or employees.

1.6 ADDENDA

Addenda will be emailed.

2. SCOPE OF SERVICES

The scope of services envisioned in this RFQ may include some or all of the following:

- Classification of soils by appropriate methods
- Determination of soil properties by appropriate means
- Determination of foundation and wall design parameters
- Pavement subgrade characterization and pavement design
- Evaluation of water mounding in relationship to stormwater injections
- Conducting geophysical studies, test borings, test excavations, infiltration testing, aquifer testing
- Identification of restrictive infiltration layers below the ground surface
- Slope stability and groundwater seepage analysis
- Geotechnical report preparations
- Phase 1 and Phase 2 environmental site assessments
- Construction phase contaminated site assessments and recommendations for remediation
- Conducting special inspections or other geotechnical related construction phase inspections

3. GENERAL INFORMATION

3.1 RFQ COORDINATOR

The RFQ Coordinator is the sole point of contact in the City for this procurement. All communication between the Proposer and the City upon receipt of this RFQ shall be with the RFQ Coordinator, as follows:

Name	Jonathan Adams
Address	808 W. Spokane Falls Blvd., Spokane, WA 99201
Phone Number	509-625-6267
E-Mail Address	jradams@spokanecity.org

Any other communication will be considered unofficial and non-binding on the City. Firms are to rely on written statements issued by Addendum. Communication directed to parties other than the RFQ Coordinator may result in disqualification of the Firm.

3.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Step	Expected Dates
Issue Request for Qualifications	Week of 9-11-23
Proposals due	10-2-23

Evaluate proposals, conduct oral interviews with finalists, if necessary	Weeks of 10-2-23 and 10-9-23
Announce selection, negotiate contract	Weeks of 10-16-23 and 10-23-23
City Council approval of contract	Weeks of 10-30-23 and 11-6-23
Contract signatures	Week of 11-6-23
Contract effective date	1-1-24

The City reserves the right to revise the above schedule.

3.3 SUBMISSION OF PROPOSALS

Proposals shall be submitted via email to jradams@spokanecity.org. The email shall include subject line “SOQ – 2024-2025 Non Fed Aid On-Call Geotechnical Engineering”.

Proposals shall be submitted in pdf format. The entire submittal shall consist of not more than three pdf files (and, ideally, a single pdf file). Note that the City email server will not accept files larger than 10 MB, so files should be configured accordingly. If your submittal is such that you need an FTP link, please email jradams@spokanecity.org, and an FTP link will be provided.

3.4 PROPRIETARY INFORMATION / PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the City.

All received Proposals shall remain confidential until the award of contract. Thereafter, the Proposals shall be deemed public records as defined in RCW 42.56, “Public Records.”

Any information in the Proposal that the Proposer desires to claim as proprietary and thus exempt from disclosure under the provisions of existing state law shall be clearly designated. Each page claimed to be exempt from disclosure must be clearly identified by the word “Confidential” printed on it. Marking the entire Proposal exempt from disclosure will not be honored.

The City will consider a Proposer’s request for exemption from disclosure; however, the City will make a decision predicated upon state law and regulations. If any information is marked as proprietary in the Proposal, it will not be made available until the affected Proposer has been given an opportunity to seek a court injunction against the requested disclosure.

All requests for information should be directed to the RFQ Coordinator.

3.5 REVISIONS TO THE RFQ

In the event it becomes necessary to revise any part of this RFQ or provide any other pertinent information, such revision will be emailed to you.

The City also reserves the right to cancel or reissue the RFQ in whole or in part prior to final award of a contract.

3.6 ACCEPTANCE PERIOD

Proposals shall remain in effect for sixty (60) days for acceptance by the City from the due date for receipt of Proposals.

3.7 RESPONSIVENESS

The Proposer is specifically notified that failure to comply with any part of the RFQ may result in rejection of the Proposal as non-responsive.

The City also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

3.8 COSTS TO PROPOSE

The City will not be liable for any costs incurred by the Proposer in preparation of a Proposal submitted in response to this RFQ, in conduct of a presentation, or any other activities related to responding to this RFQ

3.9 NO OBLIGATION TO CONTRACT

This RFQ does not obligate the City to contract for services specified herein.

3.10 REJECTION OF PROPOSALS

The City reserves the right at its sole discretion to reject any and all Proposals received without penalty and to not issue a contract as a result of this RFQ.

3.11 INTERLOCAL PURCHASE AGREEMENTS

The City of Spokane has entered into Interlocal Purchase Agreements with other public agencies pursuant to RCW 39.34. In submitting a response the Proposer agrees to sell additional items at the contracted price, terms and conditions to the City of Spokane and other public agencies contingent upon the Firm's review and approval at the time of a requested sale. Any price de-escalation/escalation provisions of this Proposal shall apply in the case of a sale of additional items. Firm's right to refuse to sell additional items at the time of request shall be absolute.

4. PROPOSAL CONTENTS

4.1 PREPARATION OF PROPOSAL

Proposals shall be submitted via email. The major sections of the Proposal are to be submitted in the order noted below:

1. Letter of Submittal.
2. Qualifications Statement.

Proposals shall provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the Proposal but should assist the Proposer in preparing a thorough response.

4.2 LETTER OF SUBMITTAL

The Letter of Submittal shall be signed (electronic signatures are acceptable) and dated by a person authorized to legally bind the Firm to a contractual relationship, e.g., the president or executive director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include the following information about the Firm and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/email address of legal entity or individual with whom contract would be written.
2. Legal status of the Firm (sole proprietorship, partnership, corporation, etc.).
3. Location of the facility from which the Firm would operate.
4. Identify any current or former City employees employed by or on the Firm's governing board as of the date of the Proposal or during the previous twelve (12) months.
5. Acknowledgement that the Firm will comply with all terms and conditions set forth in the Request for Qualifications unless otherwise agreed by the City.
6. Acknowledgement that the Firm certifies that it has not been debarred, suspended, ineligible for, or otherwise excluded from participation in Federal Assistance programs under Executive Order 12549, Title 31 U.S. Code 6101 Note, Executive Order 12549, Executive Order 12689, Title 48 Codified Federal Regulation 9.404, "Debarment and Suspension". Further Acknowledge that Firm will not contract with a subcontractor that is likewise debarred, suspended, ineligible for, or otherwise excluded, as referenced in the foregoing Executive Orders, U.S. Codes and Codified Federal Regulations; and the Firm agrees to comply with City requirements to follow cost principles outlined in 2 CFR 200, Subpart E – Cost Principles for financial disbursements under its Grant Agreement. The Firm also agrees to comply with audit requirements outlined in 2 CFR 200 Subpart F – Audit Requirements”.

4.3 PROPOSAL (QUALIFICATION STATEMENT)

Proposers shall limit their Proposal response to a maximum of 6 pages excluding “letter of submittal”, résumés and reference letters. The Firm's Proposal response to the RFQ shall include at a minimum the following items:

1. A description of the Firm's qualifications/experience in the areas described below.
 - Classification of soils by appropriate methods
 - Determination of soil properties by appropriate means
 - Determination of foundation and wall design parameters
 - Pavement subgrade characterization and pavement design
 - Evaluation of water mounding in relationship to stormwater injections
 - Conducting geophysical studies, test borings, test excavations, infiltration testing, aquifer testing

- Identification of restrictive infiltration layers below the ground surface
 - Slope stability and groundwater seepage analysis
 - Geotechnical report preparations
 - Phase 1 and Phase 2 environmental site assessments
 - Construction phase contaminated site assessments and recommendations for remediation
 - Conducting special inspections or other geotechnical related construction phase inspections
2. A staffing plan listing:
- a) personnel who will be responsible for carrying out the work.
 - b) a description of qualifications, skills (e.g., brief résumés), and responsibilities for each project participant.
3. References of at least three current/former clients (if City staff are listed, they shall be in addition to these three) for whom the Firm performed similar services on similar projects to those described herein. Identify contact persons and email addresses and phone numbers. The Firm grants permission to the City to contact the references. City staff references, if provided, shall be above and beyond the three references noted above. The City may evaluate references at the City's discretion.
4. Include a list of contracts the Firm has had during the last two (2) years that relate to the Firm's ability to perform the services needed under this RFQ. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/email addresses. The Firm grants permission to the City to contact the references.
5. If the Firm has had a contract terminated for default in the last five (5) years, describe such incident. Termination for default is defined as notice to stop performance due to the Firm's non-performance or poor performance, and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default. Submit full details of the terms for default, including the other party's name, address, and phone number. Present the Firm's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of the past experience. If no such termination for default has been experienced by the Firm in the past five (5) years, so indicate.

5. EVALUATION

5.1 EVALUATION PROCEDURE

Responsive Proposals will be evaluated in accordance with the requirements stated in this solicitation and any addenda issued. Evaluation of Proposals shall be accomplished by an evaluation team, to be designated by the City, which will determine the ranking of the Proposals.

The RFQ Coordinator may contact the Firm for clarification of any portion of the Firm's Proposal.

5.2 EVALUATION WEIGHTING AND SCORING

The following weighting will be assigned to the Proposal for evaluation purposes:

Qualifications of key personnel	20%
Expertise and approach to various tasks described in Scope of Services (excluding special inspections)	45%
Conducting special inspections	15%
Past performance/references relevant to areas itemized above on similar projects	20%

5.3 AWARD OF CONTRACT

This RFQ does not obligate the City to award a contract.

Award of contract, when made, will be to the Proposer whose Proposal is the most favorable to the City, taking into consideration the evaluation factors. The Proposer should be prepared to accept this RFQ for incorporation into a contract resulting from this RFQ. Contract negotiations may incorporate some or all of the Proposal.

5.4 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. Discussion will be limited to a critique of the requesting Firm's Proposal. Comparisons between Proposals or evaluations of the other Proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone.

6. CONTRACT TERMS

6.1 BUSINESS REGISTRATION REQUIREMENT

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained and been the holder of a valid annual business registration or temporary business registration as provided in this chapter. The Firm shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Firm 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.

6.2 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 the contract. Any litigation to enforce this contract or any of its provisions shall be brought in Spokane County, Washington.

6.3 DISPUTES

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

6.4 TERMINATION

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.

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.

For Convenience: Either party may terminate this Agreement without cause, upon thirty (30) days written notice to the other party.

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.

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.

6.5. 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 Firm 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 Firm.

6.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

A Certification form will accompany the contract to be signed confirming that, to the best of its knowledge and belief, Firm 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.

6.7 PAYMENT

Payment will be made via direct deposit/ACH except as provided by state law. A completed ACH application is required before a City Order will be issued. 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.

6.8 LIABILITY

The Firm shall indemnify, defend and hold harmless the City, its officers and employees from all claims, demands, or suits in law or equity arising from the Firm's negligence or breach or its obligations under the contract. The Firm's duty to indemnify shall not apply to liability caused by the sole negligence of the City, its officers and employees. The Firm's duty to indemnify for liability arising from the concurrent negligence of the City, its officers and employees and the Firm, its officers and employees shall apply only to the extent of the negligence of the Firm, its officers and employees. The Firm's duty to indemnify shall survive termination or expiration of the contract. The Firm waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance.

6.9 INSURANCE COVERAGE

During the term of the contract, the Firm shall maintain in force at its own expense, each insurance coverage noted below:

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

- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Firm's services to be provided under this contract; and
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.
- 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 contract. The coverage must remain in effect for at least three (3) years after the contract is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Firm or its insurer(s) to the City.

As evidence of the insurance coverages required by this contract, the Firm shall furnish acceptable insurance certificates to the City at the time it returns the signed contract. The certificate shall specify all of the parties who are additional insured, and include applicable policy endorsements, and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. Copies of all applicable endorsements shall be provided. The Firm shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

6.10 CONFORMANCE WITH FEDERAL, STATE AND LOCAL LAWS

Federal, State and Local Laws: Services of a project as a result of the use of a Firm's services including the letting of subcontracts in connection with any project work related to this RFQ may be required to conform to the applicable requirements of Federal, State and local laws and ordinances. The City stipulates that Federal funds may be involved. Note requirements listed in Attachment "A" titled "Federal Grant Funded Guidelines" incorporated herein by reference.

6.11 DEBARRED OR SUSPENDED PARTY

The City will not make any award or permit any award or contract at any tier to any party which is debarred, suspended or in any way is excluded from procurement actions by any Federal, State or Local governmental agency. If information becomes available, such evidence may be grounds for non-award or nullification of the Contract.

6.12 MAINTENANCE OF RECORDS

The Firm will maintain, for at least three (3) years after completion of this contract, all relevant records pertaining to the contract. The Firm shall make available to the City, Washington State Auditor, Federal Grantor Agency, Comptroller General of the United States or any of their duly authorized representatives, at any time during their normal operating hours, all records, books or pertinent information which the Firm shall have kept in conjunction with this Agreement and which the City may be required by law to include or make part of its auditing procedures, an audit trail or which may be required for the purpose of funding the services contracted for herein.

6.13 SINGLE AUDIT REQUIREMENTS

Any contract awarded as a result of this RFQ may include the agreement to annually audit any contracts with the City. Audits shall be performed in accordance with 2 CFR 200 Subpart F – Audit Requirements as appropriate and shall be received by the City within the 12 month period following the close of each fiscal year. Agencies not covered by federal single audit requirements may be responsible for an independent agency audit, which meets general accepted auditing standards.

6.14 AMERICANS WITH DISABILITIES ACT INFORMATION

The City of Spokane in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by emailing Engineering Services at eraea@spokanecity.org or by calling 509-625-6700.

6.15 TITLE VI

The City of Spokane, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.



Agenda Sheet for City Council Meeting of: 10/23/2023

<u>Date Rec'd</u>	10/9/2023
<u>Clerk's File #</u>	OPR 2023-1068
<u>Renews #</u>	

<u>Submitting Dept</u>	ENGINEERING SERVICES	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	DAN BULLER 625-6391	<u>Project #</u>	2023115
<u>Contact E-Mail</u>	DBULLER@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	MASTER
<u>Agenda Item Name</u>	0370 – GEOTECHNICAL ENGINEERING ON-CALL CONTRACT 2024-2025 GEOENGINEERS		

Agenda Wording

Consultant Agreement with GeoEngineers, Inc. (Spokane, WA) for Geotechnical Engineering On-Call Services for 2024-2025 - (Non-Federal) for an amount not to exceed \$800,000. (Various Neighborhood Councils)

Summary (Background)

This Consultant Agreement for Geotechnical Engineering On-Call Services is for a period of two years with an optional one-year extension. Task Assignments shall be prepared under this Agreement and scoped for individual project needs. Funding shall be from the individual projects.

Lease? NO Grant related? NO Public Works? NO
Fiscal Impact **Budget Account**

Expense	\$ 800,000.00	# VARIOUS
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	BULLER, DAN	<u>Study Session\Other</u>	PIES 9/25/23
<u>Division Director</u>	FEIST, MARLENE	<u>Council Sponsor</u>	Kinnear
<u>Finance</u>	ORLOB, KIMBERLY	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE	eraea@spokanecity.org	
<u>For the Mayor</u>	JONES, GARRETT	publicworksaccounting@spokanecity.org	
<u>Additional Approvals</u>		kgoodman@spokanecity.org	
<u>Purchasing</u>		ddaniels@spokanecity.org	
		dbuller@spokanecity.org	
		jradams@spokanecity.org	
		Signee: Teresa Dugger tdugger@geoengineers.com	

Committee Agenda Sheet

PIES

Submitting Department	Public Works, Engineering
Contact Name	Dan Buller
Contact Email & Phone	dbuller@spokanecity.org 625-6391
Council Sponsor(s)	Lori Kinnear
Select Agenda Item Type	X Consent <input type="checkbox"/> Discussion Time Requested: _____
Agenda Item Name	On-call consultant contracts
Summary (Background)	<ul style="list-style-type: none"> Engineering Services has “on-call” contracts with various consultants for specialized engineering or related services (geotech engineering., surveying, historic resources, real estate acquisition, landscape architect, construction management, etc.) associated with the City’s public works projects. These firms are selected based on qualifications as required by RCW 39. These agreements typically last 2 years with an optional 3rd year extension. A request for qualifications (RFQ) will be advertised for these various consultants this fall. We expect to bring these contracts to you this fall. These contracts will range in size from \$200,000 to \$800,000, with most being toward the lower end of that range except geotech engineering which is at the upper end of that range. Funds expended under these contracts are reimbursed by the public works contract (generally water, sewer, storm sewer, streets or trail/sidewalk) for which the consultant is hired, generally using utility rates or state/federal loans/grants.
Proposed Council Action & Date:	For council consideration. The individual contracts will be placed on council agenda following completion of the RFQ process.
Fiscal Impact: Total Cost: \$200,000 - \$800,000 Approved in current year budget? X Yes <input type="checkbox"/> No N/A Funding Source X One-time <input type="checkbox"/> Recurring Specify funding source: Varies by project. Costs incurred under the proposed contracts will be paid as part of each public works project for which the consultant is used. Expense Occurrence X One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	
What impacts would the proposal have on historically excluded communities? Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.	

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 – This contract supports multiple public works projects and should not impact racial, gender identity, national origin, income level, disability, sexual orientation or other existing disparity factors.

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

Public Works follows the City's established procurement and public works bidding regulations and policies to bring items forward, and then uses contract management best practices to ensure desired outcomes and regulatory compliance.

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

The projects is consistent with our adopted six year programs as well as the annual budget and strategic initiative to advance street improvement activities.



City of Spokane

CONSULTANT AGREEMENT

**Title: 2024-2025 GEOTECHNICAL ENGINEERING
FOR NON-FED AID PROJECTS**

This Consultant Agreement 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 purpose of this Agreement is to 2024-2025 On-Call Geotechnical Engineering Services for Non-Fed Aid Projects to the City; and

WHEREAS, the Consultant was selected through a Request for Qualification 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 Consultant mutually agree as follows:

1. TERM OF AGREEMENT.

The term of this Agreement begins on January 1, 2024, and ends on December 31, 2025, unless amended by written agreement or terminated earlier under the provisions. The contract may be renewed for one (1) additional one-year contract period, subject to mutual agreement.

2. TIME OF BEGINNING AND COMPLETION.

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

3. SCOPE OF WORK.

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

This agreement covers yet to be defined geotechnical engineering work associated with the City of Spokane public works projects. Work initiation under this agreement shall occur as follows:

1. City personnel contact Consultant and describe overall project and needed geotechnical work.

2. Consultant responds to City contact in writing with a proposed scope of work and budget.
3. City personnel review and approve (or request revisions to) scope of work and budget. Once approved, a brief document referencing the Consultant prepared scope of work and budget.
4. Task assignment is signed and dated by Consultant, City project manager and City Engineering Services Director.
5. Work begins

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

4. COMPENSATION.

Total compensation for Consultant's services under this On-Call Agreement shall not exceed **EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$800,000.00)**, 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 Company shall submit its applications for payment to City of Spokane, Engineering Services Department, 998 E North Foothills Drive Spokane, WA 99207-2735. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

6. REIMBURSABLES

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

- A. City will reimburse the Consultant at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses or include a markup. Other direct charges may include, but are not limited to the following types of items: travel, printing, cell phone, supplies, materials, computer charges, and fees of subconsultants.
- B. The billing for third party direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant paid invoices, and other supporting documents used by the Consultant to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.
- C. The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts (excluding meals) supporting such travel expenses, and in

accordance with the City of Spokane Travel Policy, details of which can be provided upon request.

- D. **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- E. **Meals:** Meals will be reimbursed at the Federal Per Diem daily meal rate for the city in which the work is performed. *Receipts are not required as documentation.* The invoice shall state “the meals are being billed at the Federal Per Diem daily meal rate”, and shall detail how many of each meal is being billed (e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time.
- F. **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published General Services Administration (GSA) Index for the city in which the work is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.)
- G. **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred. Please note: payment for mileage for long distances traveled will not be more than an equivalent trip round-trip airfare of a common carrier for a coach or economy class ticket.
- H. **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).
- I. **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.
- J. **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred and may not include a mark up. Receipts are required for all miscellaneous expenses that are billed.
- K. **Subconsultant:** Subconsultant expenses will be reimbursed at the actual cost incurred and a four percent (4%) markup. Copies of all Subconsultant invoices that are rebilled to the City are required.

7. TAXES, FEES AND LICENSES.

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

- D. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

8. CITY OF SPOKANE BUSINESS LICENSE.

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

9. SOCIAL EQUITY REQUIREMENTS.

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

10. INDEMNIFICATION.

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

11. INSURANCE.

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

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

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

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

12. DEBARMENT AND SUSPENSION.

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

13. AUDIT.

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

14. INDEPENDENT CONSULTANT.

- A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant

employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.

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

15. KEY PERSONS.

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

16. ASSIGNMENT AND SUBCONTRACTING.

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

17. CITY ETHICS CODE.

- A. Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.
- B. Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two (2) years.
- C. Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations,

special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than \$25 may be distributed by the Consultant to a City employee if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

18. NO CONFLICT OF INTEREST.

Consultant confirms that the Consultant or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant's work. As used in this Section, the term Consultant includes any worker of the Consultant who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term "close family relationship" refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

19. ERRORS AND OMISSIONS, CORRECTIONS.

Consultant is responsible for professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement in the delivery of a final work product. The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional engineers or Consultants performing the same or similar services at the time said services are performed. The Final Work Product is defined as a stamped, signed work product. Consultant, without additional compensation, shall correct or revise errors or mistakes in designs, drawings, specifications, and/or other consultant services immediately upon notification by the City. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

20. INTELLECTUAL PROPERTY RIGHTS.

- A. Copyrights. The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant for the Work, whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use copy and distribute every document and all the materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs, and other storage facilities), software program or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.
- B. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Consultant created or produced separate

from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has identified in writing such material as pre-existing prior to commencement of the Work. If pre-existing materials are incorporated in the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.

- C. The City may make and retain copies of such documents for its information and reference with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City or others, on extensions of the project or on any other project, and the City releases the Consultant from liability for any unauthorized reuse of such documents.

21. CONFIDENTIALITY.

Notwithstanding anything to the contrary, City will maintain the confidentiality of Company's materials and information only to the extent that is legally allowed in the State of Washington. City is bound by the State Public Records Act, RCW Ch. 42.56. That law presumptively makes all records in the possession of the City public records which are freely available upon request by anyone. In the event that City gets a valid public records request for Company's materials or information and the City determines there are exemptions only the Company can assert, City will endeavor to give Company notice. Company will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Company does not get a timely injunction preventing the release of the records, the City will comply with the Public Records Act and release the records.

22. DISPUTES.

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

23. TERMINATION.

- A. For Cause: The City or Consultant may terminate the Agreement if the other party is in material breach of this Agreement, and such breach has not been corrected to the other party's reasonable satisfaction in a timely manner. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered

impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.

- C. For Convenience: Either party may terminate this Agreement without cause, upon thirty (30) days written notice to the other party.
- D. Actions upon Termination: if termination occurs not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to the actual termination date, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- E. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided however, that the City shall indemnify and hold the Consultant harmless from any claims, losses, or damages to the extent caused by modifications made by the City to the Consultant's work product.

24. EXPANSION FOR NEW WORK.

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

25. MISCELLANEOUS PROVISIONS.

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.

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

requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.

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

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

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: Exhibit A – Certificate Regarding Debarment
Exhibit B – Scope of Services

23-198

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/> 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

NADINE WOODWARD
MAYOR



CITY OF SPOKANE - PURCHASING
808 W. Spokane Falls Blvd.
Spokane, Washington 99201-3316
(509) 625-6400

REQUEST FOR QUALIFICATIONS

2024-2025 GEOTECHNICAL ENGINEERING FOR NON- FED AID PROJECTS

City of Spokane, Washington

DUE DATE: **MONDAY, OCTOBER 2, 2023**
No later than 1:00 p.m.

DELIVERY: via email to: jradams@spokanecity.org

1. INTRODUCTION

1.1 BACKGROUND AND PURPOSE

The City of Spokane, through its Department of Engineering Services (hereinafter “City”) is initiating this Request for Qualifications (RFQ) to solicit Proposals from Firms with expertise in geotechnical engineering.

This will be an on-call type contract for up to \$800,000. There is no guaranteed minimum amount of work that will be directed to the consultant as a result of the contract that will be awarded pursuant to this RFQ.

1.2 FUNDING

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

A portion of the funding for this project may come from state or federal sources. Where applicable, the contract awarded as a result of this procurement will incorporate the requirements of state or federal funding programs.

1.3 PERIOD OF PERFORMANCE

The period of performance of the contract resulting from this RFQ is tentatively scheduled to begin on or about January 1, 2024 and to end on December 31, 2025 with an optional one-year extension.

1.4 DEFINITIONS

Definitions for the purposes of this RFQ include:

City – The City of Spokane, a Washington State municipal corporation, that is issuing this RFQ.

Firm or Consultant – Individual or company whose Proposal has been accepted by the City and is awarded a fully executed, written contract.

Proposal – A formal offer or statement of qualifications submitted in response to this solicitation.

Proposer -- Individual or company submitting a Proposal in order to attain a contract with the City.

Request for Qualifications (RFQ) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFQ is to permit the consultant community to provide qualifications for evaluation.

1.5 CONTRACTING WITH CURRENT OR FORMER CITY EMPLOYEES

Specific restrictions apply to contracting with current or former City officers and employees pursuant to the Code of Ethics in chapter 1.04 of the Spokane Municipal Code. Proposers should familiarize themselves with the requirements prior to submitting a Proposal that includes current or former City officers or employees.

1.6 ADDENDA

Addenda will be emailed.

2. SCOPE OF SERVICES

The scope of services envisioned in this RFQ may include some or all of the following:

- Classification of soils by appropriate methods
- Determination of soil properties by appropriate means
- Determination of foundation and wall design parameters
- Pavement subgrade characterization and pavement design
- Evaluation of water mounding in relationship to stormwater injections
- Conducting geophysical studies, test borings, test excavations, infiltration testing, aquifer testing
- Identification of restrictive infiltration layers below the ground surface
- Slope stability and groundwater seepage analysis
- Geotechnical report preparations
- Phase 1 and Phase 2 environmental site assessments
- Construction phase contaminated site assessments and recommendations for remediation
- Conducting special inspections or other geotechnical related construction phase inspections

3. GENERAL INFORMATION

3.1 RFQ COORDINATOR

The RFQ Coordinator is the sole point of contact in the City for this procurement. All communication between the Proposer and the City upon receipt of this RFQ shall be with the RFQ Coordinator, as follows:

Name	Jonathan Adams
Address	808 W. Spokane Falls Blvd., Spokane, WA 99201
Phone Number	509-625-6267
E-Mail Address	jradams@spokanecity.org

Any other communication will be considered unofficial and non-binding on the City. Firms are to rely on written statements issued by Addendum. Communication directed to parties other than the RFQ Coordinator may result in disqualification of the Firm.

3.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Step	Expected Dates
Issue Request for Qualifications	Week of 9-11-23
Proposals due	10-2-23

Evaluate proposals, conduct oral interviews with finalists, if necessary	Weeks of 10-2-23 and 10-9-23
Announce selection, negotiate contract	Weeks of 10-16-23 and 10-23-23
City Council approval of contract	Weeks of 10-30-23 and 11-6-23
Contract signatures	Week of 11-6-23
Contract effective date	1-1-24

The City reserves the right to revise the above schedule.

3.3 SUBMISSION OF PROPOSALS

Proposals shall be submitted via email to jradams@spokanecity.org. The email shall include subject line “SOQ – 2024-2025 Non Fed Aid On-Call Geotechnical Engineering”.

Proposals shall be submitted in pdf format. The entire submittal shall consist of not more than three pdf files (and, ideally, a single pdf file). Note that the City email server will not accept files larger than 10 MB, so files should be configured accordingly. If your submittal is such that you need an FTP link, please email jradams@spokanecity.org, and an FTP link will be provided.

3.4 PROPRIETARY INFORMATION / PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the City.

All received Proposals shall remain confidential until the award of contract. Thereafter, the Proposals shall be deemed public records as defined in RCW 42.56, “Public Records.”

Any information in the Proposal that the Proposer desires to claim as proprietary and thus exempt from disclosure under the provisions of existing state law shall be clearly designated. Each page claimed to be exempt from disclosure must be clearly identified by the word “Confidential” printed on it. Marking the entire Proposal exempt from disclosure will not be honored.

The City will consider a Proposer’s request for exemption from disclosure; however, the City will make a decision predicated upon state law and regulations. If any information is marked as proprietary in the Proposal, it will not be made available until the affected Proposer has been given an opportunity to seek a court injunction against the requested disclosure.

All requests for information should be directed to the RFQ Coordinator.

3.5 REVISIONS TO THE RFQ

In the event it becomes necessary to revise any part of this RFQ or provide any other pertinent information, such revision will be emailed to you.

The City also reserves the right to cancel or reissue the RFQ in whole or in part prior to final award of a contract.

3.6 ACCEPTANCE PERIOD

Proposals shall remain in effect for sixty (60) days for acceptance by the City from the due date for receipt of Proposals.

3.7 RESPONSIVENESS

The Proposer is specifically notified that failure to comply with any part of the RFQ may result in rejection of the Proposal as non-responsive.

The City also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

3.8 COSTS TO PROPOSE

The City will not be liable for any costs incurred by the Proposer in preparation of a Proposal submitted in response to this RFQ, in conduct of a presentation, or any other activities related to responding to this RFQ

3.9 NO OBLIGATION TO CONTRACT

This RFQ does not obligate the City to contract for services specified herein.

3.10 REJECTION OF PROPOSALS

The City reserves the right at its sole discretion to reject any and all Proposals received without penalty and to not issue a contract as a result of this RFQ.

3.11 INTERLOCAL PURCHASE AGREEMENTS

The City of Spokane has entered into Interlocal Purchase Agreements with other public agencies pursuant to RCW 39.34. In submitting a response the Proposer agrees to sell additional items at the contracted price, terms and conditions to the City of Spokane and other public agencies contingent upon the Firm's review and approval at the time of a requested sale. Any price de-escalation/escalation provisions of this Proposal shall apply in the case of a sale of additional items. Firm's right to refuse to sell additional items at the time of request shall be absolute.

4. PROPOSAL CONTENTS

4.1 PREPARATION OF PROPOSAL

Proposals shall be submitted via email. The major sections of the Proposal are to be submitted in the order noted below:

1. Letter of Submittal.
2. Qualifications Statement.

Proposals shall provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the Proposal but should assist the Proposer in preparing a thorough response.

4.2 LETTER OF SUBMITTAL

The Letter of Submittal shall be signed (electronic signatures are acceptable) and dated by a person authorized to legally bind the Firm to a contractual relationship, e.g., the president or executive director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include the following information about the Firm and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/email address of legal entity or individual with whom contract would be written.
2. Legal status of the Firm (sole proprietorship, partnership, corporation, etc.).
3. Location of the facility from which the Firm would operate.
4. Identify any current or former City employees employed by or on the Firm's governing board as of the date of the Proposal or during the previous twelve (12) months.
5. Acknowledgement that the Firm will comply with all terms and conditions set forth in the Request for Qualifications unless otherwise agreed by the City.
6. Acknowledgement that the Firm certifies that it has not been debarred, suspended, ineligible for, or otherwise excluded from participation in Federal Assistance programs under Executive Order 12549, Title 31 U.S. Code 6101 Note, Executive Order 12549, Executive Order 12689, Title 48 Codified Federal Regulation 9.404, "Debarment and Suspension". Further Acknowledge that Firm will not contract with a subcontractor that is likewise debarred, suspended, ineligible for, or otherwise excluded, as referenced in the foregoing Executive Orders, U.S. Codes and Codified Federal Regulations; and the Firm agrees to comply with City requirements to follow cost principles outlined in 2 CFR 200, Subpart E – Cost Principles for financial disbursements under its Grant Agreement. The Firm also agrees to comply with audit requirements outlined in 2 CFR 200 Subpart F – Audit Requirements”.

4.3 PROPOSAL (QUALIFICATION STATEMENT)

Proposers shall limit their Proposal response to a maximum of 6 pages excluding “letter of submittal”, résumés and reference letters. The Firm's Proposal response to the RFQ shall include at a minimum the following items:

1. A description of the Firm's qualifications/experience in the areas described below.
 - Classification of soils by appropriate methods
 - Determination of soil properties by appropriate means
 - Determination of foundation and wall design parameters
 - Pavement subgrade characterization and pavement design
 - Evaluation of water mounding in relationship to stormwater injections
 - Conducting geophysical studies, test borings, test excavations, infiltration testing, aquifer testing

- Identification of restrictive infiltration layers below the ground surface
 - Slope stability and groundwater seepage analysis
 - Geotechnical report preparations
 - Phase 1 and Phase 2 environmental site assessments
 - Construction phase contaminated site assessments and recommendations for remediation
 - Conducting special inspections or other geotechnical related construction phase inspections
2. A staffing plan listing:
- a) personnel who will be responsible for carrying out the work.
 - b) a description of qualifications, skills (e.g., brief résumés), and responsibilities for each project participant.
3. References of at least three current/former clients (if City staff are listed, they shall be in addition to these three) for whom the Firm performed similar services on similar projects to those described herein. Identify contact persons and email addresses and phone numbers. The Firm grants permission to the City to contact the references. City staff references, if provided, shall be above and beyond the three references noted above. The City may evaluate references at the City's discretion.
4. Include a list of contracts the Firm has had during the last two (2) years that relate to the Firm's ability to perform the services needed under this RFQ. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/email addresses. The Firm grants permission to the City to contact the references.
5. If the Firm has had a contract terminated for default in the last five (5) years, describe such incident. Termination for default is defined as notice to stop performance due to the Firm's non-performance or poor performance, and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default. Submit full details of the terms for default, including the other party's name, address, and phone number. Present the Firm's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of the past experience. If no such termination for default has been experienced by the Firm in the past five (5) years, so indicate.

5. EVALUATION

5.1 EVALUATION PROCEDURE

Responsive Proposals will be evaluated in accordance with the requirements stated in this solicitation and any addenda issued. Evaluation of Proposals shall be accomplished by an evaluation team, to be designated by the City, which will determine the ranking of the Proposals.

The RFQ Coordinator may contact the Firm for clarification of any portion of the Firm's Proposal.

5.2 EVALUATION WEIGHTING AND SCORING

The following weighting will be assigned to the Proposal for evaluation purposes:

Qualifications of key personnel	20%
Expertise and approach to various tasks described in Scope of Services (excluding special inspections)	45%
Conducting special inspections	15%
Past performance/references relevant to areas itemized above on similar projects	20%

5.3 AWARD OF CONTRACT

This RFQ does not obligate the City to award a contract.

Award of contract, when made, will be to the Proposer whose Proposal is the most favorable to the City, taking into consideration the evaluation factors. The Proposer should be prepared to accept this RFQ for incorporation into a contract resulting from this RFQ. Contract negotiations may incorporate some or all of the Proposal.

5.4 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. Discussion will be limited to a critique of the requesting Firm's Proposal. Comparisons between Proposals or evaluations of the other Proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone.

6. CONTRACT TERMS

6.1 BUSINESS REGISTRATION REQUIREMENT

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained and been the holder of a valid annual business registration or temporary business registration as provided in this chapter. The Firm shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Firm 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.

6.2 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 the contract. Any litigation to enforce this contract or any of its provisions shall be brought in Spokane County, Washington.

6.3 DISPUTES

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

6.4 TERMINATION

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.

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.

For Convenience: Either party may terminate this Agreement without cause, upon thirty (30) days written notice to the other party.

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.

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.

6.5. 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 Firm 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 Firm.

6.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

A Certification form will accompany the contract to be signed confirming that, to the best of its knowledge and belief, Firm 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.

6.7 PAYMENT

Payment will be made via direct deposit/ACH except as provided by state law. A completed ACH application is required before a City Order will be issued. 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.

6.8 LIABILITY

The Firm shall indemnify, defend and hold harmless the City, its officers and employees from all claims, demands, or suits in law or equity arising from the Firm's negligence or breach or its obligations under the contract. The Firm's duty to indemnify shall not apply to liability caused by the sole negligence of the City, its officers and employees. The Firm's duty to indemnify for liability arising from the concurrent negligence of the City, its officers and employees and the Firm, its officers and employees shall apply only to the extent of the negligence of the Firm, its officers and employees. The Firm's duty to indemnify shall survive termination or expiration of the contract. The Firm waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance.

6.9 INSURANCE COVERAGE

During the term of the contract, the Firm shall maintain in force at its own expense, each insurance coverage noted below:

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

- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Firm's services to be provided under this contract; and
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.
- 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 contract. The coverage must remain in effect for at least three (3) years after the contract is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Firm or its insurer(s) to the City.

As evidence of the insurance coverages required by this contract, the Firm shall furnish acceptable insurance certificates to the City at the time it returns the signed contract. The certificate shall specify all of the parties who are additional insured, and include applicable policy endorsements, and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. Copies of all applicable endorsements shall be provided. The Firm shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

6.10 CONFORMANCE WITH FEDERAL, STATE AND LOCAL LAWS

Federal, State and Local Laws: Services of a project as a result of the use of a Firm's services including the letting of subcontracts in connection with any project work related to this RFQ may be required to conform to the applicable requirements of Federal, State and local laws and ordinances. The City stipulates that Federal funds may be involved. Note requirements listed in Attachment "A" titled "Federal Grant Funded Guidelines" incorporated herein by reference.

6.11 DEBARRED OR SUSPENDED PARTY

The City will not make any award or permit any award or contract at any tier to any party which is debarred, suspended or in any way is excluded from procurement actions by any Federal, State or Local governmental agency. If information becomes available, such evidence may be grounds for non-award or nullification of the Contract.

6.12 MAINTENANCE OF RECORDS

The Firm will maintain, for at least three (3) years after completion of this contract, all relevant records pertaining to the contract. The Firm shall make available to the City, Washington State Auditor, Federal Grantor Agency, Comptroller General of the United States or any of their duly authorized representatives, at any time during their normal operating hours, all records, books or pertinent information which the Firm shall have kept in conjunction with this Agreement and which the City may be required by law to include or make part of its auditing procedures, an audit trail or which may be required for the purpose of funding the services contracted for herein.

6.13 SINGLE AUDIT REQUIREMENTS

Any contract awarded as a result of this RFQ may include the agreement to annually audit any contracts with the City. Audits shall be performed in accordance with 2 CFR 200 Subpart F – Audit Requirements as appropriate and shall be received by the City within the 12 month period following the close of each fiscal year. Agencies not covered by federal single audit requirements may be responsible for an independent agency audit, which meets general accepted auditing standards.

6.14 AMERICANS WITH DISABILITIES ACT INFORMATION

The City of Spokane in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by emailing Engineering Services at eraea@spokanecity.org or by calling 509-625-6700.

6.15 TITLE VI

The City of Spokane, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.



Agenda Sheet for City Council Meeting of: 10/23/2023

Date Rec'd	10/10/2023
Clerk's File #	OPR 2023-1069
Renews #	

Submitting Dept	ENGINEERING SERVICES	Cross Ref #	
Contact Name/Phone	DAN BULLER 625-6391	Project #	2022042
Contact E-Mail	DBULLER@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	CR 25526/BT
Agenda Item Name	0370 – LOW BID AWARD– STREET MAINT. CURB RAMPS (2022042) CAMERON REILLY LLC		

Agenda Wording

Low Bid of Cameron-Reilly, LLC of Spokane, WA for the 2023 Street Maintenance Curb Ramps in the amount of \$1,175,715.00. An administrative reserve of \$117,571.50, which is 10% of the contract price, will be set aside. (Various Neighborhood Councils)

Summary (Background)

On October 9, 2023, bids were opened for the above project. The low bid was from Cameron-Reilly, LLC, in the amount of \$1,175,715.00, which is \$62,396.00 or 5% under the Engineer's Estimate; 2 other bids were received as follows: Bacon Concrete, Inc. - \$1,346,479.00 and National Native American Construction, Inc. - \$1,624,664.00.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense	\$ 765,696.27	# 3200 49828 42300 54201 86107
Expense	\$ 412,214.33	# 3200 47110 42300 54201 86107
Expense	\$ 115,375.90	# 3200 49828 42300 54201 86107
Select	\$	#

Budget Account

Approvals

Dept Head	BULLER, DAN
Division Director	FEIST, MARLENE
Finance	ORLOB, KIMBERLY
Legal	BEATTIE, LAUREN
For the Mayor	CODDINGTON, BRIAN

Council Notifications

Study Session\Other	PIES 5/22/2023
Council Sponsor	Kinnear

Distribution List

eraea@spokanecity.org
publicworksaccounting@spokanecity.org
kgoodman@spokanecity.org
ddaniels@spokanecity.org
jgraff@spokanecity.org
pyoung@spokanecity.org
Signee:Mike Reilly mike@cameron-reilly.com

Briefing Paper

PIES

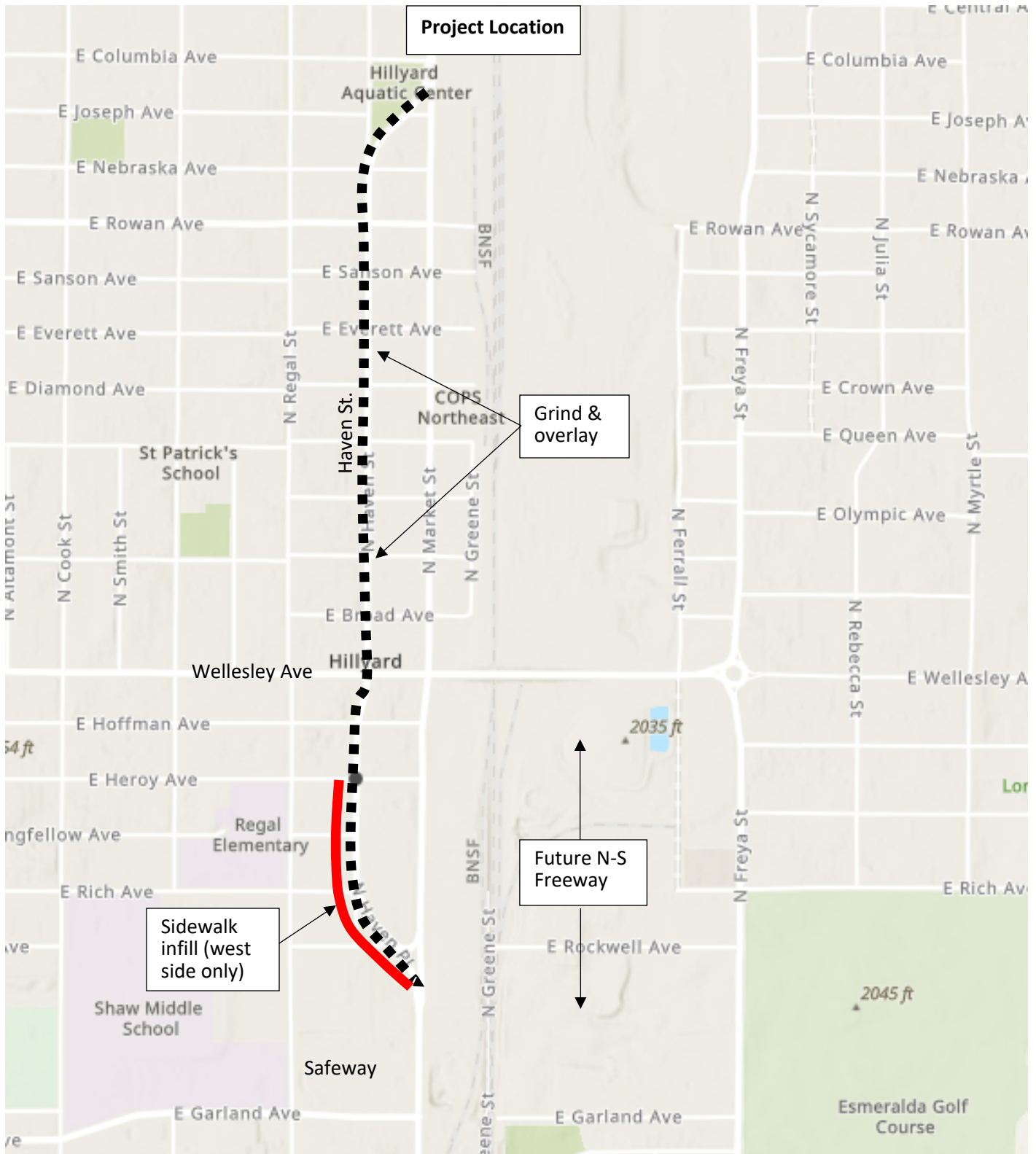
Submitting Department:	Public Works, Engineering
Contact Name	Dan Buller 625-6391
Contact Email & Phone	dbuller@spokanecity.org
Council Sponsor(s)	Lori Kinnear
Select Agenda Item Type	X Consent <input type="checkbox"/> Discussion Time Requested: _____
Agenda Item Name	Street Maintenance ADA Curb Ramps
Summary (Background)	<ul style="list-style-type: none"> Every year the city Street Dept. grinds and overlays various streets through the city. These projects generate the need for curb ramp installation or replacements. The street dept does not have the manpower or expertise to construct concrete curb ramps complying with ADA This project constructs curb ramps from Street Dept. grind and overlay projects on city arterials. Because the ramps are spread out throughout town, no exhibit is attached. This project is paid with local funds.
Proposed Council Action & Date:	None at this time. Following bid opening, we will bring a construction contract to Council for approval. This project is planned to advertise in about July, 2023 and be constructed in late summer/fall 2023, possibly extending into spring 2024
<p>• Fiscal Impact: Total Cost: This project is expected to cost about \$600,000.</p> <p>Approved in current year budget? X Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Funding Source X One-time <input type="checkbox"/> Recurring Specify funding source: project funds (generally street or utility funds)</p> <p>Expense Occurrence X One-time <input type="checkbox"/> Recurring</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
Operations Impacts	
<p>What impacts would the proposal have on historically excluded communities?</p> <p>Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.</p>	
<p>How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?</p> <p>N/A – This contract supports multiple public works projects and should not impact racial, gender identity, national origin, income level, disability, sexual orientation or other existing disparity factors.</p>	

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

Public Works follows the City's established procurement and public works bidding regulations and policies to bring items forward, and then uses contract management best practices to ensure desired outcomes and regulatory compliance.

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

The projects which will use this on-call contract are consistent with our adopted six year programs as well as the annual budget and strategic initiative to advance street maintenance activities.





City of Spokane

PUBLIC WORKS CONTRACT

Title: **2023 STREET MAINTENANCE
CURB RAMPS**

This Contract is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **CAMERON-REILLY, LLC**, whose address is 309 North Park Road, Spokane Valley, Washington 99212 as ("Contractor"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE.** The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization and other items of work and costs necessary for the proper execution and completion of the work described in the Special Provisions entitled **2023 STREET MAINTENANCE CURB RAMPS**.
2. **CONTRACT DOCUMENTS.** The contract documents are this Contract, the Contractor's completed bid proposal form, the Washington State Department of Transportation's Standard Specifications for Road, Bridge and Municipal Construction 2023, City of Spokane Special Provisions, contract provisions, contract plans, standard plans, addenda, various certifications and affidavits, supplemental agreements, change orders and subsurface boring logs (if any). These contract documents are on file in the Engineering Services Department and are incorporated into this Contract by reference as if they were set forth at length. In the event of a conflict, or to resolve an ambiguity or dispute, the order of precedence defined in the City of Spokane Special Provisions section 1-04.2 City Engineering Services File No. 2021070 shall apply.
3. **TIME OF PERFORMANCE.** The time of performance of the Contract shall be in accordance with the contract documents.
4. **LIQUIDATED DAMAGES.** Liquidated damages shall be in accordance with the contract documents.
5. **TERMINATION.** Either party may terminate this Contract in accordance with the contract documents.
6. **COMPENSATION.** This is a unit price contract, and upon full and complete performance by the Contractor, the City will pay only the amount set forth in Schedule A-1 for the actual quantities furnished for each bid item at a total cost not to exceed \$1,175,715.00, which are taxed as noted in Section 7.

7. TAXES. Bid items in Schedule A-1 will include sales tax.
8. PAYMENT. The Contractor will send its applications for payment to the Engineering Services Department, 998 E North Foothills Drive Spokane, WA 99207-2735. 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. Five percent (5%) of the Contract price may be retained by the City, in accord with RCW 60.28 for a minimum of forty five (45) days after final acceptance, as a trust fund for the protection and payment of: the claims of any person arising under the Contract; and the State with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from the Contractor
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. BONDS. The Contractor may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a performance bond and a payment bond on the forms attached, each equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State.
11. INSURANCE. The Contractor represents that it and its employees, agents and subcontractors, in connection with the Contract, are protected against the risk of loss by the insurance coverages required in the contract documents. The policies shall be issued by companies that meet with the approval of the City Risk Manager. The policies shall not be canceled without at least minimum required written notice to the City as Additional Insured.
12. CONTRACTOR'S WARRANTY. The Contractor's warranty for all work, labor and materials shall be in accordance with the contract documents.
13. WAGES. The Contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the Department of Labor and Industries, prior to any payments. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Contractor's registration number; and (2) the prevailing wages under RCW 39.12.020 and the

number of workers in each classification. Each voucher claim submitted by the Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the "Statement(s) of Intent to Pay Prevailing Wages" on file with the City. Prior to the payment of funds held under RCW 60.28, the Contractor and subcontractors must submit an "Affidavit of Wages Paid" certified by the industrial statistician.

14. STATEMENT OF INTENT TO PAY PREVAILING WAGES TO BE POSTED. The Contractor and each subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the State Department of Labor and Industries; 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.

15. PUBLIC WORKS REQUIREMENTS. The Contractor and each subcontractor are required to fulfill the Department of Labor and Industries Public Works and Prevailing Wage Training Requirement under RCW 39.04.350. The contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify the responsibility criteria listed in RCW 39.04.350(1) for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria. This verification requirement, as well as responsibility criteria, must be included in every public works contract and subcontract of every tier.

16. SUBCONTRACTOR RESPONSIBILITY.

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

B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable, have:
 - a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department number, as required in Title 50 RCW;
 - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.

4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

C. On Public Works construction projects, as defined in RCW 39.04.010, with an estimated cost of six hundred thousand dollars (\$600,000) or more, at least fifteen (15) percent of the labor hours on each project shall be performed by apprentices enrolled in a State-approved apprenticeship program; and for each contract in the project fifteen (15) percent of the labor hours for each craft that has an available state-approved apprenticeship program for Spokane County and utilizes more than one hundred sixty (160) hours in each contract shall be performed by apprentices enrolled in a state-approved apprenticeship program.

1. Subcontracting Requirements. The utilization percentages for apprenticeship labor for Public Works construction contracts shall also apply to all subcontracts of one hundred thousand dollars (\$100,000) or more within those contracts, and at least fifteen percent (15%) of the labor hours for each such subcontract shall be performed by apprentices in a state-approved apprenticeship program. For each craft that has an available apprenticeship program for Spokane county and performs more than one hundred sixty (160) hours on each project, fifteen (15) percent of the labor hours shall be performed by apprentices enrolled in a State-approved apprenticeship program.
2. Each subcontractor which this chapter applies is required to execute a form, provided by the city, acknowledging that the requirements of Article X 07.06 SMC are applicable to the labor hours for the project.

17. 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 Contractor 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 Contractor.

18. EXECUTIVE ORDER 11246.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. The Contractor will send each labor union, or representative of workers with which it has a collective bargaining contract or other contract or understanding, a notice, to be provided

- by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - E. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - G. The Contractor will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, HOWEVER, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as the result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

19. 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.

20. ASSIGNMENTS. The Contractor may not assign, transfer or sublet any part of the work under this Contract, or assign any monies due, without the written approval of the City, except as may be required by law. In the event of assignment of accounts or monies due under this Contract, the Contractor specifically agrees to give immediate written notice to the City Administrator, no later than five (5) business days after the assignment.

21. 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 the Contract. Contractor will comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor Regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

22. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations that are incorporated herein by reference.

23. 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.

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

25. AUDIT / RECORDS. The Contractor 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 Contractor 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.

26. 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 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.

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

28. MODIFICATIONS. The City may modify this Contract and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the Director of Engineering Services, and the Contract time and compensation will be adjusted accordingly.

29. INTEGRATION. This Contract, including any and all exhibits and schedules referred to herein or therein set forth the entire Agreement and understanding between the parties pertaining to the subject matter and merges all prior agreements, negotiations and discussions between them on the same subject matter.

30. OFF SITE PREFABRICATED ITEMS. In accordance with RCW 39.04.370, the Contractor shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the Contract and produced outside Washington as a part of the "Affidavit of Wages Paid" form filed with the State Department of Labor and Industries.

31. FORCE MAJEURE. Neither party shall be liable to the other for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other party, or unusually severe weather affecting City, Contractor or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

32. CLEAN AIR ACT.

Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC 1251-1387). Violations will be reported.

33. USE OF PROJECT MANAGEMENT SOFTWARE. The Contractor shall transmit all submittal documentation for proposed project materials by uploading it to the City's web based construction management software. A City representative will be available to assist in learning this process.

CAMERON-REILLY, 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 Contract:

Payment Bond
Performance Bond
Certification Regarding Debarment
Schedule A-1

23-202

PAYMENT BOND

We, **CAMERON-REILLY, LLC**, as principal, and _____, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **ONE MILLION ONE HUNDRED SEVENTY-FIVE THOUSAND SEVEN HUNDRED FIFTEEN AND NO/100 DOLLARS (\$1,175,715.00)** for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all work and furnish all materials for the **2023 STREET MAINTENANCE CURB RAMPS**. If the principal shall:

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

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

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

SIGNED AND SEALED on _____.

CAMERON-REILLY, LLC,

AS PRINCIPAL

By: _____
Title: _____

_____,
AS SURETY

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

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) ss.
County of _____)

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

DATED: _____

Signature of Notary Public

My appointment expires _____

PERFORMANCE BOND

We, **CAMERON-REILLY, LLC**, as principal, and _____, as Surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **ONE MILLION ONE HUNDRED SEVENTY-FIVE THOUSAND SEVEN HUNDRED FIFTEEN AND NO/100 DOLLARS (\$1,175,715.00)** for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all the work and furnish all materials for the **2023 STREET MAINTENANCE CURB RAMPS**. If the principal shall:

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

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

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

SIGNED AND SEALED on _____

CAMERON-REILLY, LLC,

AS PRINCIPAL

By: _____

Title: _____

_____,
AS SURETY

By: _____

Its Attorney in Fact

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

STATE OF WASHINGTON)
) ss.
County of _____)

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

DATED on _____.

Signature of Notary

My appointment expires _____

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

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

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

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

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

SCHEDULE A-1
Tax Classification: Sales tax shall be included in unit prices

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITIES		UNIT PRICE		TOTAL
1	ADA FEATURES SURVEYING	1.00 LS	\$	7,000.00	\$	7,000.00
2	APPRENTICE UTILIZATION	1.00 LS	\$	990.00	\$	990.00
3	REIMBURSEMENT OF THIRD PARTY DAMAGE	1.00 EST	\$	1.00	\$	1.00
4	SPCC PLAN	1.00 LS	\$	500.00	\$	500.00
5	PUBLIC LIAISON REPRESENTATIVE	1.00 LS	\$	6,500.00	\$	6,500.00
6	MOBILIZATION	1.00 LS	\$	112,576.00	\$	112,576.00
7	PROJECT TEMPORARY TRAFFIC CONTROL	1.00 LS	\$	65,000.00	\$	65,000.00
8	WORK ZONE SAFETY CONTINGENCY	10,000.00 FA	\$	1.00	\$	10,000.00
9	SEQUENTIAL ARROW SIGNS	408.00 HR	\$	3.00	\$	1,224.00
10	CLEARING AND GRUBBING	1.00 LS	\$	24,000.00	\$	24,000.00
11	SIDEWALK CLEANING	1.00 LS	\$	4,000.00	\$	4,000.00
12	TREE ROOT TREATMENT	10.00 EA	\$	850.00	\$	8,500.00

13	TREE PROTECTION ZONE	14.00 EA	\$	450.00	\$	6,300.00
14	REMOVE TREE, CLASS I	1.00 EA	\$	850.00	\$	850.00
15	TREE PRUNING	14.00 EA	\$	450.00	\$	6,300.00
16	REMOVAL OF STRUCTURE AND OBSTRUCTION	1.00 LS	\$	14,000.00	\$	14,000.00
17	REMOVE EXISTING CURB	3,286.00 LF	\$	15.00	\$	49,290.00
18	REMOVE EXISTING CURB AND GUTTER	254.00 LF	\$	20.00	\$	5,080.00
19	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	2,225.00 SY	\$	42.00	\$	93,450.00
20	SAWCUTTING CURB	192.00 EA	\$	35.00	\$	6,720.00
21	SAWCUTTING RIGID PAVEMENT	3,170.00 LFI	\$	1.50	\$	4,755.00
22	SAWCUTTING FLEXIBLE PAVEMENT	5,380.00 LFI	\$	1.00	\$	5,380.00
23	SAWCUTTING FLEXIBLE PAVEMENT - CURVILINEAR	5,070.00 LFI	\$	1.50	\$	7,605.00
24	CONTROLLED DENSITY FILL	10.00 CY	\$	200.00	\$	2,000.00
25	CSTC FOR SIDEWALK AND DRIVEWAYS	130.00 CY	\$	200.00	\$	26,000.00
26	COMMERCIAL HMA	60.00 TON	\$	350.00	\$	21,000.00
27	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. MEDIUM TRAFFIC, 4 INCH THICK	270.00 SY	\$	65.00	\$	17,550.00

28	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. MEDIUM TRAFFIC, 6 INCH THICK	605.00 SY	\$	75.00	\$	45,375.00
29	PAVEMENT REPAIR EXCAVATION INCL. HAUL	875.00 SY	\$	26.00	\$	22,750.00
30	COMMERCIAL CONCRETE	10.00 CY	\$	200.00	\$	2,000.00
31	CEMENT CONCRETE CURB WALL	20.00 LF	\$	125.00	\$	2,500.00
32	RETROFIT SURFACE INLET CB WITH FRAME & BI-DIRECTIONAL VANED GRATE	2.00 EA	\$	1,850.00	\$	3,700.00
33	ESC LEAD	1.00 LS	\$	1,000.00	\$	1,000.00
34	INLET PROTECTION	46.00 EA	\$	125.00	\$	5,750.00
35	TOPSOIL TYPE A, 2 INCH THICK	834.00 SY	\$	7.50	\$	6,255.00
36	HYDROSEEDING	178.00 SY	\$	7.00	\$	1,246.00
37	SOD INSTALLATION	680.00 SY	\$	26.00	\$	17,680.00
38	REMOVE AND REPLACE EXISTING SPRINKLER HEADS AND LINES	1.00 LS	\$	38,000.00	\$	38,000.00
39	CEMENT CONCRETE CURB	2,830.00 LF	\$	32.50	\$	91,975.00
40	CEMENT CONCRETE CURB AND GUTTER	2,538.00 LF	\$	41.00	\$	104,058.00
41	CEMENT CONCRETE DRIVEWAY	48.00 SY	\$	150.00	\$	7,200.00
42	CLASSIFICATION AND PROTECTION OF SURVEY MONUMENTS	1.00 LS	\$	12,500.00	\$	12,500.00

43	REFERENCE AND REESTABLISH SURVEY MONUMENT	30.00 EA	\$	700.00	\$	21,000.00
44	CEMENT CONCRETE SIDEWALK	2,198.00 SY	\$	75.00	\$	164,850.00
45	RAMP DETECTABLE WARNING	768.00 SF	\$	30.00	\$	23,040.00
46	SIGNING, PERMANENT - CITY MANUFACTURED SIGNS	1.00 LS	\$	45,000.00	\$	45,000.00
47	MAGNOLIA PED LOOP SIGNING, PERMANENT - CITY MANUFACTURED SIGNS	1.00 LS	\$	3,400.00	\$	3,400.00
48	REINFORCED DOWELED CURB	980.00 LF	\$	28.00	\$	27,440.00
49	TRAFFIC ISLAND CONCRETE	195.00 SY	\$	115.00	\$	22,425.00
Schedule A-1 Subtotal					\$	<u>1,175,715.00</u>
Summary of Bid Items				Bid Total	\$	<u>1,175,715.00</u>

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

Project Number **2022042**

Project Description 2022 ADA Ramps for 2023 Street Maintenance Work **Original Date** 10/9/2023 2:08:00 PM

Project Number: 2022042			Engineer's Estimate		CAMERON-REILLY LLC (Submitted)		BACON CONCRETE INC (Submitted)		NATIONAL NATIVE AMERICAN CONSTRUCTION INC (Submitted)	
Item No	Bid Item Description	Est Qty	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount

Tax Classification

Schedule 01

Sales tax shall be included in unit prices

1	ADA FEATURES SURVEYING	1 LS	3,000.00	3,000.00	7,000.00	\$7,000.00	19,000.00	\$19,000.00	26,000.00	\$26,000.00
2	APPRENTICE UTILIZATION	1 LS	5,000.00	5,000.00	990.00	\$990.00	15,000.00	\$15,000.00	26,000.00	\$26,000.00
3	REIMBURSEMENT OF THIRD PARTY DAMAGE	1 EST	1.00	1.00	1.00	\$1.00	1.00	\$1.00	1.00	\$1.00
4	SPCC PLAN	1 LS	1,200.00	1,200.00	500.00	\$500.00	2,000.00	\$2,000.00	1,200.00	\$1,200.00
5	PUBLIC LIAISON REPRESENTATIVE	1 LS	15,000.00	15,000.00	6,500.00	\$6,500.00	15,000.00	\$15,000.00	16,652.00	\$16,652.00
6	MOBILIZATION	1 LS	102,000.00	102,000.00	112,576.00	\$112,576.00	130,000.00	\$130,000.00	105,000.00	\$105,000.00
7	PROJECT TEMPORARY TRAFFIC CONTROL	1 LS	100,000.00	100,000.00	65,000.00	\$65,000.00	145,000.00	\$145,000.00	120,000.00	\$120,000.00
8	WORK ZONE SAFETY CONTINGENCY	10000 FA	1.00	10,000.00	1.00	\$10,000.00	1.00	\$10,000.00	1.00	\$10,000.00
9	SEQUENTIAL ARROW SIGNS	408 HR	8.00	3,264.00	3.00	\$1,224.00	10.00	\$4,080.00	6.00	\$2,448.00
10	CLEARING AND GRUBBING	1 LS	5,000.00	5,000.00	24,000.00	\$24,000.00	6,000.00	\$6,000.00	19,550.00	\$19,550.00
11	SIDEWALK CLEANING	1 LS	5,000.00	5,000.00	4,000.00	\$4,000.00	7,000.00	\$7,000.00	19,500.00	\$19,500.00
12	TREE ROOT TREATMENT	10 EA	800.00	8,000.00	850.00	\$8,500.00	900.00	\$9,000.00	963.00	\$9,630.00
13	TREE PROTECTION ZONE	14 EA	300.00	4,200.00	450.00	\$6,300.00	400.00	\$5,600.00	450.00	\$6,300.00
14	REMOVE TREE, CLASS I	1 EA	1,200.00	1,200.00	850.00	\$850.00	2,000.00	\$2,000.00	835.00	\$835.00
15	TREE PRUNING	14 EA	450.00	6,300.00	450.00	\$6,300.00	400.00	\$5,600.00	450.00	\$6,300.00
16	REMOVAL OF STRUCTURE AND OBSTRUCTION	1 LS	10,000.00	10,000.00	14,000.00	\$14,000.00	7,000.00	\$7,000.00	23,000.00	\$23,000.00
17	REMOVE EXISTING CURB	3286 LF	12.00	39,432.00	15.00	\$49,290.00	14.00	\$46,004.00	13.00	\$42,718.00
18	REMOVE EXISTING CURB AND GUTTER	254 LF	12.00	3,048.00	20.00	\$5,080.00	20.00	\$5,080.00	21.00	\$5,334.00
19	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	2225 SY	25.00	55,625.00	42.00	\$93,450.00	18.00	\$40,050.00	24.00	\$53,400.00
20	SAWCUTTING CURB	192 EA	45.00	8,640.00	35.00	\$6,720.00	40.00	\$7,680.00	6.00	\$1,152.00
21	SAWCUTTING RIGID PAVEMENT	3170 LFI	1.50	4,755.00	1.50	\$4,755.00	4.00	\$12,680.00	3.00	\$9,510.00
22	SAWCUTTING FLEXIBLE PAVEMENT	5380 LFI	1.00	5,380.00	1.00	\$5,380.00	2.00	\$10,760.00	3.00	\$16,140.00
23	SAWCUTTING FLEXIBLE PAVEMENT - CURVILINEAR	5070 LFI	1.30	6,591.00	1.50	\$7,605.00	3.25	\$16,477.50	3.00	\$15,210.00
24	CONTROLLED DENSITY FILL	10 CY	180.00	1,800.00	200.00	\$2,000.00	200.00	\$2,000.00	225.00	\$2,250.00
25	CSTC FOR SIDEWALK AND DRIVEWAYS	130 CY	250.00	32,500.00	200.00	\$26,000.00	160.00	\$20,800.00	561.00	\$72,930.00
26	COMMERCIAL HMA	60 TON	300.00	18,000.00	350.00	\$21,000.00	350.00	\$21,000.00	424.00	\$25,440.00
27	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. MEDIUM TRAFFIC, 4 INCH THICK	270 SY	50.00	13,500.00	65.00	\$17,550.00	74.00	\$19,980.00	75.00	\$20,250.00

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

Project Number: 2022042			Engineer's Estimate		CAMERON-REILLY LLC (Submitted)		BACON CONCRETE INC (Submitted)		NATIONAL NATIVE AMERICAN CONSTRUCTION INC (Submitted)	
Item No	Bid Item Description	Est Qty	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
28	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. MEDIUM TRAFFIC, 6 INCH THICK	605 SY	65.00	39,325.00	75.00	\$45,375.00	81.00	\$49,005.00	91.00	\$55,055.00
29	PAVEMENT REPAIR EXCAVATION INCL. HAUL	875 SY	40.00	35,000.00	26.00	\$22,750.00	48.00	\$42,000.00	69.00	\$60,375.00
30	COMMERCIAL CONCRETE	10 CY	180.00	1,800.00	200.00	\$2,000.00	200.00	\$2,000.00	300.00	\$3,000.00
31	CEMENT CONCRETE CURB WALL	20 LF	110.00	2,200.00	125.00	\$2,500.00	95.00	\$1,900.00	161.00	\$3,220.00
32	RETROFIT SURFACE INLET CB WITH FRAME & BI-DIRECTIONAL VANED GRATE	2 EA	1,200.00	2,400.00	1,850.00	\$3,700.00	1,000.00	\$2,000.00	1,623.00	\$3,246.00
33	ESC LEAD	1 LS	2,000.00	2,000.00	1,000.00	\$1,000.00	2,500.00	\$2,500.00	16,035.00	\$16,035.00
34	INLET PROTECTION	46 EA	120.00	5,520.00	125.00	\$5,750.00	100.00	\$4,600.00	193.00	\$8,878.00
35	TOPSOIL TYPE A, 2 INCH THICK	834 SY	20.00	16,680.00	7.50	\$6,255.00	12.00	\$10,008.00	9.00	\$7,506.00
36	HYDROSEEDING	178 SY	5.00	890.00	7.00	\$1,246.00	15.00	\$2,670.00	8.00	\$1,424.00
37	SOD INSTALLATION	680 SY	25.00	17,000.00	26.00	\$17,680.00	25.00	\$17,000.00	31.00	\$21,080.00
38	REMOVE AND REPLACE EXISTING SPRINKLER HEADS AND LINES	1 LS	6,000.00	6,000.00	38,000.00	\$38,000.00	14,000.00	\$14,000.00	41,103.00	\$41,103.00
39	CEMENT CONCRETE CURB	2830 LF	50.00	141,500.00	32.50	\$91,975.00	38.00	\$107,540.00	49.00	\$138,670.00
40	CEMENT CONCRETE CURB AND GUTTER	2538 LF	50.00	126,900.00	41.00	\$104,058.00	48.00	\$121,824.00	54.00	\$137,052.00
41	CEMENT CONCRETE DRIVEWAY	48 SY	100.00	4,800.00	150.00	\$7,200.00	117.00	\$5,616.00	128.00	\$6,144.00
42	CLASSIFICATION AND PROTECTION OF SURVEY MONUMENTS	1 LS	3,500.00	3,500.00	12,500.00	\$12,500.00	9,500.00	\$9,500.00	11,560.00	\$11,560.00
43	REFERENCE AND REESTABLISH SURVEY MONUMENT	30 EA	900.00	27,000.00	700.00	\$21,000.00	675.00	\$20,250.00	706.00	\$21,180.00
44	CEMENT CONCRETE SIDEWALK	2198 SY	90.00	197,820.00	75.00	\$164,850.00	108.00	\$237,384.00	135.00	\$296,730.00
45	RAMP DETECTABLE WARNING	768 SF	30.00	23,040.00	30.00	\$23,040.00	30.00	\$23,040.00	45.00	\$34,560.00
46	SIGNING, PERMANENT - CITY MANUFACTURED SIGNS	1 LS	24,000.00	24,000.00	45,000.00	\$45,000.00	36,000.00	\$36,000.00	44,314.00	\$44,314.00
47	MAGNOLIA PED LOOP SIGNING, PERMANENT - CITY MANUFACTURED SIGNS	1 LS	14,000.00	14,000.00	3,400.00	\$3,400.00	4,000.00	\$4,000.00	3,147.00	\$3,147.00
48	REINFORCED DOWELED CURB	980 LF	60.00	58,800.00	28.00	\$27,440.00	20.00	\$19,600.00	41.00	\$40,180.00
49	TRAFFIC ISLAND CONCRETE	195 SY	100.00	19,500.00	115.00	\$22,425.00	150.00	\$29,250.00	69.00	\$13,455.00
Bid Total				\$1,238,111.00		\$1,175,715.00		\$1,346,479.50		\$1,624,664.00

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

	SCHEDULE SUMMARY				
	Sched 1	Sched 2	Sched 3	Sched 4	Total
ENGINEER'S ESTIMATE	1,238,111.00	0.00	0.00	0.00	1,238,111.00
CAMERON-REILLY LLC (Submitted)	1,175,715.00	0.00	0.00	0.00	1,175,715.00
BACON CONCRETE INC (Submitted)	1,346,479.50	0.00	0.00	0.00	1,346,479.50
NATIONAL NATIVE AMERICAN CONSTRUCTION INC (Submitted)	1,624,664.00	0.00	0.00	0.00	1,624,664.00

Low Bid Contractor: CAMERON-REILLY LLC

	Contractor's Bid	Engineer's Estimate	% Variance
Schedule 01	1,175,715.00	1,238,111.00	5.04 % Under Estimate
Schedule 02	0.00	0.00	% Under Estimate
Schedule 03	0.00	0.00	% Under Estimate
Schedule 04	0.00	0.00	% Under Estimate
Bid Totals	1,175,715.00	1,238,111.00	5.04 % Under Estimate



Agenda Sheet for City Council Meeting of:
10/23/2023

Date Rec'd	10/10/2023
Clerk's File #	OPR 2023-1070
Renews #	
Cross Ref #	
Project #	2022083
Bid #	
Requisition #	

Submitting Dept	ENGINEERING SERVICES
Contact Name/Phone	DAN BULLER 625-6391
Contact E-Mail	DBULLER@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	0370 – SEWER EXTENSION EASEMENT TO HWY 195

Agenda Wording

Public Utility Access Easement and Temporary Construction Easement with Latah Creek Plaza, LLC in conjunction with the Marshall Road Transmission Main Phase 3 for an amount of \$135,000.00.

Summary (Background)

As part of the Marshall Road Transmission Main, the City requires an easement across a portion of 4235 S. Cheney-Spokane Road (parcel 35313.0044). This easement provides for a sewer main extension to Highway 195.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense	\$ 4250-43387-94350-56501-10162	# 135,000.00
Select	\$	#
Select	\$	#
Select	\$	#

Approvals

<u>Dept Head</u>	BULLER, DAN	<u>Council Notifications</u>	
<u>Division Director</u>	FEIST, MARLENE	<u>Study Session\Other</u>	PIES 9/25/23
<u>Finance</u>	ORLOB, KIMBERLY	<u>Council Sponsor</u>	Kinnear
<u>Legal</u>	PICCOLO, MIKE	<u>Distribution List</u>	
<u>For the Mayor</u>	CODDINGTON, BRIAN		
<u>Additional Approvals</u>			
<u>Purchasing</u>			

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Public Works, Engineering
Contact Name	Dan Buller
Contact Email & Phone	dbuller@spokanecity.org 625-6391
Council Sponsor(s)	Lori Kinnear
Committee Date	9-25-23
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Sewer Easement Along Hwy 195 Corridor
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<ul style="list-style-type: none"> As growth occurs along the Hwy 195 corridor, the water department is upgrading its infrastructure to support that growth. At the July PIES meeting, we presented a briefing paper with an explanation of the overall Marshall Rd. Water Main project as well as the attached exhibit. Most of the construction pictured is planned for 2024. In addition to the water main work, the Wastewater Department plans to extend its trunk main as shown in yellow on the attached exhibit. To connect this trunk main extension to the existing trunk main network, the sewer main must cross the privately owned parcel on which Yokes grocery store sits. Engineering Services has negotiated an easement for this private property crossing. The parcel owner will grant this easement in exchange for \$6.50/SF which results in a total cost of \$135,000. Going around this parcel would be significantly more expensive than going across this parcel. Money for this easement payment would come from Wastewater funds anticipated for this project.
Proposed Council Action	Approval of payment for easement
Fiscal Impact \$135,000 Total Cost: Click or tap here to enter text. 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: 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? Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to	

respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.

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?

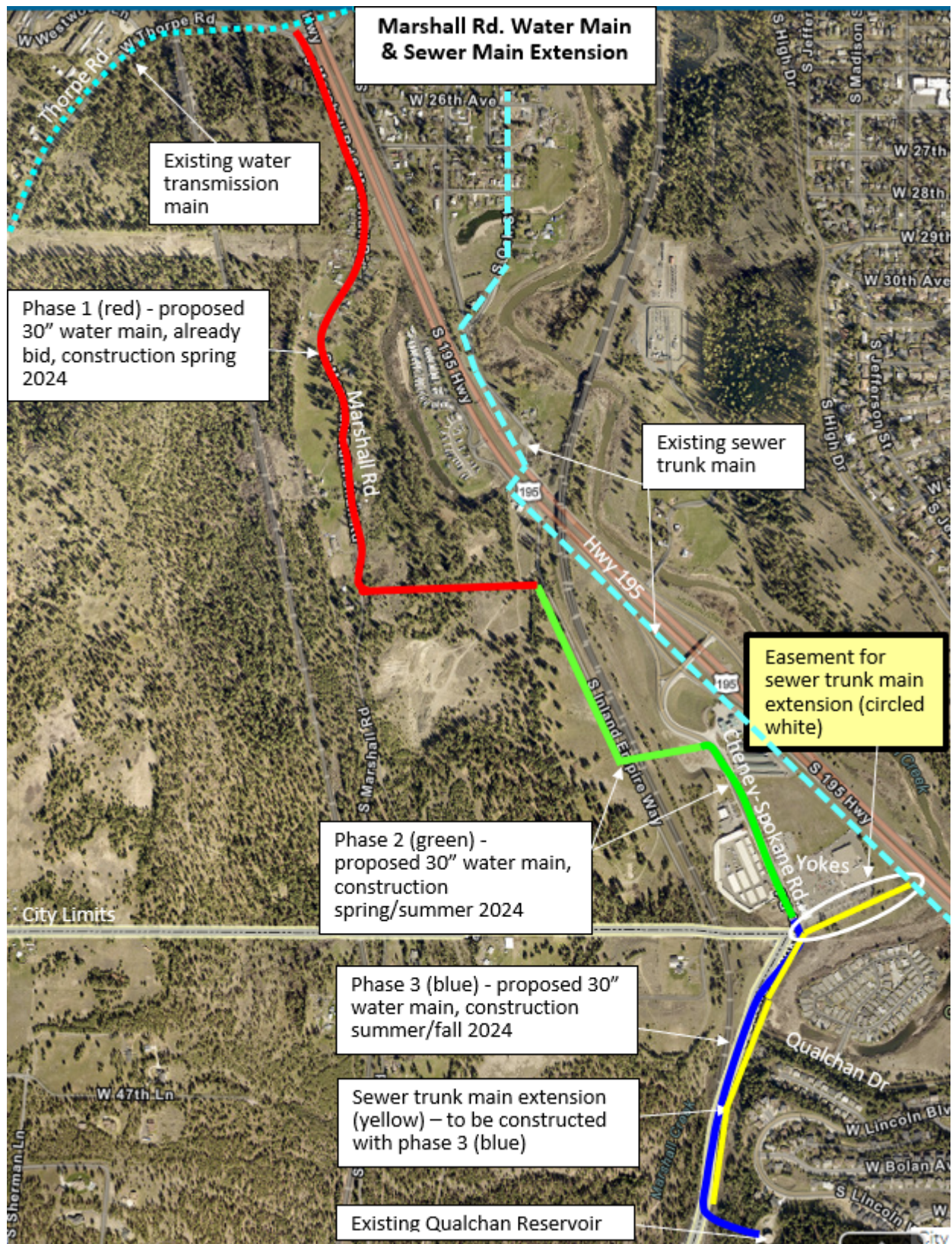
N/A – This contract supports multiple public works projects and should not impact racial, gender identity, national origin, income level, disability, sexual orientation or other existing disparity factors.

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

Public Works follows the City's established procurement and public works bidding regulations and policies to bring items forward, and then uses contract management best practices to ensure desired outcomes and regulatory compliance.

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

The project is consistent with our adopted six year programs as well as the annual budget and strategic initiative to advance street improvement activities.



City of Spokane
Department of Engineering Services
808 West Spokane Falls Blvd.
Spokane, WA 99201

Document Title: Public Utility Easement
Grantor(s): Latah Creek Plaza, LLC
Grantee(s): City of Spokane
Legal Description: See Exhibit "A"
Assessor's Tax Parcel Number: 35313.0044

PUBLIC UTILITY ACCESS EASEMENT

This Public Utility Easement ("Easement") is made and executed this _____ day of _____, 2023, by LATAH CREEK PLAZA, LLC, a Washington Limited Liability Company ("Grantor"), and the CITY OF SPOKANE, a Washington municipal corporation ("City" or "Grantee"), hereinafter jointly referred to as "Parties".

WHEREAS, Grantor is the owner of certain land located in the City and County of Spokane, Washington, which is legally described in Exhibit "A" and depicted in Exhibit "B" attached hereto (the "Easement Area"):

WHEREAS, Grantor is desirous of granting the City a utility easement over, under, through, across, and upon those portions of the Easement Area for public underground utility purposes, including, without limitation, a public sewer main;

NOW, THEREFORE, in consideration of One Hundred Thirty Five Thousand and 00/100 Dollars (\$135,000.00) and curb to curb repaving of the access road above the proposed sewer main, the mutual covenants and purposes herein stated, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and the City agree as follows:

1. **Easement.** Grantor hereby grants, conveys, warrants and delivers to the City a perpetual Easement on, over, under, through, across, and upon the Easement Area (as depicted in Exhibit "A" and described in Exhibit "B-1") for purposes of installing, operating, maintaining, repairing, removing and/or replacing an underground sewer main and related appurtenances (the "Sewer Main") and a temporary Easement (as depicted in Exhibit "A")

and described in Exhibit "B-2") for the same purposes. The temporary Easement shall expire 40 business days from the first day of on-site work.

2. **Purpose.** This Easement is granted for the purposes of allowing the City, through its officers, employees, contractors and agents, at all times to enter the Easement Area for the purpose of installing, operating, maintaining, repairing, removing and/or replacing an underground Sewer Main and related appurtenances, together with such access via Grantor's adjacent land as the City deems necessary in its sole discretion.

3. **Non-Exclusive.** The Easement shall be non-exclusive; provided, however, Grantor shall not grant or convey any interest that materially conflicts with the interest of the City under this Easement, or allow others to obstruct, impair or interfere with the Easement or the Sewer Main installed therein.

4. **Obstructions.** Neither Grantor, nor its successors or assigns shall erect or place any improvement(s) within the Easement Area without the prior written approval of the City's Director of Public Works & Utilities ("Permitted Improvements"), which approval shall not be unreasonably withheld. In the event improvements of any type are placed over the Easement Area without the City's consent, it will be the responsibility of the Grantor to bear all the costs to replace any such improvements should the City of Spokane have to disrupt the improvement for the repair, maintenance, reconstruction, removal or replacement of the Sewer Main and/or related appurtenances.

5. **Ownership of Utilities.** The Sewer Main placed within the Easement Area shall remain the property of the City, with the City retaining authority over the utilities and related appurtenances.

6. **Condition of Easement Property.** Upon each and every occasion that the City installs, repairs, maintains, removes, and/or replaces the Sewer Main, it shall restore the Easement Area and Permitted Improvements to the condition such Easement Area and Permitted Improvements were in prior to any such installation or work, to the extent any damage or disturbance of the Easement Area and Permitted Improvements was caused by the City's installation, repair, maintenance, removal and/or replacement of the Sewer Main.

7. **Successors.** The agreements contained herein and the rights granted hereby shall run with the title to the Easement Area and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, sub-lessees and assigns.

8. **Utility Service.** Nothing in this Easement or any action or inaction by the City shall create any obligation on the part of the City to pay for any improvements, to provide public utility services, or to pay for any service connections, or installations near or adjacent to the Easement.

9. **Indemnification.** The Grantor and the City shall each defend, indemnify, hold and save harmless the other from all loss, damage, liability, or expense (including expense of

litigation), resulting from any actual or alleged injury or death of any person, or from any actual or alleged loss of or damage to any property, caused by or resulting from any act or omission of each party's own comparative negligence, or from the comparative negligence of each parties' officers, agents or employees.

Dated this 18 day of September, 20 23.

LATAH CREEK PLAZA, LLC

By: David R. Black
Its: authorized signatory

CITY OF SPOKANE

By: _____
City Administrator

Attest:

City Clerk

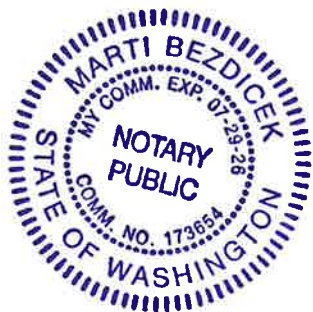
Approved as to Form:

Assistant City Attorney

STATE OF WASHINGTON :
: ss.
County of Spokane :

I hereby certify that I know or have satisfactory evidence that, on this 28th day of September, 20 23, David R. Black signed this instrument, on oath state that (she/he/they) is/are authorized to execute the instrument as an Authorized Signatory of LATAH CREEK PLAZA, LLC, and

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



Marta Bendrick
Notary Public in and for the State of
Washington, residing at Spokane
My commission expires: 7/29/26

STATE OF WASHINGTON)
) ss.
County of Spokane)

I certify that I know or have satisfactory evidence that _____ and _____ are the persons who appeared before me and said persons acknowledged that they signed this document, on oath stated that they were authorized to sign it and acknowledged it as the _____, and the City Clerk, respectively, of the CITY OF SPOKANE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes therein mentioned.

NOTARY SEAL

Notary Public in and for the State of
Washington, residing at Spokane.

Appointment expires: _____

EXHIBIT B-1

Permanent Easement

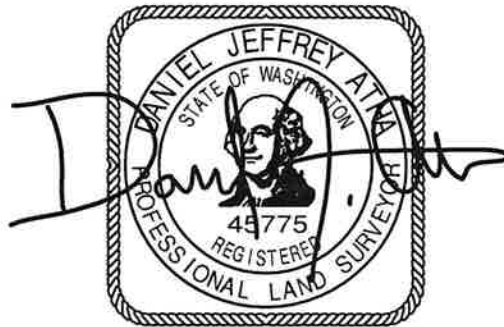
A 25.00-foot strip of land in the Southwest Quarter of the Southwest Quarter of Section 31, Township 25 North, Range 43 East, W.M., in the City of Spokane, Spokane County, State of Washington, the centerline of said 25.00-foot strip of land is more particularly described as follows:

Commencing at a 3" Aluminum Cap marking the Southwest Corner of said Section 31, thence North $87^{\circ}54'31''$ East a distance of 605.70 feet to a 5/8" rebar with cap #37549 as shown on Spokane County Record of Survey, Auditors #6381480; thence North $27^{\circ}15'11''$ East a distance of 54.46 feet to the centerline of Cheney-Spokane Road and being the **True Point of Beginning**;

Thence North $63^{\circ}08'02''$ West a distance of 732.62 feet more or less to the East line of said Southwest Quarter of the Southwest Quarter of Section 31 and being the **Terminus** of this line description.

The sidelines of the above-described strip of land shall be prolonged or shortened, to terminate at said East line and the Easterly right of way line of said Cheney-Spokane Road.

Except all those portions of land lying within the right of way of Cheney-Spokane Road.



9/26/23

____ Initials

EXHIBIT B-2

Temporary Easement

Being two (2) 7.50 foot easements one lying 7.50 foot northerly of and one lying 7.50 foot Southerly of a permanent 25-foot easement in the Southwest Quarter of the Southwest Quarter of Section 31, Township 25 North, Range 43 East, W.M., in the City of Spokane, Spokane County, State of Washington, the centerline of said 25.00-foot permanent easement is more particularly described as follows:

Commencing at a 3" Aluminum Cap marking the Southwest Corner of said Section 31, thence North $87^{\circ}54'31''$ East a distance of 605.70 feet to a 5/8" rebar with cap #37549 as shown on Spokane County Record of Survey, Auditors #6381480; thence North $27^{\circ}15'11''$ East a distance of 54.46 feet to the centerline of Cheney-Spokane Road and being the **True Point of Beginning**;

Thence North $63^{\circ}08'02''$ West a distance of 732.62 feet more or less to the East line of said Southwest Quarter of the Southwest Quarter of Section 31 and being the **Terminus** of this line description.

The sidelines of the two (2) 7.50 foot temporary easements are to be prolonged or shortened, to terminate at said East line and the Easterly right of way line of said Cheney-Spokane Road.

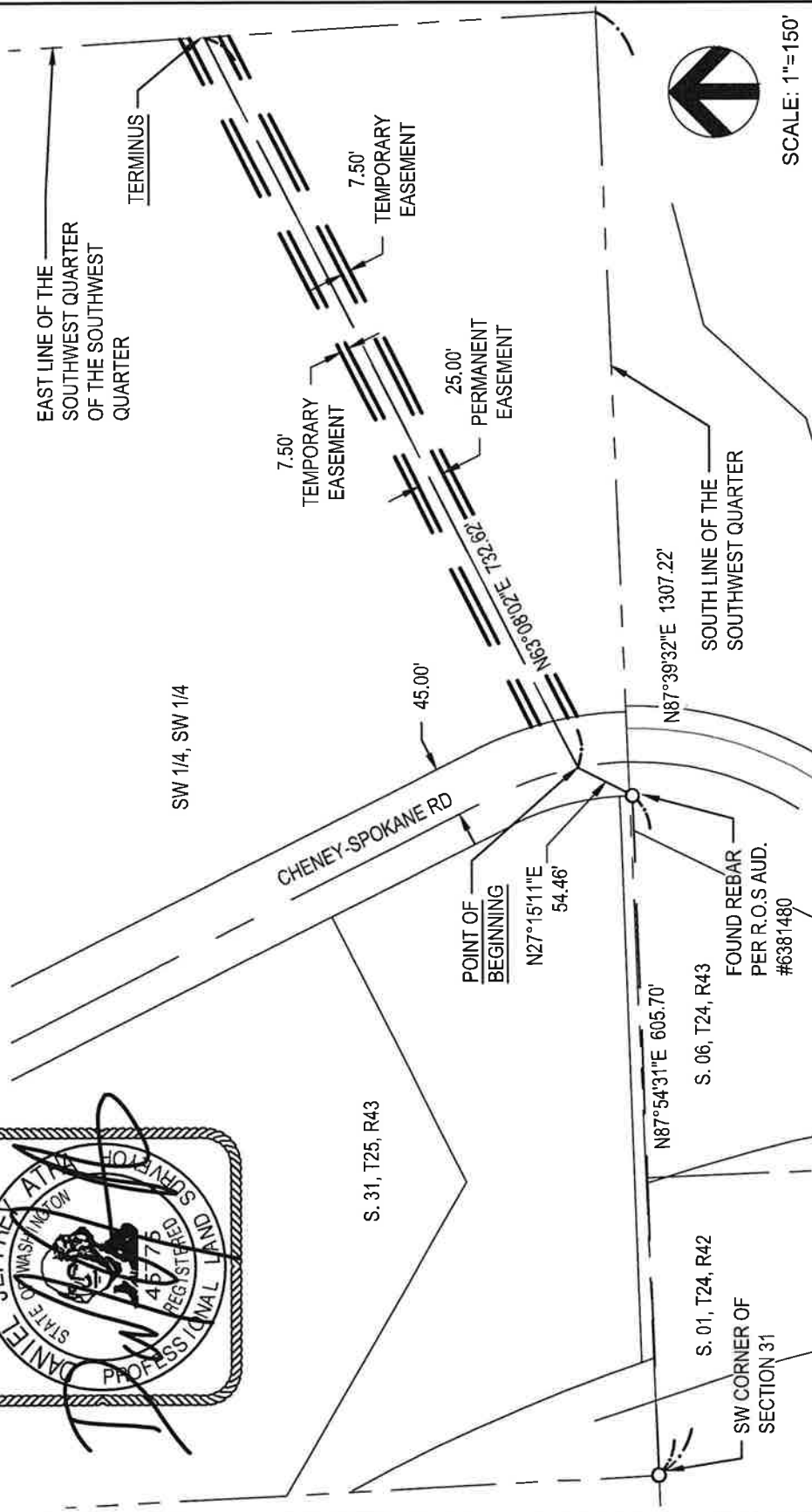
Except all those portions of land lying within the right of way of Cheney-Spokane Road.



9/26/23

____ Initials

CITY OF SPOKANE EASEMENTS
SW 1/4 OF THE SW 1/4, SECTION 31, T25N,
R43E, W.M., SPOKANE COUNTY, WA.



LOCATION:

PARCEL 35313.0044 EASEMENTS, SPOKANE COUNTY, WA

CLIENT:

CITY OF SPOKANE, WASHINGTON

DATE:

9/26/23

Initials

EXHIBIT A

REAL PROPERTY VOUCHER

AGENCY NAME <div style="text-align: center;"> CITY OF SPOKANE 808 W. Spokane Falls Blvd. Spokane, WA 99201 </div>		I hereby certify under penalty of perjury that the items and amounts listed herein are proper charges against the Agency, that the same or any part thereof has not been paid, and that I am authorized to sign for the claimant.	
		SIGNATURE (IN INK) FOR EACH CLAIMANT	DATED
GRANTOR OR CLAIMANT (NAME, ADDRESS)	TIN/SSN:	X	
Latah Creek Plaza, LLC 801 W. Riverside Ave., Ste 400 Spokane, WA 99201			
PROJECT NO. AND TITLE 2022083 - Marshall Road Transmission Main Phase 3			
FEDERAL AID NO.	PARCEL NO. 35313.0044		
In full, complete and final payment and settlement for the title or interest conveyed or released, as fully set forth in:		DATED	\$ AMOUNT
LAND:			
Approximately 18,300 sq. ft. permanent easement and temporary easement for construction.		+	\$135,000.00
IMPROVEMENTS:			
Repaving of access road above proposed sewer main.		+	
DAMAGES:			
Cost to Cure		+	
Proximity		+	
Other		+	
SPECIAL BENEFITS			
JC (Just Compensation) Amount			\$135,000.00
REMAINDER:			
Uneconomic Remnant		+	
Excess Acquisition		+	
DEDUCTIONS:			
Amount Previously Paid			
Performance Bond			
Salvage Amount			
Pre Paid Rent			
Other			
ADMINISTRATIVE SETTLEMENT		+	
STATUTORY EVALUATION ALLOWANCE		+	
ESCROW FEE		+	
REAL ESTATE EXCISE TAX		+	
OTHER:			
		+	
ACQUISITION AGENT	DATE	Voucher No.	TOTAL AMOUNT PAID
			\$135,000.00
AUTHORIZED AGENT FOR AGENCY	DATE		



Agenda Sheet for City Council Meeting of: 10/23/2023

Date Rec'd	10/10/2023
Clerk's File #	OPR 2023-1071
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	PLANNING & ECONOMIC DEVELOPMENT
Contact Name/Phone	COLIN QUINN- X6804 HURST
Contact E-Mail	CQUINNHRST@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	0650 - DIVISION TOD PILOT STUDY INTERLOCAL AGREEMENT

Agenda Wording

Interlocal Agreement between the City of Spokane, STA and Spokane County to carry out a grant award from the Federal Transit Administration as part of the Transit-Oriented Development Pilot Program.

Summary (Background)

This is an interlocal agreement between the City of Spokane, Spokane County and the Spokane Transit Authority to accept grant funding from the Federal Transit Administration for the Transit-Oriented Development Pilot Program to conduct a land use policy assessment, zoning code analysis, and station area planning for select station areas along the Division Street corridor.

Lease? NO Grant related? YES Public Works? NO
Fiscal Impact **Budget Account**

Neutral	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

Approvals		Council Notifications	
Dept Head	GARDNER, SPENCER	Study Session\Other	PIES 09/25/23
Division Director	MACDONALD, STEVEN	Council Sponsor	CP Kinnear, CM Stratton
Finance	ORLOB, KIMBERLY	Distribution List	
Legal	SMITHSON, LYNDEN	smacdonald@spokanecity.org	
For the Mayor	CODDINGTON, BRIAN	sgardner@spokanecity.org	
Additional Approvals		tblack@spokanecity.org	
Purchasing		cquinnhurst@spokanecity.org	
ACCOUNTING - GRANTS	MURRAY, MICHELLE	rbenzie@spokanecity.org	
		amccall@spokanecity.org	

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Planning & Economic Development Services
Contact Name	Colin Quinn-Hurst
Contact Email & Phone	cquinnhurst@spokanecity.org ; 509-625-6804
Council Sponsor(s)	CP Kinnear and CM Stratton
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Division TOD Interlocal Agreement
Summary (Background) *use the Fiscal Impact box below for relevant financial information	This is an interlocal agreement between the City of Spokane, Spokane County and the Spokane Transit Authority to accept grant funding from the Federal Transit Administration for the Transit-Oriented Development Pilot Program. This grant will fund a community visioning process, land use policy assessment, zoning code analysis, and station area planning for select sites along the Division Street corridor to plan for Transit-Oriented Development in support of planned Bus Rapid Transit.
Proposed Council Action	Approval
Fiscal Impact Total Cost: <u>\$5,000 per year in 2024 and 2025</u> Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source: Planning General Fund 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? The recommendations of the Division TOD Pilot Study would support improved access to transit and transit-adjacent affordable housing for residents in historically underserved neighborhoods. Through multi-modal facilities and public right-of-way improvements, the proposals of this project would connect the adjacent sidewalk, bikeway and pathway networks, and provide arterial crossings and improvements along the Division Street corridor. These gaps in walk and bike facilities previously created barriers separating residents from parks, amenities and services. The land use proposals of this study will lay the groundwork for creating concentrated nodes of Transit-Oriented Development on the Division Street corridor around selected high-use transit station. Recommendations will also further shift policy toward supporting a range of housing and commercial investments that would be more immediately accessible and available to nearby residents.	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?	

The Division TOD Pilot Study will build on baseline data identifying existing demographics and land-use characteristics within the neighborhoods bordering the Division Street corridor between Downtown Spokane and the northern reaches of Division in Spokane County, focusing on measures of Social Vulnerability as provided by the Centers for Disease Control. The study will also identify gaps in accessible infrastructure, services and land uses, seeking direct feedback from neighborhood residents on resulting proposals through social mapping exercises, surveys and community meetings.

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

This project will assess baseline conditions at focus areas, addressing transportation patterns, land use patterns, and demographic conditions. The project will include multiple rounds of public engagement consisting of questionnaires, surveys, and online mapping activities, as well as public meetings and presentations. A Steering Committee made up of elected and non-elected City, County, and agency representatives from the project area will provide guidance and feedback throughout the study. The feedback obtained through these efforts, as well as through assessment of existing land use policies and development codes, will inform the selection of proposed solutions and policy recommendations. Subsequent investments, plans, policy changes and studies will be measured using these same methods to determine changes as compared to baseline conditions. Future planning and infrastructure projects will continue seeking public input using these methods to assess changes in conditions.

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?

Chapter 3, Land Use:

- LU 2: Public Realm Enhancement
- LU 3: Efficient Land Use
- LU 4: Transportation
 - LU 4.6: Transit-Supported Development

Chapter 4, Transportation:

- TR 2: Transportation Supporting Land Use
- TR 5: Active Transportation
- TR 6: Commercial Center Access
- TR 7: Neighborhood Access
- TR 9: Promote Economic Opportunity

Chapter 7, Economic Development:

- ED 2: Land Available for Economic Activities
- ED 3: Strong, Diverse, and Sustainable Economy

This project also aligns with previous studies and plans conducted by the Spokane Transit Authority and the City of Spokane to assess the potential for high-performance transit as well as suitability for transit-supportive land use and infrastructure investments. These studies include Connect Spokane: A Comprehensive Plan for Public Transportation, the Central City Line Strategic Overlay Plan (2016), Economic and Land Use Impacts of the Central City Line (2014), the DivisionConnects Phase 2: Land Use and Active Transportation assessments (2022), as well as supportive neighborhood-level planning efforts including the [Logan Neighborhood Subarea Plan](#).

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SPOKANE, THE
COUNTY OF SPOKANE, AND THE SPOKANE TRANSIT AUTHORITY (“STA”), FOR
DEVELOPMENT AND FUNDING OF DIVISION STREET TRANSIT-ORIENTED
DEVELOPMENT (“TOD”) CORRIDOR PLAN**

THIS INTERLOCAL AGREEMENT (“Agreement”), authorized per RCW 39.34.030, is made and entered into between the CITY OF SPOKANE, a municipal corporation of the State of Washington, having offices for the transaction of business at 808 West Spokane Falls Boulevard, Spokane, Washington 99201, hereinafter referred to as the “CITY”, the COUNTY OF SPOKANE, a political subdivision of the State of Washington, having offices for the transaction of business at 1116 West Broadway Avenue, Spokane, Washington 99260, hereinafter referred to as the “COUNTY” and the SPOKANE TRANSIT AUTHORITY, a Washington State political subdivision and special purpose district, having offices for the transaction of business at 1230 West Boone Avenue, Spokane, Washington 99201, hereinafter referred to as “STA”, each individually referred to as a “PARTY” and collectively as the “PARTIES”.

SECTION 1: RECITALS AND FINDINGS

WHEREAS, pursuant to the provisions of Revised Code of Washington (“RCW”) Chapter 39.34 (“Interlocal Corporation Act”), the PARTIES may contract with each other to perform certain functions which each may legally perform; and

WHEREAS, in preparation of the planned Division Street Bus Rapid Transit (“BRT”) project, [linked here https://www.spokanetransit.com/wp-content/uploads/2023/08/Division-Street-BRT-Phase-1-Report-Final-071023-with-appendices.pdf](https://www.spokanetransit.com/wp-content/uploads/2023/08/Division-Street-BRT-Phase-1-Report-Final-071023-with-appendices.pdf)) and summarized in Exhibit A attached hereto, the CITY, COUNTY, and STA applied for the Fiscal Year 2021 Pilot Program for a Transit-Oriented Development Planning (“TOD”) grant from the United States Federal Transit Administration (FTA) to fund work that will yield the “Division Street TOD Corridor Plan”; and

WHEREAS, the corridor-wide TOD plan will build on the work completed in the DivisionConnects study, [linked here \(https://www.srtc.org/wp-content/uploads/2022/08/DivisionConnects-Vision-and-Implementation-Strategy-Phase-2-Report-final2.pdf\)](https://www.srtc.org/wp-content/uploads/2022/08/DivisionConnects-Vision-and-Implementation-Strategy-Phase-2-Report-final2.pdf) and summarized in Exhibit B attached hereto, to reimagine how the current highway arterial could transform into a multimodal corridor, teaming with accessible transit, a mix of jobs and housing, and abundant access for all; and

WHEREAS, grant funding received through the FTA’s TOD Pilot Program will aid in taking the next step of TOD planning for the Division Street corridor to comprehensively plan for BRT-centered, transit-oriented development along the entire corridor that addresses climate change, challenges facing environmental justice populations, and racial equity and barriers to opportunity; and

WHEREAS, this document updates the June 2021 Letter of Intent explaining the

partnership between the STA as the transit project sponsor and the City and the County as the entities within the project corridor with land use planning authority to conduct the comprehensive planning work; and

WHEREAS, in pursuit of planning for and implementing transit-supportive development along the Division Street corridor, the City, County, and STA will also continue to work closely with the Spokane Regional Transportation Council (SRTC), and the Washington State Department of Transportation (WSDOT) to carry out the collaborative TOD planning process for this TOD planning project.

NOW, THEREFORE, in consideration of the following terms and conditions, to include the above recitals, which are incorporated herein as a part of this Interlocal Agreement, it is agreed among the Parties:

SECTION 2: PURPOSE

The purpose of this Interlocal Agreement is to set forth the shared understanding of the CITY, COUNTY and the STA regarding generation of a Transit-Oriented Development “(TOD)” Plan for the Division Street Corridor, and funding for development of such Plan, utilizing a combination of both United States Federal Transit Administration (“FTA”) Pilot Program TOD grant monies awarded STA, and supportive cost-share funding from both the CITY and COUNTY as the land use authorities responsible for completing the federal grant work and deliverables.

SECTION 3: DURATION

The term of this Agreement shall begin on October 1, 2023 and end on December 31, 2026, or coincide with the TOD Pilot Program grant agreement schedules established by the Federal Transit Administration, currently scheduled for completion by December 31, 2026.

SECTION 4: RESPONSIBILITIES OF THE PARTIES

See attached Exhibit A for PARTIES’ RESPONSIBILITIES.

SECTION 5: RECORDS

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

SECTION 6: JOINT BOARD

Pursuant to RCW 39.34.030(4)(a), the PARTIES will each appoint a representative from their respective agencies to a Joint Board who will administer the cooperative undertaking set forth in this Agreement.

SECTION 7: AGREEMENT TO BE FILED

Pursuant to RCW 39.34.040, prior to its entry into force, this AGREEMENT shall be filed with the County Auditor or, alternatively, listed by subject on each PARTIES

website or other electronically retrievable public source.

SECTION 8: FINANCING

See attached Exhibit A for PARTIES' RESPONSIBILITIES.

SECTION 9: AMENDMENTS

This Agreement may be amended by the mutual written agreement of the Parties executed by personnel authorized to bind each of the Parties.

SECTION 10: SEVERABILITY.

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

SECTION 11: ANTI-KICKBACK

No officer or employee of the Parties, 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.

SECTION 12: ANTIDISCRIMINATION

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 Parties agree to comply with, and to require that all subcontractors to the extent utilized 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 to the subject matter of this Agreement.

SECTION 13: GOVERNING BODY APPROVAL ACTION

Pursuant to RCW 39.34.030(2), Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the Parties shall be necessary before this Agreement enters into force and effect.

SECTION 15: LEGAL RELATIONS

Individually, each Party to this Agreement shall protect, defend, indemnify and save harmless each other Party, its officers, officials, employees and agents from any and all costs, claims, judgment and/or awards of damages resulting from the negligent acts or omissions of its officers, officials, employees and agents acting within the scope of their employment arising out of or in connection with the performance of the Agreement.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of more than one Party, their officers, officials, employees and agents, an individual Party's liability hereunder shall be only to the extent of that Party's negligence.

SECTION 16: FORCE MAJEURE

In the event any Party's obligations under this Agreement are substantially delayed, prevented or rendered impractical by fire, flood, riot, earthquake, civil commotion, war, strike, lockout, labor disturbances, exposition, sabotage accident or other casualty, weather event, act of God, any law, ordinance, rule or regulation which becomes effective after the date of this Agreement, or any other cause beyond the reasonable control of any Party, then the Parties shall be released from performance under the Agreement. Parties hereby waive any claim for damages or compensation for such delay or failure to perform.

SECTION 15: PUBLIC RECORDS ACT

Each Party to this Agreement understand and acknowledges that they are each subject to the Public Records Act, RCW 42.56 *et seq.*

SECTION 17: TERMINATION

- (a) This Agreement shall be effective upon the signature of all Parties.
- (b) A Party to this Agreement may terminate its participation by providing sixty (60) days written notice of termination to the other Parties. The terminating Party will continue participation, financial or otherwise, up to the effective date of termination.
- (c) This Agreement also may be amended by the mutual written consent of the Parties authorized representatives.

SECTION 18: MISCELLANEOUS PROVISIONS

- (a) Partial Invalidity. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect. Notwithstanding the foregoing, this Agreement shall be subject to renegotiation as provided in this Agreement.
- (b) Assignability. The rights, duties, and obligations of either party to this Agreement may not be assigned to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- (c) Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the Parties hereto relating to the subject matter of this Agreement. No amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the Parties hereto.

- (d) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the Parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the Parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration, which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the Parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the Parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. The Arbitration shall be final and binding pursuant to RCW Chapter 7.04A.
- (e) Compliance with Laws. The Parties shall observe all federal, state, and local laws, ordinances, and regulations, to the extent that they may be applicable to the terms of this Interlocal Agreement.
- (f) Non-waiver. No waiver by any Party of any of the terms of this Agreement shall be construed as a waiver of the same or other rights of that Party in the future.
- (g) Assignment/Binding Effect. Performance of any or all aspects of this Interlocal Agreement may not be assigned without written authorization by the other party. Likewise, neither party may assign their respective rights to any claims or actions arising out of or relating to this Agreement without written authorization.
- (h) Modification. No modification or amendment to this Agreement shall be valid until put in writing and signed with the same formalities as this Agreement.
- (i) Headings. The section headings appearing in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit or extend the scope or intent of the sections to which they pertain.
- (j) Governing Law/Venue. The terms of this Agreement shall be governed by the laws of the State of Washington. In the event that legal action is commenced to resolve a dispute arising out of this Agreement, the venue of such action shall be in Spokane County, Washington.
- (k) Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same.

SECTION 19: RCW 39.34.030 REQUIRED CLAUSES

- (a) **DURATION:** As set forth in Section 3 above.
- (b) **ORGANIZATION:** As set forth in Section 6 above. Each party is duly organized and in existence. No new or separate legal or administrative entity is created to otherwise administer this Agreement.
- (c) **PURPOSE:** As set forth in Section 2 above.
- (d) **RESPONSIBILITIES OF THE PARTIES:** As outlined in Exhibit A.
- (e) **FINANCING:** As set forth in Section 8 above. Each Party shall be responsible for the financing of its obligations through its budgetary process.
- (f) **TERMINATION AND DISPOSAL OF PROPERTY:** As set forth in Section 17 above. Upon termination, each party retains control of its property. Jointly held property shall be divided in proportion to the amount each Party contributed to acquisition.
- (g) **ADMINISTRATOR OR JOINT BOARD:** As set forth in Section 6 above.
- (h) **AGREEMENT TO BE FILED:** As set forth in Section 7 above.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed on the date and year set forth opposite their respective signature block, the date of the last signature being the effective date of the Agreement.

Spokane County

DATED: _____

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

MARY L. KUNEY, Chair

JOSH KERNS, Vice Chair

AL FRENCH, Commissioner

AMBER WALDREF, Commissioner

CHRIS JORDAN, Commissioner

ATTEST

Ginna Vasquez
Clerk of the Board

City of Spokane

DATED: _____

Mayor

Approve as to form:

ATTEST _____

Spokane Transit Authority

DATED: _____

E. Susan Meyer
Chief Executive Officer

ATTEST

Dana Infalt
Clerk of the Board

EXHIBIT A**PARTIES' RESPONSIBILITIES****CITY Role and Responsibilities**

The City is the local municipality with jurisdiction over land use for the majority of the corridor length. As such, the City makes the following financial commitment for the Pilot Program for Transit-Oriented Development Planning grant:

Funding Commitments				
In-Kind Match				
Position	Department	Amount	Year	Type
Assistant Planner II	Planning Services	\$83,790	Year 1 and 2	In-Kind Match
Associate Planner	Planning Services	\$82,857	Year 1 and 2	In-Kind Match
Principal Planner	Planning Services	\$3,193	Year 1 and 2	In-Kind Match
Planning Director	Planning Services	\$266.50	Year 1 and 2	In-Kind Match
Senior Engineer	Integrated Capital Management	\$2,886.40	Year 1 and 2	In-Kind Match
ICM Director	Integrated Capital Management	\$734.08	Year 1 and 2	In-Kind Match
Cash Match				
Year		Amount		Type
Year 1		\$5,000		Cash Match
Year 2		\$5,000		Cash Match
Subtotal				
Year 1		\$86,864		
Year 2		\$86,864		
Total Funding Commitments		\$183,726.98		

The City's Planning Services Department has committed a cash match of \$5,000 from the fiscal year 2023 budget, and will commit \$5,000 from the fiscal year 2024 budget towards the minimum grant matching requirement outlined by the Federal Transit Administration. In addition to the cash match, the City is committing an in-kind match of dedicated staff time of \$86,864 each year of the two-year project.

The City agrees to provide staff support including but not limited to: dedicated Planning Services staff for project management and oversight; consultant coordination; administrative support for public engagement and legal noticing requirements; and a team of interdepartmental technical and professional staff to participate via the Project Management Team and Technical Advisory Committee.

The City, in concert with the County and STA, agrees to select and contract with a consultant and/or consultant team to undertake and complete the Division Street TOD Corridor project. The City shall use its reasonable business judgment, as it deems appropriate, in bidding and awarding contracts for the work associated with the project. A representative from the County and STA will be included in the consultant selection process and in the preparation of the final scope of work.

As technical analysis of the bus-rapid transit line along Division Street continues, the City shall remain an active Project Team participant so that findings from the study can inform the final deliverable for the Division Street TOD Corridor plan.

The City reserves the authority of the City Council as the final approval body of any comprehensive planning in the City to adopt, adopt with amendments, or deny the final resulting Division Street TOD Corridor plan, pursuant to Spokane Municipal Code Title 17G.

COUNTY Role and Responsibilities

The County is the municipality with jurisdiction the northernmost portion of the corridor. As partner to the proposed work and the grant, Spokane County makes the following financial commitment for the Pilot Program for Transit-Oriented Development Planning grant:

Funding Commitments				
In-Kind Match				
Position	Department	Amount	Year	Type
Assoc Planner	Building & Planning	\$19,686	Year 1 and 2	In-Kind Match
Senior Planner	Building & Planning	\$8,560	Year 1 and 2	In-Kind Match
Planning Director	Building & Planning	\$5,026	Year 1 and 2	In-Kind Match
Cash Match				
Year		Amount		Type
Year 1		\$2,500		Cash Match
Year 2		\$2,500		Cash Match
Subtotal				
Year 1		\$35,772		
Year 2		\$35,772		

Total Funding Commitments	\$71,544
----------------------------------	-----------------

The Spokane County Commissioners are in support of \$5,000 cash match over two years, and \$71,544 in-kind matching towards the grant matching requirement outlined by the Federal Transit Administration. Roles and responsibilities of the County are further described below:

- The County agrees to provide staff support including but not limited to: dedicated Planning Department staff for project oversight; consultant coordination; administrative support for public engagement and legal noticing requirements; and to participate in the Project Management Team; additionally, a County engineering staffer will provide technical and professional support by participating in the Technical Advisory Committee.
- The County, in concert with the City and STA, will participate in the procurement and selection process, as well as task management, with a consultant and/or consultant team to undertake and complete the Division Street TOD Corridor project.
- As technical analysis of the bus-rapid transit line along Division Street continues, the County shall remain an active Project Team participant so that findings from the study can inform the final deliverable for the Division Street TOD Corridor plan.
- The County reserves the authority of the Spokane County Commissioners as the final approval body of any comprehensive planning in the County to adopt, adopt with amendments, or deny the final resulting Division Street TOD Corridor Plan.

STA Roles and Responsibilities

STA is the transit project sponsor, the designated FTA grant recipient, and the region's sole public transportation benefit area and public transportation provider. As such, the STA commits to the following roles and responsibilities:

- STA is the grant recipient and will reimburse the City of Spokane and Spokane County upon submittal of payment request/progress reports.
- As technical analysis for the bus-rapid transit line along Division Street continues, STA shall remain an active Project Team participant so that findings from the study can inform the final deliverable for the Division Street TOD Corridor plan.
- STA agrees to provide staff support including but not limited to: designated staff to coordinate grant disbursement; support for public engagement; and staff participation on the Project Management Team and Technical Advisory Committee.

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

10/23/2023

Date Rec'd

10/10/2023

Clerk's File #

OPR 2023-1072

Renews #**Submitting Dept**

PLANNING & ECONOMIC

Contact Name/Phone

AMANDA BECK X6414

Contact E-Mail

ABECK@SPOKANECITY.ORG

Agenda Item Type

Contract Item

Agenda Item Name

0650 - MFTE CONDITIONAL AGREEMENT - MARIETTA TOWNHOMES

Cross Ref #**Project #****Bid #****Requisition #****Agenda Wording**

Multiple Family Housing Property Tax Exemption Conditional Agreement with Olga & Raisa Fox for the future construction of approximately 4 units, at Parcel Number(s) 35081.4515, commonly known as 1222 E Marietta Ave.

Summary (Background)

Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. SMC 08.15 Multiple-family Housing Property Tax Exemption outlines the City of Spokane MFTE Program and project eligibility.

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

UE 10/9/23

Division Director

GARDNER, SPENCER

Council Sponsor

CMs Bingle & Cathcart

Finance

ORLOB, KIMBERLY

Distribution List**Legal**

PICCOLO, MIKE

smacdona1d@spokanecity.org

For the Mayor

CODDINGTON, BRIAN

sgardner@spokanecity.org

Additional Approvals

tstripes@spokanecity.org

Purchasing

tblack@spokanecity.org

abeck@spokanecity.org

rbenzie@spokanecity.org

amccall@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Fiscal Impact

Select **\$**

Select **\$**

Budget Account

#

#

Distribution List

Olga Fox (signer) - oliafox@gmail.com



PLANNING & ECONOMIC DEVELOPMENT

MFTE Committee Briefing Paper

Urban Experience

Submitting Department	Planning and Economic Development
Contact Name & Phone	Teri Stripes, 509-625-6597
Contact Email	tstripes@spokanecity.org
Council Sponsor(s)	<u>Jonathan Bingle, Michael Cathcart</u>
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested: _____
Agenda Item Name	Multi-Family Tax Exemption (MFTE) Conditional Agreement
Summary (Background)	<p>Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. SMC <u>08.15</u> Multiple-family Housing Property Tax Exemption outlines the City of Spokane MFTE Program and project eligibility.</p> <p>Staff has determined that the <u>Marietta Townhomes</u> Conditional application meets the Project Eligibility defined in SMC <u>08.15.040</u> and is located in a previously adopted Residential Target Areas identified in SMC <u>08.15.030</u>.</p> <p>Once the project is constructed, the applicant intends to finalize as a <u>8-year Market Rate Exemption</u>.</p> <p>This Conditional Agreement authorizes the appropriate city official to enter into the Multiple Family Housing Property Tax Exemption Conditional Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office post construction.</p>
Proposed Council Action & Date:	<p>Approve the MFTE Conditional Agreement for the <u>Marietta Townhomes</u> at the October 23, 2023 City Council Meeting.</p> <p>Project Details: The applicant applied for a Conditional MFTE Agreement for <u>4 units</u>, at <u>1222 E MARIETTA AVE SPOKANE, WA</u></p> <ul style="list-style-type: none">Property is zoned <u>RSF</u> and the proposed use is allowed.Estimated Construction Costs: <u>900000</u>Located in the <u>Logan</u> neighborhood.
Fiscal Impact:	
Total Cost: <u>\$0</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:	
Expense Occurrence	<input type="checkbox"/> One-time <input type="checkbox"/> Recurring
Other budget impacts: (revenue generating, match requirements, etc.)	

Operation Impacts

What impacts would the proposal have on historically excluded communities?

SMC 08.15 Multi- Family Housing Property Tax Exemption

A. The purposes of this chapter are to:

1. encourage more multi-family housing opportunities, including affordable housing opportunities, within the City;
2. stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing;
3. increase the supply of mixed-income multifamily housing opportunities within the City;
4. accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans;
5. promote community development, neighborhood revitalization, and availability of affordable housing;
6. preserve and protect buildings, objects, sites and neighborhoods with historic, cultural, architectural, engineering or geographic significance located within the City; and
7. encourage additional housing in areas that are consistent with planning for public transit systems.

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?

RCW 84.14.100

Report—Filing—Department of commerce audit or review—Guidance to cities and counties. (Expires January 1, 2058.)

(1) Thirty days after the anniversary of the date of the certificate of tax exemption and each year for the tax exemption period, the owner of the rehabilitated or newly constructed property, or the qualified nonprofit or local government that will assure permanent affordable homeownership for at least 25 percent of the units for properties receiving an exemption under RCW 84.14.021, must file with a designated authorized representative of the city or county an annual report indicating the following:

- (a) A statement of occupancy and vacancy of the rehabilitated or newly constructed property during the twelve months ending with the anniversary date;
- (b) A certification by the owner that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in RCW 84.14.020 since the date of the certificate approved by the city or county;
- (c) A description of changes or improvements constructed after issuance of the certificate of tax exemption; and
- (d) Any additional information requested by the city or county in regards to the units receiving a tax exemption.

(2) **All cities or counties, which issue certificates of tax exemption for multiunit housing that conform to the requirements of this chapter, must report annually by April 1st of each year, beginning in 2007, to the department of commerce. A city or county must be in compliance with the reporting requirements of this section to offer certificates of tax exemption for multiunit housing authorized in this chapter. The report must include the following information:**

- (a) The number of tax exemption certificates granted;
- (b) The total number and type of units produced or to be produced;

- (c) The number, size, and type of units produced or to be produced meeting affordable housing requirements;
- (d) The actual development cost of each unit produced;
- (e) The total monthly rent or total sale amount of each unit produced;
- (f) The annual household income and household size for each of the affordable units receiving a tax exemption and a summary of these figures for the city or county; and
- (g) The value of the tax exemption for each project receiving a tax exemption and the total value of tax exemptions granted.

(3)(a) The department of commerce must adopt and implement a program to effectively audit or review that the owner or operator of each property for which a certificate of tax exemption has been issued, except for those properties receiving an exemption that are owned or operated by a nonprofit or for those properties receiving an exemption from a city or county that operates an independent audit or review program, is offering the number of units at rents as committed to in the approved application for an exemption and that the tenants are being properly screened to be qualified for an income-restricted unit. The audit or review program must be adopted in consultation with local governments and other stakeholders and may be based on auditing a percentage of income-restricted units or properties annually. A private owner or operator of a property for which a certificate of tax exemption has been issued under this chapter, must be audited at least once every five years.

(b) If the review or audit required under (a) of this subsection for a given property finds that the owner or operator is not offering the number of units at rents as committed to in the approved application or is not properly screening tenants for income-restricted units, the department of commerce must notify the city or county and the city or county must impose and collect a sliding scale penalty not to exceed an amount calculated by subtracting the amount of rents that would have been collected had the owner or operator complied with their commitment from the amount of rents collected by the owner or operator for the income-restricted units, with consideration of the severity of the noncompliance. If a subsequent review or audit required under (a) of this subsection for a given property finds continued substantial noncompliance with the program requirements, the exemption certificate must be canceled pursuant to **RCW 84.14.110**.

(c) The department of commerce may impose and collect a fee, not to exceed the costs of the audit or review, from the owner or operator of any property subject to an audit or review required under (a) of this subsection.

(4) The department of commerce must provide guidance to cities and counties, which issue certificates of tax exemption for multiunit housing that conform to the requirements of this chapter, on best practices in managing and reporting for the exemption programs authorized under this chapter, including guidance for cities and counties to collect and report demographic information for tenants of units receiving a tax exemption under this chapter.

(5) This section expires January 1, 2058.

[2021 c 187 § 5; 2012 c 194 § 9; 2007 c 430 § 10; 1995 c 375 § 13.]

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

Title 08 Taxation and Revenue

Chapter 08.15 Multiple-family Housing Property Tax Exemption

Section 08.15.100 Annual Certification and Affordability Certification

Within thirty days of the anniversary of the date the final certificate of tax exemption was recorded at the County and each year thereafter, for the tax exemption period, the property owner shall file a certification with the director, verified upon oath or affirmation, which shall contain such information as the director may deem necessary or useful, and shall include the following information:

1. A statement of occupancy and vacancy of the multi-family units during the previous year.
2. A certification that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in **SMC 8.15.090** since the date of filing of the final certificate of tax exemption, and continues to be in compliance with the contract with the City and the requirements of this chapter; and
3. If the property owner rents the affordable multi-family housing units, the property owner shall file with the City a report indicating the household income of each initial tenant qualifying as low and moderate-income in order to comply with the twenty percent requirement of **SMC 8.15.090(A)(2)(b)** and RCW 84.14.020(1)(ii)(B).

a. The reports shall be on a form provided by the City and shall be signed by the tenants.

b. Information on the incomes of occupants of affordable units shall be included with the application for the final certificate of tax exemption, and shall continue to be included with the annual report for each property during the exemption period.

4. A description of any improvements or changes to the property made after the filing of the final certificate or last declaration, as applicable.

B. Failure to submit the annual declaration may result in cancellation of the tax exemption.

Date Passed: Monday, August 21, 2017

Effective Date: Saturday, October 7, 2017

ORD C35524 Section 8

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?

Comprehensive Plan Land Use Policies:

LU 1.4 Higher Density Residential Uses

LU 3.5 Mix of Uses in Centers

LU 4.2 Land Uses That Support Travel Options and Active Transportation

LU 4.6 Transit-Supported Development

Comprehensive Plan Housing Policies:

H 1.9 Mixed-Income Housing

H 1.4 Use of Existing Infrastructure

H 1.10 Lower-Income Housing Development Incentives

H 1.11 Access to Transportation

H 1.18 Distribution of Housing Options

Comprehensive Plan Economic Development Policies:

ED 2.4 Mixed-Use

ED 7.4 Tax Incentives for Land Improvement



**PLANNING & ECONOMIC DEVELOPMENT
MULTIPLE FAMILY HOUSING
PROPERTY TAX EXEMPTION
AGREEMENT**

THIS CONDITIONAL AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as “City”, and FOX, OLGA A / FOX, RAISA P, as “Owner/Taxpayer” whose business address is 6917 E 6TH AVE SPOKANE VALLEY, WA 99212.

WITNESSETH:

WHEREAS, the City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various residential targeted areas for the provision of a limited property tax exemption for new and rehabilitated multiple family residential housing; and

WHEREAS, the City has, through Chapter 8.15 SMC, enacted a program whereby property owner/taxpayers may qualify for a Final Certificate of Tax Exemption which certifies to the Spokane County Assessor that the Owner/Taxpayer is eligible to receive the multiple family housing property tax exemption; and

WHEREAS, the Owner/Taxpayer is interested in receiving the multiple family property tax exemption for new multiple family residential housing units in a residential

targeted area; and

WHEREAS, the Owner/Taxpayer has submitted to the City a complete conditional application form for no fewer than a total of four new multiple family permanent residential housing units to be constructed on property legally described as:

08-25-43: THE WEST 57FT OF LOTS 7 AND 8, BLOCK 23, WOLVERTON AND CONLAN'S ADDITION TO SPOKANE FALLS.

Assessor's Parcel Number(s)
35081.4515,

commonly known as
1222 E MARIETTA AVE SPOKANE, WA.

WHEREAS, this property is located in the **Spokane Targeted Investment Area**. and is eligible to seek a Final Certificate of Tax Exemption post construction under the **8-year Market Rate Exemption**. as defined in SMC 08.15.090.

WHEREAS, the City has determined that the improvements will, if completed as proposed, satisfy the requirements for a Final Certificate of Tax Exemption; -- NOW, THEREFORE,

The City and the Owner/Taxpayer do mutually agree as follows:

1. The City agrees to issue the Owner/Taxpayer a Conditional Agreement subsequent to the City Council's approval of this agreement.
2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application for a building permit is received.

However, if the proposal includes rehabilitation or demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

3. If the property proposed to be rehabilitated is not vacant, the Owner/Taxpayer shall provide each existing tenant with housing of comparable size, quality and price and a reasonable opportunity to relocate. At the time of an application for a Conditional Agreement, the applicant provided a letter attesting and documenting how the existing tenant(s) were/will be provided comparable housing and opportunities to relocate.

(a). The existing residential tenant(s) are to be provided housing of a comparable size and quality at a rent level meeting the Washington State definition of affordable to their income level. Specifically, RCW 84.14.010 defines “affordable housing” as residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty (30) percent of the household’s monthly income. The duration of this requirement will be the length of the tenant’s current lease plus one year.

4. The Owner/Taxpayer intends to construct on the site, approximately 4 new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

5. The Owner/Taxpayer agrees to complete construction of the agreed-upon improvements within three years from the date the City issues this Conditional Agreement or within any extension granted by the City.

6. The Owner/Taxpayer agrees, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file an application for a Final Certificate of Tax Exemption with the City's Planning and Economic Development Department, which will require the following:

(a) a statement of the actual development cost of each multiple family housing unit, and the total expenditures made in the rehabilitation or construction of the entire property;

(b) a description of the completed work and a statement that the rehabilitation improvements or new construction of the Owner/Taxpayer's property qualifies the property for the exemption;

(c) a statement that the project meets the affordable housing requirements, if applicable; and

(d) a statement that the work was completed within the required three-year period or any authorized extension of the issuance of the conditional certificate of tax exemption.

7. The City agrees, conditioned on the Owner/Taxpayer's successful completion of the improvements in accordance with the terms of this Conditional Agreement and on the Owner/Taxpayer's filing of application for the Final Certificate of Exemption with the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption with the Spokane County Assessor indicating that the Owner/Taxpayer is qualified for the limited tax exemption under Chapter 84.14 RCW.

8. The Owner/Taxpayer agrees, that once a Final Certificate of Tax Exemption is issued, to comply with all Annual Reporting requirements set forth in SMC 8.15.100 and contained in the annual report form provided by the City. Thirteen (13) months following the first year of the exemption beginning and every year

thereafter, the Owner/Taxpayer will complete and file the appropriate Annual Report required by the terms of their Final Certificate of Tax Exemption with the City's Planning and Economic Development Department. The Annual Report is a declaration verifying upon oath and indicating the following:

(a) a statement of occupancy, use of the property/unit, income and rents for qualifying 12-year and 20-year and vacancy of the multi-family units during the previous year;

(b) a certification that the property has not changed to a commercial use or been used as a transient (short-term rental) basis and, if applicable, that the property has been in compliance with the affordable housing income and rent requirements as described in SMC 8.15.090 since the date of the filing of the Final Certificate of Tax Exemption, and continues to be in compliance with this Agreement and the requirements of SMC Chapter 8.15;

(c) for affordable multi-family housing units, information providing the household income, rent and utility cost, of each qualifying as low and moderate-income, which shall be reported on a form provided by the City and signed by the tenants; and

(d) a description of any improvements or changes to the property made after the filing of the final certificate or last declaration.

9. The parties acknowledge that the units, including any owner-occupied units are to be used and occupied for multifamily permanent residential occupancy and use. The parties further acknowledge that the certificate of occupancy issued by the City is for multifamily residential units. The Owner/Taxpayer acknowledges and agrees that the units shall be used primarily for multi-family housing for permanent residential occupancy as defined in SMC 8.15.020 and RCW 84.14.010 and any business activities shall only be incidental and ancillary to the residential

occupancy. Any units that are converted from multi-family housing for permanent residential occupancy shall be reported to the City of Spokane's Planning and Economic Development Department and the Spokane County Assessor's Office and removed from eligibility for the tax exemption within 60 days. If the removal of the ineligible unit or units causes the number of units to drop below the number of units required for tax exemption eligibility, the remaining units shall be removed from eligibility pursuant to state law.

10. To qualify for the twelve-year tax exemption, the Owner/Taxpayer will be required to rent or sell at least **25%** of the multiple family housing units as affordable housing units to low and moderate-income households and will ensure that the units within the 12-yr program are dispersed throughout the building and distributed proportionally among the buildings; not be clustered in certain sections of the building or stacked; comparable to market-rate units in terms of unit size and leasing terms; and are comparable to market-rate units in terms of functionality and building amenities and access in addition to the other requirements set forth in the Agreement. The Owner/Taxpayer is further required to comply with the rental relocation assistance requirements set forth in RCW 84.14.020 (7) and (8) and in SMC 8.15.090 (D).

11. The Owner/Taxpayer will have the right to assign its rights under this Agreement. The Owner/Taxpayer agrees to notify the City promptly of any transfer of Owner/Taxpayer's ownership interest in the Site or in the improvements made to the Site under this Agreement.

12. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner/Taxpayer, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement or of SMC Chapter 8.15.

13. No modifications of this

Conditional Agreement shall be made unless mutually agreed upon by the parties in writing.

14. The Owner/Taxpayer acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner/Taxpayer further acknowledges its awareness and understanding of the process implemented by the Spokane County Assessor's Office for the appraisal and assessment of property taxes. The Owner/Taxpayer agrees that the City is not responsible for the property value assessment imposed by Spokane County at any time during the exemption period.

15. In the event that any term or clause of this Conditional Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement, which can be given effect without the conflicting term or clause, and to this end, the terms of this Conditional Agreement are declared to be severable.

16. The parties agree that this Conditional Agreement, requires the applicant to file an application for the Final Certificate of Tax Exemption post the construction of the multiple family residential housing units referenced above and that the Final Certificate of Tax Exemption shall be subject to the applicable provisions of Chapter 84.14 RCW and Chapter 8.15 SMC that exist at the time this agreement is signed by the parties. The parties may agree to amend this Conditional Agreement requirements as set forth when the applicant applies for the Final Certificate of Tax Exemption based upon applicable amendments and additions to Chapter 84.14 RCW or Chapter 8.15 SMC if the requirements change between the issuance of the Conditional Agreement and the Application for Final Tax Exemption has been submitted.

17. Nothing in this Agreement shall permit or be interpreted to permit either party to violate any provision of Chapter 84.14 RCW or Chapter 8.15 SMC

18 This Agreement is subject to approval by the City Council.

DATED this _____ day of _____ 20 _____

CITY OF SPOKANE
FOX, OLGA A / FOX, RAISA P

By:
By:

Mayor, Nadine Woodward
Its:

Attest:
Approved as to form:

City Clerk
Assistant City Attorney



Agenda Sheet for City Council Meeting of:
10/23/2023

Date Rec'd	10/10/2023
Clerk's File #	OPR 2023-1073
Renews #	

Submitting Dept	POLICE	Cross Ref #	
Contact Name/Phone	ERIC OLSEN 835-4505	Project #	
Contact E-Mail	EOLSEN@SPOKANEPOLICE.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	2024 BUDGET
Agenda Item Name	1380 - 5-YEAR AGREEMENT WITH VERRA MOBILITY PHOTO ENFORCEMENT		

Agenda Wording

Agreement between City of Spokane (the City) and American Traffic Solutions (ATS), doing business as Verra Mobility, for continued operation of the photo enforcement program.

Summary (Background)

The City has implemented a photo enforcement program to enforce traffic violations in accordance with section 46.63.170 of the Revised Code of Washington and City ordinance Chapter 16A.64 Automated Traffic Camera Systems. Verra Mobility was selected to provide services to implement and carry on this program.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Expense	\$ 667,800(per year)	<u>Budget Account</u>	# 1380-24100-21700-54201-99999
Expense	\$ 456,000(per year)		# 1380-24104-21700-54201-99999
Select	\$		#
Select	\$		#

Approvals

<u>Dept Head</u>	LUNDGREN, JUSTIN
<u>Division Director</u>	LUNDGREN, JUSTIN
<u>Finance</u>	ORLOB, KIMBERLY
<u>Legal</u>	BEATTIE, LAUREN
<u>For the Mayor</u>	CODDINGTON, BRIAN

Council Notifications

<u>Study Session\Other</u>	PSCHC 10/02/2023
<u>Council Sponsor</u>	Council President Kinnear

Distribution List

<u>Additional Approvals</u>	spdfinance
<u>Purchasing</u>	nzollinger@spokanecity.org
	korlob@spokanecity.org
	mharrington@spokanecity.org

PHOTO ENFORCEMENT SERVICES AGREEMENT

This Photo Enforcement Services Agreement includes the attached Exhibits ("Agreement") and is made by and between American Traffic Solutions, Inc., doing business as Verra Mobility, ("Verra Mobility") and the City of Spokane, Washington ("Customer").

WHEREAS, Customer has implemented a photo enforcement program to enforce traffic violations (the "Program") in accordance with section 46.63.170 of the Revised Code of Washington and City ordinance Chapter 16A.64 Automated Traffic Camera Systems;

WHEREAS, Verra Mobility has the exclusive possession and ownership of the Back-office System "BOS", including certain knowledge, equipment, licenses, and the processes for processing Events;

WHEREAS, Customer selected Verra Mobility to provide services to implement and carry on the Customer's Program;

WHEREAS, Customer desires to use the Camera Systems together with the BOS to monitor and enforce traffic Violations and to issue Citations for traffic Violations as part of its Program;

WHEREAS, Customer has determined that it has the authority to enter into this Agreement in compliance with the laws, regulations, and policies applicable to it, including procurement laws, regulations, and policies.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby admitted and acknowledged, the parties agree as follows:

By signing below, the parties agree to the terms and conditions of this Agreement. Each individual signing below represents that such individual has the requisite authority to execute this Agreement on behalf of the entity which such individual represents and that all the necessary formalities have been met. This Agreement is effective on the date of execution by the last signatory to this cover page ("Effective Date").

ACKNOWLEDGED AND AGREED TO BY:

AMERICAN TRAFFIC SOLUTIONS, INC.

CITY OF SPOKANE, WASHINGTON

By: _____
Name: _____ Date _____
Title: _____

By: _____
Name: _____ Date _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

I. DEFINITIONS

As used in this Agreement, the following words and terms shall, unless the context otherwise requires, have the respective meanings provided below:

“Approach”: One (1) direction of travel on a road including up to four (4) contiguous lanes and, if applicable controlled by up to two (2) signal phases, on which a Camera System may be installed upon the mutual agreement of the parties.

“Back-Office System” or “BOS”: The proprietary back-end system that processes Events and Violations, including the printing and mailing of Citations, the generation of evidence packages, and that provides system generated reports of Violation counts. The BOS also includes the case management and adjudication processing module for Customer’s Spokane Municipal Court (“Court”).

“Halo 3”: Verra Mobility’s new multipurpose radar-based detection Camera System.

“Business Hours”: Eight (8) hours per day, Monday through Friday, excluding weekends and holidays.

“Business Rules”: The Business Rules Questionnaire to be completed by Customer and delivered to Verra Mobility setting forth the business rules for the implementation and operation of the Program.

“Camera System” or “Camera”: A photo-traffic monitoring device consisting of one (1) rear camera, strobe (if applicable) and traffic monitoring device, including the wiring associated with each, capable of accurately detecting a Violation, which records such data with one (1) or more images of such vehicle. ***“Camera System”*** may refer to either a Red Light Safety Camera System or a Fixed Speed Safety Camera System, depending on the context.

“Change Order Notice”: Written notice from Customer requesting changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement, setting forth in reasonable detail the proposed changes.

“Change Order Proposal”: A written statement from Verra Mobility describing the cost of the changes to the work or addition of products or services requested by Customer in a Change Order Notice.

“Citation”: A citation, notice of violation, notice of infraction, notice of liability or equivalent instrument issued by a competent state, county or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a Violation documented or evidenced in the BOS.

“Designated Safety Zone”: A designated safety zone in which a Camera System may be installed or deployed, such as an intersection a school zone, park zone or hospital zone.

“Event”: A potential Violation captured by the Camera System.

“Fees”: The amount payable by Customer to Verra Mobility for equipment, services, and maintenance as set forth in **EXHIBIT A**.

“Fixed Speed Safety Camera System”: A Camera System that uses radar, or other vehicle detection technology, to capture the speed of a motor vehicle and generates recorded images of a Event and is installed on a mutually agreed upon Approach such as in a school zone, park zone or hospital zone.

“Laws”: All federal, state, or local, laws, ordinances, regulations, and orders.

“Maintenance Records”: The monthly speed validation reports, preventative maintenance records, and annual radar calibration certificates for the Fixed Speed Camera Systems provided to the municipal court.

“Non-Radar Based Camera System”: Any Red Light Safety Camera System or Fixed Speed Safety Camera System that does not have radar-based detection technology.

“Notice to Proceed”: Written confirmation from Customer that Verra Mobility may proceed with the installation or deployment of a given Camera System, a form of which is attached as **EXHIBIT C**.

“Owner”: The owner(s) of a motor vehicle as shown by the motor vehicle registration records of the motor vehicle department or the analogous agency of another state or country, including a lessee of a motor vehicle under a lease of six months or longer.

“Paid Citation”: A situation where the Person cited has paid any portion of the penalty, fine, funds, fees or costs associated with the particular Citation.

“Person” or “Persons”: Any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.

“Photo Enforcement Infrastructure”: The poles, foundation, conduit, and other below-grade infrastructure associated with installing Camera Systems.

“Project Time Line”: The initial schedule and timelines required to begin the implementation of Customer’s project, as mutually agreed upon by the parties. The initial project timeline will be prepared assuming the active cooperation and engagement of the Program stakeholders set forth in Section 2.1.1 of **EXHIBIT B**.

“Red Light Safety Camera System”: A Camera System that uses vehicle detection technology to capture a vehicle traversing a red light traffic signal and generates recorded images of an Event and is installed on a mutually agreed upon Approach.

“System”: A Camera System and the related Photo Enforcement Infrastructure.

“Violation”: A failure to obey an applicable traffic law or regulation related to a failure to obey a traffic signal or related to operating a motor vehicle in excess of the posted speed limit, as determined in Customer’s sole discretion.

II. GENERAL TERMS AND CONDITIONS

1. VERRA MOBILITY AGREES TO PROVIDE:

The scope of work identified in **EXHIBIT B**, Section 1.

2. CUSTOMER AGREES TO PROVIDE:

The scope of work identified in **EXHIBIT B**, Section 2.

3. (if applicable) ADDITIONAL SERVICES: [Reserved]

4. TERM:

This Agreement shall commence upon the Effective Date and shall continue for a term of five (5) years. This Agreement may extend for up to four consecutive five (5) year terms upon Spokane City Council approval. Customer or Verra Mobility may terminate this Agreement at the expiration of any term by providing written notice of its intent not to extend the Agreement one hundred twenty (120) days prior to the expiration of the then-current term.

5. FEES AND PAYMENT:

- 5.1 Customer shall pay for all equipment, services and maintenance based on the fee schedule indicated in **EXHIBIT A**, Service Fee Schedule 1.
- 5.2 Invoices shall be in standard Verra Mobility format and provided electronically.
- 5.3 Customer shall pay all Fees due Verra Mobility based upon invoices from the preceding month within thirty (30) days of submission. Late payments may be subject to interest calculated at 1.5% per month on open balances.
- 5.4 Verra Mobility's Fees will be fixed for the first term of the Agreement; thereafter, unit prices will increase annually by the Consumer Price Index (CPI), according to the average change during the prior twelve (12) months in the CPI for All Urban Consumers (CPI-U) for U.S. Consumer average, as published by the Bureau of Labor Statistics, U.S. Department of Labor for the Services category listed under Commodity and Service Group.

6. COMMUNICATION OF INFORMATION:

Verra Mobility will comply with reasonable requests from Customer for information obtained by Verra Mobility through operation of the Camera Systems or the BOS. Verra Mobility will not be under any obligation to provide information directly to non-Customer requesting parties. For any non-Customer requests for information, Verra Mobility shall work collaboratively with Customer to provide requested information in a timely manner to Customer. Nothing in this paragraph shall be construed contrary to the terms and provisions of any public records laws, insofar as they may be applicable.

7. CONFIDENTIALITY:

Notwithstanding anything to the contrary, Customer will maintain the confidentiality of Verra Mobility's materials and information only to the extent that is legally allowed in the State of Washington. Customer is bound by the State Public Records Act, RCW Ch. 42.56. That law presumptively makes all records in the possession of the Customer public records which are freely available upon request by anyone. In the event that Customer gets a valid public records request for Verra Mobility's materials or information and the Customer determines there are exemptions only the Verra Mobility can assert, Customer will endeavor to give Verra Mobility notice. Verra Mobility will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Verra Mobility does not get a timely injunction preventing the release of the records, the Customer will comply with the Public Records Act and release the records.

No information given by Verra Mobility to Customer will be of a confidential nature, unless specifically designated in writing as proprietary or confidential by Verra Mobility ("Verra Mobility Confidential Information"). If, however, Verra Mobility does designate certain information as proprietary or confidential, Customer shall, subject to legal requirements imposed under the Washington State Public Records Act, RCW Ch. 42.56, referenced above, treat the Verra Mobility Confidential Information with the same degree of care and same restrictions as Customer treats its own proprietary and confidential information, but in no event with less than reasonable care and reasonable restrictions. Customer will use Verra Mobility Confidential Information solely in connection with its rights and obligations under this Agreement, and will not use Verra Mobility Confidential Information for any other purpose, including but not limited to any use to harm or injure Verra Mobility or in any other way detrimental to Verra Mobility. If Customer receives a request or becomes legally obligated or compelled (by Public Records Act requirements, deposition, interrogatory, request for documents, subpoena, civil investigative demand, other demand or request by a governmental agency, or the application of statutes, rules or regulations) to disclose any of the Verra Mobility Confidential Information, Customer will promptly provide Verra Mobility with written notice of such request or requirement before any disclosure, and will cooperate with Verra Mobility's reasonable efforts to obtain confidential treatment of the Verra Mobility Confidential Information. If a protective order or other confidential treatment is not obtained or if Verra Mobility waives its rights under this paragraph, Customer

agrees to furnish only so much of the Verra Mobility Confidential Information as it is legally required to furnish and to exercise its best efforts to obtain written assurances that confidential treatment will be accorded to the Verra Mobility Confidential Information except if the Information is being produced pursuant to a Public Records Act request. Customer will give Verra Mobility an opportunity to review the Verra Mobility Confidential Information prior to its disclosure, and Customer will allow Verra Mobility to participate in any related proceeding. Nothing in this paragraph shall be construed contrary to the terms and provisions of any public records laws, insofar as they may be applicable.

8. PROPRIETARY RIGHTS:

- 8.1 Back Office: Verra Mobility's proprietary BOS is software-as-a-service. Under all circumstances, Verra Mobility shall retain ownership of the BOS, including any modifications, configurations, improvements, enhancements, upgrades, or further developments of the BOS, even if modified, configured, improved, enhanced, upgraded, or further developed at the request, feedback, or recommendation of the Customer. Under no circumstance will any modifications, configurations, improvements, enhancements, upgrades, or further developments of the BOS be considered "Work for Hire". During the term of our Agreement with Customer, Verra Mobility grants Customer a non-exclusive, non-transferable, revocable license to access and use the BOS for the sole purpose of Customer performing its obligations under this Agreement.
- 8.2 Systems: Under all circumstances, Verra Mobility shall retain ownership of all Camera Systems. On and as of the date of termination of this Agreement, Customer shall be deemed to accept and receive full ownership and control of the Photo Enforcement Infrastructure.
- 8.3 Public Safety Campaign and Public Awareness: As between the parties, Verra Mobility owns and retains all rights, title and interest in and to the Public Safety Campaign Content, if any, created by Verra Mobility and all intellectual property rights therein, excluding all Customer Content. "Public Safety Campaign Content" means all content, trademarks, service marks, works of authorship, products, software, software code, databases, technology, information, data, specifications, documentation, algorithms, technical and business plans, and other materials of any kind, and all intellectual property rights therein produced by Verra Mobility for a Public Safety Campaign pursuant to **EXHIBIT B**. Verra Mobility grants to Customer a perpetual, revocable, non-transferable, and non-exclusive license to use, copy, display, and distribute the Public Safety Campaign Content solely to promote Customer's photo enforcement programs, and to modify the Public Safety Campaign Content as needed for formatting for exercise of the license granted.
- 8.4 In order to produce the Public Safety Campaign Content, Customer grants Verra Mobility a nonexclusive, fully paid-up, license to use, reproduce, distribute, perform, practice and display, and to create derivatives of all content, trademarks, service marks, works of authorship, products, software, software code, databases, technology, information, data, specifications, documentation, algorithms, technical and business plans, and other materials of any kind, and all intellectual property rights therein provided to Verra Mobility ("Customer Content") solely for Verra Mobility to (i) create the Public Safety Campaign Content, and (ii) provide services to Customer. Customer has the ability to approve use of any Customer Content in the Public Safety Campaign Content. In order to carry out the purposes of this Agreement, for the term of this Agreement, Verra Mobility grants Customer a non-exclusive, non-transferable, revocable license to use and display Verra Mobility information provided by Verra Mobility on or in marketing, public awareness or education, or other publications or materials relating to the Program, so long as any and all such publications or materials are approved by Verra Mobility in advance of use.
- 8.5 Data Use: Verra Mobility shall retain the ownership rights to all metadata, business intelligence, or other analytics obtained, gathered, or mined by Verra Mobility from the data captured by the Camera Systems and the BOS. Furthermore, Verra Mobility has a right to use non-personalized and aggregated Program data for its internal business purposes, analytics, statistical analysis, and to perform analyses which would further Customer's Program.
- 8.6 Public Disclosure: Verra Mobility Corporation, the ultimate parent company in the corporate family, is a public company registered with the U.S. Securities and Exchange Commission (SEC) with shares of its common stock listed on the NASDAQ. Nothing in this Agreement shall be construed to limit Verra

Mobility's or Verra Mobility Corporation's ability to comply with our disclosure obligations as interpreted by our attorneys and accountants under applicable, laws, rules, and regulations of the SEC or the NASDAQ.

9. INDEMNIFICATION AND LIABILITY:

- 9.1 Indemnification by Verra Mobility. Verra Mobility agrees to indemnify Customer and its managers, officers, directors, employees, agents, representatives and successors (individually, a "Customer Party" and collectively, the "Customer Parties") against all liabilities, obligations, losses, damages, penalties and judgments (collectively, "Losses"), which may be imposed on or incurred by any Customer Party arising out of or related to the gross negligence of, willful misconduct of, or material breach of this Agreement by Verra Mobility, which results in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except (i) to the extent caused by the gross negligence of, willful misconduct of, or material breach of this Agreement by any Customer Party and (ii) any claim, action or demand (a "Claim") caused by Customer's failure to perform its obligations under this Agreement.
- 9.2 Indemnification by Customer. Customer hereby agrees to indemnify Verra Mobility and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all Persons acting by, through, under or in concert with them (individually, an "Verra Mobility Party" and collectively, the "Verra Mobility Parties") against any and all Losses which may be imposed on or incurred by any Verra Mobility Party arising out of or related to the gross negligence of, willful misconduct of, or material breach of this Agreement by the Customer which results in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except (a) to the extent caused by the gross negligence of, willful misconduct of, or material breach of this Agreement by any Verra Mobility Party or (b) any Claim caused by Verra Mobility's failure to perform its obligations under this Agreement. Upon the termination of this Agreement, Customer agrees to indemnify Verra Mobility Parties against any and all Losses which may be imposed on or incurred by any Verra Mobility Party arising out of or related to any Claim related to the Photo Enforcement Infrastructure.
- 9.3 Indemnification Procedures. In the event of any Claim in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim and no party shall have the right to enter into any settlement agreement that materially affects the other party's material rights or material interests without such party's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 9.4 Limited Liability. In no event shall Verra Mobility's liability under this Agreement exceed the greater of \$1,000,000 or the average of the prior twelve (12) months of Fees paid by Customer pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, or consequential damages, or lost profits, lost fines, or lost data however caused and on any theory of liability, arising out of or relating to this Agreement.

10. INSURANCE:

Verra Mobility shall maintain the following minimum scope and limits of insurance:

- 10.1 Commercial General Liability Insurance including coverage for bodily injury, property damage, premises and operations, products/completed operations, personal and advertising injury, and contractual liability with a combined single limit of \$1,000,000 per occurrence.
- 10.2 Workers' Compensation as required by applicable state law, and Employer's Liability Insurance with limits of not less than \$500,000 each accident. Verra Mobility shall at all times maintain Worker's Compensation insurance coverage in the amounts required by Law, but shall not be required to provide such coverage for any actual or statutory employee of Customer.
- 10.3 Commercial Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by Verra Mobility with a minimum \$1,000,000 per occurrence combined single limit bodily injury and property damage.
- 10.4 Customer shall be named as additional insured on the comprehensive general liability policies provided by Verra Mobility under this Agreement.
- 10.5 Certificates showing Verra Mobility is carrying the above-described insurance shall be furnished to Customer within thirty (30) calendar days after Customer request.

Customer shall maintain the following minimum scope and limits of insurance:

Customer certifies that it is self-funded for its liability exposures including General Liability. Customer also carries excess General Liability Insurance to \$10 million. The combined assets of Customer's Risk is in excess of \$10 million which represents the financial security appropriate to provide payment for liability under Customer's self-insured layer. Should a covered loss occur, Customer's self-funded insurance program would respond accordingly.

11. LIMITED WARRANTY:

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, VERRA MOBILITY MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, WITH RESPECT TO THE CAMERA SYSTEMS, THE BOS, OR ANY RELATED EQUIPMENT OR SOFTWARE, OR WITH RESPECT TO THE RESULTS OF THE PROGRAM. THE CUSTOMER ACKNOWLEDGES THAT AT TIMES SUCH SYSTEMS AND RELATED EQUIPMENT AND SOFTWARE MAY MALFUNCTION OR OTHERWISE NOT OPERATE AS ANTICIPATED. VERRA MOBILITY SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

12. STATE LAW TO APPLY:

This Agreement shall be construed under and in accordance with the laws of the State of Washington.

13. DISPUTE RESOLUTION:

- 13.1 All disputes arising out of or in connection with the Agreement shall be attempted to be settled through good-faith efforts between senior management of both parties. Following thirty (30) days of unsuccessful negotiation, the parties shall participate in professionally-assisted mediation, with a mediator acceptable to both parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

- 13.2 Failing resolution through negotiation or mediation, any remaining dispute shall be submitted to binding arbitration in accordance with the Arbitration Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association (“AAA Rules”) before a single arbitrator. The place of arbitration will be mutually agreed upon within fourteen (14) days of a decision to seek arbitration. Limited discovery will be permitted in connection with the arbitration upon agreement of the parties and upon a showing of substantial need by the party seeking discovery.
- 13.3 The arbitrator’s decision shall follow the plain and natural meaning of the relevant documents and shall be final and binding. The arbitrator will have no power to award:
- a) damages inconsistent with the Agreement; or,
 - b) punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum.
- 13.4 All aspects of the arbitration will be confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as may be necessary to comply with legal or regulatory requirements.
- 13.5 Each party will promptly pay its share of all arbitration fees and costs, provided that such fees and costs shall be recoverable by the prevailing party as determined by the arbitrator. If a party fails to pay such share promptly upon demand, the arbitrator shall, upon written request by the other party, enter a final and binding decision against the nonpaying party for the full amount of such share, together with an award of attorneys’ fees and costs incurred by the other party in obtaining such decision, which decision may be entered in any court of competent jurisdiction. Except for the failure of a party to pay arbitration fees and costs that requires the arbitrator to order such payment, the parties will bear their own attorneys’ fees in any matter or dispute under this Agreement.

14. CHANGE ORDERS:

Customer may request the addition of any products or services that Verra Mobility provides or other changes to the scope of work to be performed under this Agreement by providing a Change Order Notice to Verra Mobility. Upon Verra Mobility’s receipt of the Change Order Notice, Verra Mobility shall deliver to Customer a Change Order Proposal. Following Customer’s receipt of the Change Order Proposal, the parties shall negotiate in good faith regarding a plan and schedule for implementation of the proposed changes; the time, manner and amount of payment or price and any other matters relating to the proposed changes. Any Change Order Proposal mutually agreed to by the parties in writing shall be incorporated as an addendum to this Agreement. Pursuant to General Provisions, Article 21 (Change Orders and Amendments. Any failure of the parties to reach agreement with respect to any foregoing as a result of any proposed changes will not be deemed to be a breach of this Agreement.

15. TERMINATION:

- 15.1 Verra Mobility’s services may be terminated:
- (i) By mutual written consent of the parties; or
 - (ii) For material breach of this Agreement by either party, where the other party fails in any material way to perform its obligations under this Agreement.
 - a) Where Customer is in breach of this Agreement for non-payment of Fees to Verra Mobility, Verra Mobility may exercise any or all of the following remedies: (1) provide Customer written notice and ten (10) days to cure before suspending performance and turning off the Camera Systems; (2) terminate this Agreement for cause where Customer’s account remains delinquent sixty (60) days after written notice; and (3) in addition to the foregoing, seek any other available remedies at law or equity.

- b) Termination under this Subsection 15.1(ii) for any reason other than non-payment of Fees by Customer is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within forty-five (45) days after receiving written notice; or
 - (iii) By Customer if a court decision, a change in Washington State law impedes Customer's ability to continue enforcement, prosecution, or litigation of civil infractions captured by Verra Mobility's Camera Systems.
 - (iv). In the event of termination of this Agreement prior to the end of its term for any reason, except material breach by Verra Mobility, Customer shall pay Verra Mobility an early termination fee based on an amount of \$105,000 per Red Light Safety Camera System, \$105,000 per Fixed Speed Safety Camera System, amortized over sixty (60) months on a straight-line basis from the date the Camera System is installed and operational. Camera Systems installed sixty (60) months or more before the date of termination are not subject to the \$105,000 termination fee.
 - (v) Customer recognizes the substantial upfront costs Verra Mobility will incur to procure, provide and install Camera Systems. Customer therefore agrees that any Camera Systems that Customer authorizes through a Notice to Proceed shall remain installed and operational for the duration of the term, unless otherwise mutually agreed. Verra Mobility will bill a restocking or standby fee for any upfront costs associated with the Camera System(s), vehicle(s), or other equipment in the event Customer terminates or suspends a Notice to Proceed.
- 15.2 Upon termination of this Agreement, including because it has reached the end of its term, the parties recognize that Customer will have to process Events in the "pipeline". Accordingly, the parties shall take the following actions and shall have the following obligations, which survive termination during the wind-down period:
- (i) Customer shall cease using the Camera Systems to capture Events.
 - (ii) Unless it is unlawful to do so, Verra Mobility will, for a period of ninety (90) days, continue to process all Events captured before termination and provide all services associated with processing in accordance with this Agreement and shall be entitled to a monthly Fee per Camera System. After such ninety (90) day period, Verra Mobility will terminate all use of the BOS for Customer's Program and upon such termination, the BOS, including Verra Mobility provided website accessible by Owners/violators, and related lockbox shall no longer be capable of accepting payments.
 - (iii) Except as provided for in Section 15.2(iv) related to the Photo Enforcement Infrastructure, Customer shall return or allow Verra Mobility to recover all provided equipment within a reasonable time not to exceed ninety (90) days.
 - (iv) Pursuant to Section 8, Customer shall be deemed to accept full ownership and control of the Photo Enforcement Infrastructure. Upon Customer's request or if otherwise required by Law, regulation, or administrative agency, and subject to the limitations set forth herein, Verra Mobility shall remove the Photo Enforcement Infrastructure Verra Mobility installed in connection with Verra Mobility's performance of its obligations under this Agreement for the actual cost of the removal (presently estimated at approximately \$5,000 per Approach) plus an additional 20% service fee (the "Removal Fee"). As part of the services performed for the Removal Fee, Verra Mobility shall restore the surface of Customer's property to substantially the same condition as such property was in immediately prior to this Agreement, except for foundation removal, which shall be left approximately flush with grade with no exposed bolts, or other hazards. Installed underground Photo Enforcement Infrastructure shall not be required to be removed, and Customer shall accept and observe any and all duties, obligations, or liabilities associated with the remaining foundation, conduit, or other below-grade Photo Enforcement Infrastructure.

15.3 In the event of termination by Verra Mobility for non-payment of Fees by Customer, Verra Mobility shall cease processing Events as of the date of termination.

16. LIMITED AGENCY:

Customer hereby grants Verra Mobility the authority to act on its behalf as a limited agent of Customer, and shall cause the applicable law enforcement agency to grant Verra Mobility the authority to act as a limited agent of the law enforcement agency, for the purposes of (i) facilitating establishment of bank accounts and delivering payment/transfer instructions, if applicable; (ii) access to DMV records; and (iii) generating and administratively processing recorded images of Events as described in this Agreement and the Business Rules. Verra Mobility and its employees, contractors, agents and servants will in no event be considered to be employees, agents (other than in the limited capacity described herein), or servants of Customer. This Agreement does not and shall not be interpreted as creating a general agency relationship between Verra Mobility and Customer.

17. USE OF SUBCONTRACTORS:

From time to time, Verra Mobility may subcontract certain services provided under this Agreement without notice to or consent of Customer.

18. DATA RETENTION:

Subject to litigation holds, court orders, changes in Law, or other legal requirements applicable to Verra Mobility, Verra Mobility shall maintain the categories of data set forth under the heading "Type of Record" for the periods of time set forth under the heading "Minimum Verra Mobility Retention Period" on **EXHIBIT E** during the term of this Agreement. Customer represents and warrants to Verra Mobility that the data retention schedule provided by Customer complies with the Washington Secretary of State, Washington State Archives, Records Retention Schedules. Within one hundred-twenty (120) days of the later of the termination of this Agreement or the termination of any wind-down period, Verra Mobility shall (i) place the Violation Images, Non-Violation Images, Individually Identifiable Violation Records, and Individually Identifiable Non-Violation Records (each as described on **EXHIBIT E**), not previously disposed of in accordance with the data retention schedule at a secured location with SFTP access or (ii) provide Customer with a hard-drive containing the Violation Images, Non-Violation Images, Individually Identifiable Violation Records, and Individually Identifiable Non-Violation Records, where Customer shall have ninety (90) days to retrieve and validate the information. After ninety (90) days, Verra Mobility shall delete all data from the SFTP location (if applicable) and shall have no further data retention obligations to Customer with respect to such data. Customer acknowledges that DMV data source providers may require Customer to enter into licensing agreements with the DMV data source providers in order for Customer to have continued access to certain registered owner information after the termination of this Agreement.

19. ASSIGNMENT:

Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. However, for business financing purposes or other corporate reorganizational purposes, Verra Mobility may sell, assign, transfer or convey any interest in this Agreement in whole or in part without the written consent of Customer.

20. FORCE MAJEURE:

Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, hurricanes, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, supply-chain disruptions or governmental authorities approval delays which are not caused by any act or omission by the parties. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay. For the avoidance of doubt, road construction is not an event

of Force Majeure on behalf of the Customer. The term of the Agreement shall be extended by a period equal to that during which either party's performance is suspended under this section.

21. NOTICES:

Any notices or demand which, under the terms of this Agreement or under any statute, that must or may be given or made by Verra Mobility or Customer shall be in writing and shall be given or made by personal service, overnight delivery service (e.g. Federal Express), or by certified mail to the parties at the following addresses:

For Customer:

Mayor or designee
City of Spokane Seventh Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, WA. 99201

Copy:

Chief of Police
Spokane Police Department
City/County Public Safety Building
1100 West Mallon Ave.
Spokane, WA 99260

For Verra Mobility:

American Traffic Solutions, Inc.
1150 North Alma School Road
Mesa, Arizona 85201
Attn: Government Solutions Legal Department

22. LEGAL CONSTRUCTION:

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein. This Agreement shall be enforced to the maximum extent possible so as to give effect to the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable herein.

23. AMENDMENTS TO THE AGREEMENT:

Any changes, modifications or amendments to this Agreement shall be in writing and signed by both parties.

24. INTEGRATION:

This Agreement constitutes the sole and only agreement of the parties and supersedes any prior or contemporaneous understanding, written or oral, between the parties respecting its subject matter.

25. SURVIVAL:

The following provisions of the General Terms and Conditions shall survive the termination of this Agreement: Sections 5, 7, 8, 9, 11, 12, 13, 15, 16, 18, 20, 21, 22 and this Section 25.

26. ADDITIONAL SERVICES:

During the term of this Agreement, from time-to-time Verra Mobility may propose certain new technologies for Customer to consider and, if so desired, Customer may procure from Verra Mobility the new technologies through an amendment to this Agreement upon terms to be mutually agreed upon by the parties.

27. PILOTS:

From time to time, at the mutual agreement of the parties, Verra Mobility may pilot existing Verra Mobility products and services or products and services that are under development by Verra Mobility or its current or future subcontractors and vendors (each a “Vendor”). During any pilot pursuant to this Section 27, registered owner information shall not be used and no Events will be issued as Citations and no mailing of warnings or Citations will occur. Customer expressly acknowledges that Verra Mobility is under no obligation to retain for any period of time any data produced by any pilot systems. Verra Mobility may request Customer or its employees to provide feedback on the use, quality, viability, features, functionality, or desirability of pilot systems (“Customer Feedback”). All data, drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared or generated by Verra Mobility or a Vendor or a pilot system in connection with any pilot shall remain the property of Verra Mobility (the “Pilot Data”). To the extent that such Pilot Data is provided to Customer, Verra Mobility grants to Customer a limited, personal, non sublicensable, nonexclusive license to use the Pilot Data, solely for evaluation and statistical purposes. Actual program performance may vary from pilot performance. Customer acknowledges and agrees that the terms of this Agreement, *except for* Sections 7, 10, 11, 12, 13, 17, 20, 21, 22 and this Section 27, shall not apply to any such pilot.

28. DEBARMENT AND SUSPENSION.

Verra Mobility 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.

29. EXECUTION:

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile or “.pdf” transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or “.pdf” shall be deemed to be their original signatures for any purpose whatsoever.

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EXHIBIT A
SERVICE FEE SCHEDULE

1.0 Description of Pricing

Fees are based on per camera and are as follows:

Product Description	Fee*
Red Light Safety Camera System – up to 4 lanes monitored; the parties shall mutually agree on the number of Camera Systems to be installed (includes upgrades of non-radar based current Camera Systems to Halo 3).	\$4,600 Fixed Fee per Month per Camera System
Red Light Safety Camera System – 5 lanes monitored; the parties shall mutually agree on the number of Camera Systems to be installed (includes upgrades of non-radar based current Camera Systems to Halo 3).	\$4,750 Fixed Fee per Month per Camera System
Fixed Safety Camera System – up to 2 lanes monitored; the parties shall mutually agree on the number of Camera Systems to be installed (includes upgrades of non-radar based current Camera Systems to Halo 3).	\$4,750 per month per Camera System
Subsequent Notices Mailing Fee – For any additional notices sent by first class mail required by the Customer or required by Law in excess of the standard set of notices as described in Subsection 1.2.3 of EXHIBIT B , Verra Mobility will charge the Customer a Subsequent Notices Mailing Fee.	\$2.00 per page per notice
* Excess Volume Fee - The fixed Fee per month per Camera System includes mailing of up to 500 Citations per Camera System per month. Verra Mobility will charge an additional \$200 for each increment of up to 100 Citations in excess of the 500 Citations per Camera System per month. For example: assuming the use of 10 Camera Systems, the first 5,000 Citations mailed in a month are covered by the standard monthly fee, however if the combined number of Citations issued is between 5,000 and 5,099, Verra Mobility will add a \$200 “excess volume fee” to its monthly invoice, if the combined volume is between 5,100 and 5,199 the excess volume fee is \$400, and if the combined volume is between 5,200 and 5,299 the excess volume fee is \$600, and so forth.	
Service Fees: All service Fees per Camera System above includes all costs required and associated with a Camera System installation, routine maintenance, use of BOS for back-office operations and reporting, Event processing services, DMV records access, the standard set of notices as described in Subsection 1.2.3 of EXHIBIT B , lockbox and epayment processing (excluding user convenience fee, which is paid by payor and excluding any bank account set up or monthly bank account fees), IVR call center support for general Program questions and public awareness Program support. Any required certified mail, or other special mailing, is not included and the fee is extra and will be billed per unit as published by the US Postal Service.	
Verra Mobility’s monthly fee includes postage for the standard set of notices as described in Subsection 1.2.3 of EXHIBIT B. Certified mail or other mailings is extra and will be billed per unit as published by the US Postal Service plus a \$2.00 per unit per page service charge.	
Verra Mobility’s Fee anticipate a standard BOS configuration and a standard suite of notices as described in Subsection 1.2.3 of EXHIBIT B and as already provided to the Customer. For any configuration or Program customization work, Verra Mobility shall provide Customer with an hours estimate and, upon approval by Customer for the work, shall invoice Customer \$200 per hour for such additional configuration or Program customization.	

2.0 Optional Collection Services:

In the event that Customer elects to have Verra Mobility engage a collections agency to perform collections services, Verra Mobility’s designated collection’s subcontractor may initiate collection efforts of delinquent notices upon written request by Customer, so long as collection of said recovered revenue

amounts does not conflict with applicable state law. Verra Mobility will be entitled to receive portions of the collected revenue as noted below. For those accounts in default that go to collection, this is in addition to Verra Mobility Fees noted in Section 1.0 above.

Delinquent Collections Services 25% of Recovered Revenue

In the event that Customer elects to have Verra Mobility provide collections services, Customer shall so notify Verra Mobility in writing. Customer agrees that, once Verra Mobility's collections services are elected, Customer may not utilize another vendor for these collections services without prior written consent from Verra Mobility through an amendment to this Agreement.

EXHIBIT B
SCOPE OF WORK

1. VERRA MOBILITY SCOPE OF WORK

1.1 VERRA MOBILITY IMPLEMENTATION

- 1.1.1 Verra Mobility agrees to provide Camera System(s), use of the BOS and related services to Customer as outlined in this Agreement, excluding those items identified in Section 2 titled “Customer Scope of Work”. Verra Mobility and Customer understand and agree that new or previously unforeseen requirements may, from time to time, be identified and that the parties shall negotiate in good faith to assign the proper party the responsibility and cost for such items. In general, if work is to be performed by Customer, unless otherwise specified, Customer shall not charge Verra Mobility for the cost.
- 1.1.2 Customer and Verra Mobility will complete the Project Time Line within sixty (60) days of Agreement execution date, unless mutually agreed to otherwise by the parties. Verra Mobility agrees to make every effort to adhere to the Project Time Line.
- 1.1.3 Verra Mobility will install or deploy Camera System(s) at a number of Designated Safety Zones to be mutually agreed upon between Verra Mobility and Customer as reflected in a written Notice to Proceed. In addition to any initial Designated Safety Zones the parties may mutually agree to add additional Camera System(s) or Approaches, which shall also be reflected in a written Notice to Proceed as set forth in **EXHIBIT C**.
- 1.1.4 Site installation plans for fixed-site installations shall be prepared under the supervision of, approved and sealed by a licensed professional engineer licensed to perform engineering services in the state where the Camera Systems will be installed.
- 1.1.5 Verra Mobility will perform speed studies or statistical analysis of traffic upon the mutual agreement of the parties as to the scope of the speed studies or statistical analysis and provide a report to the Customer.
- 1.1.6 Verra Mobility will operate each Camera System on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances, unless enforcement times are restricted by law, such as in school zones.
- 1.1.7 Verra Mobility’s Marketing Department will assist Customer with public information content and outreach campaign strategies (“**Public Safety Campaign**”).
- 1.1.8 Verra Mobility agrees to provide a secure website accessible to Owners/violators who have received notices of violation by means of a Notice # and PIN, which will allow Violation image and video viewing. Verra Mobility shall include a link to the payment website(s) and may offer the opportunity to download an affidavit of non-liability online. Verra Mobility will operate this secure website on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances.
- 1.1.9 Verra Mobility shall provide a toll free Customer Service telephone number for both the Court and violators, to be administered in accordance with the business rules to be developed to effectuate the requirements of this section.
- 1.1.10 Verra Mobility will provide technician site visits to each Camera System, as needed, to perform maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and, general system inspections and maintenance. Verra Mobility shall continue to provide Customer monthly speed

validation reports for Fixed Speed Safety Camera Systems, annual radar calibration certificates and copies of preventative maintenance records documenting preventative maintenance checks by Camera System technician/s.

- 1.1.11 Verra Mobility shall take commercially reasonable best efforts to repair a non-functional System within seventy-two (72) hours (excluding weekends and holidays) of determination of a malfunction.
- 1.1.12 Customer shall receive all upgrades to its BOS and any required firmware upgrades to the Camera Systems when made available by Verra Mobility to all customers and Verra Mobility will update the technology and hardware for existing Camera Systems at least every seven (7) years if requested by the Customer after consultation with Verra Mobility on the advantages and disadvantages of any such an upgrades.
- 1.1.13 If Customer is using Verra Mobility enabled lockbox or epayment services, Customer shall provide Verra Mobility and the applicable payment processor with the items set forth in Section 2.1.4 below.
- 1.1.14 Verra Mobility is authorized to charge, collect and retain a service/convenience fee of up to the greater of \$5.00 or to 5% of the total payment, for each payment processed through the web, call center, IVR, or other electronic means. Such fee is paid by the payor and retained by Verra Mobility.

1.2 VERRA MOBILITY OPERATIONS

- 1.2.1 Verra Mobility shall implement and operate the Program in accordance with the provisions of this Agreement and the Customer's Business Rules.
- 1.2.2 If a warning period is required, Verra Mobility shall provide Customer with a one-time warning period up to thirty (30) days in length following the installation and activation of the first installed Camera System. Customer shall not be charged a fee for the warning period; however for any warning period exceeding thirty (30) days, Customer shall be responsible for the normal monthly Fee.
- 1.2.3 Verra Mobility shall provide Customer with access to the BOS, including image processing, and printing and mailing of up to six (6) letters/ notices in support of Citation issuance and escalation. In the case of a transfer of liability by the Owner, the BOS shall be setup to mail a Citation to the driver identified in the affidavit of non-liability or identified by a rental car company. Costs of certified mailings are priced separately and paid by Customer to Verra Mobility as indicated in **EXHIBIT A**.
- 1.2.4 Subsequent notices, other than those specified in Subsection 1.2.3 may be delivered by first class or other mail means for additional compensation to Verra Mobility as agreed upon by the parties.
- 1.2.5 Verra Mobility shall apply an electronic signature, name, or badge number to the Citation as authorized in the Customer's Business Rules.
- 1.2.6 Verra Mobility may not make changes to the Citation form without approval by Customer.
- 1.2.7 Verra Mobility shall seek records from vehicle registration databases reasonably accessible to Verra Mobility through its limited agent relationship with Customer and use such records to assist Customer in processing Citations. Verra Mobility may mail Citations to the address of the Owner obtained through the DMV, obtained through the National Change of Address (NCOA) database provided by the United States Postal Service, or obtained through other

means including but not limited to skip tracing. Verra Mobility reserves the right to pass-through to Customer any cost increases imposed on Verra Mobility by DMV data sources.

- 1.2.8** The BOS shall provide Customer with the ability to run and print standard system reports. Verra Mobility provides a suite of standard program reporting at no charge to clients with active Programs. Upon notice to Customer, Verra Mobility reserves the right to modify the suite of standard program reporting available to Customer, so long as such change applies generally to customers with similar programs. Customized reporting services are available upon written request. The fee for such services shall be mutually agreed upon.
- 1.2.9** During the twelve (12) month period following the installation or deployment of the first Camera System, upon Verra Mobility's receipt of a written request from Customer at least fourteen (14) calendar days in advance of a court proceeding, and if required by the court or prosecutor, Verra Mobility shall provide Customer with or train a Customer provided local expert witness to testify in court on matters relating to the accuracy, reliability, technical operations, and effectiveness of the Camera System or the BOS until judicial notice is taken. Customer shall use its best efforts to obtain judicial notice as soon as possible. If a Verra Mobility expert witness is required more than two (2) times during the twelve (12) month period, Customer shall reimburse Verra Mobility for any reasonable time and travel costs incurred for the additional dates.
- 1.2.10** In those instances where damage to a System (or sensors where applicable) is caused by (i) negligence on the part of Verra Mobility or its authorized agent(s), Verra Mobility shall bear the cost of repair or (ii) negligence or recklessness on the part of a driver or severe weather or other Force Majeure events, Verra Mobility and Customer shall bear the cost of repair equally with Customer reimbursing Verra Mobility for its portion of the cost of repair. For all other causes of damage, including road construction, Customer negligence, etc. Customer shall reimburse Verra Mobility for the cost of repair.
- 1.2.11** Verra Mobility shall provide a help-line to assist Customer with resolving any problems encountered regarding its Camera System and/or the BOS. The help-line shall function during Business Hours.

2. CUSTOMER SCOPE OF WORK

2.1 GENERAL IMPLEMENTATION REQUIREMENTS

- 2.1.1** Within seven (7) business days of the Effective Date of this Agreement, Customer shall provide Verra Mobility with the name, title, mailing address, email address and phone number of all Customer stakeholders, including:
- A project manager with authority to coordinate Customer responsibilities under this Agreement;
 - Court manager responsible for oversight of all Court-related program requirements;
 - The police contact;
 - The court contact;
 - The person responsible for overseeing payments by violators (might be court);
 - The prosecuting attorney;
 - The Customer attorney;
 - The finance contact (who receives the invoices and will be in charge of reconciliation);
 - The IT person for the police;
 - The IT person for the courts;
 - The public works and/or engineering contact responsible for issuing any/all permits for construction; and
 - Court manager responsible for oversight of all Court-related program requirements.

- 2.1.2 Customer and Verra Mobility shall complete the Project Time Line within sixty (60) calendar days of the Effective Date of this Agreement, unless mutually agreed to otherwise by the parties. Customer shall make every effort to adhere to the Project Time Line.
- 2.1.3 As requested from time to time by Customer, Verra Mobility will provide Customer with a mock-up of the Citation and other notices within fifteen (15) days of a completed Business Rules Questionnaire. Customer shall review the Citation and other notices to ensure conformity with the Laws applicable to Customer. Except as outlined in Section 1.2.6, Verra Mobility shall not implement changes to the Citation or other notices without Customer's prior review and sign-off. Customer is responsible for the content of its Program notices, including but not limited to Citations.
- 2.1.4 Customer intends to utilize Verra Mobility enabled payment processing channels. Customer shall designate a Customer account for deposit / settlement of funds paid by payors. Within seven (7) business days of receipt by Customer, Customer shall provide Verra Mobility completed banking forms and payment processing agreements, which may include among others a Participant Agreement and Submerchant Agreement with the payment processor as well as a bank verification letter prepared by the Customer's settlement account's bank, and a Form W-9, Request for Taxpayer Identification Number and Certification. A copy of the Participant Agreement and the Submerchant Agreement are each attached here to as **EXHIBIT E**.
- 2.1.5 Customer shall direct the law enforcement agency to execute the Verra Mobility DMV Services Subscriber Authorization (substantially in the form attached as **EXHIBIT D**) to provide verification to the National Law Enforcement Telecommunications System (NLETS) indicating that Verra Mobility is acting on behalf of the Customer for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. 2721, Section (b)(1). Access to registered owner information through National Law Enforcement Telecommunications System (NLETS) requires Customer to provide Verra Mobility with a unique Customer ORI. In order to access certain state departments of motor vehicles records directly (not through NLETS), agreements or applications directly between customer and the state DMV may be required by Customer, including agreements requiring Customer to comply with certain permissible use, privacy, and security requirements of the applicable state department of motor vehicle. If required, Customer shall execute such agreements or applications with, participate in audits by, or provide certifications to state department of motor vehicles. If Customer requires Verra Mobility to access registered owner information from sources other than NLETS or direct through a state DMV, accessible to Verra Mobility at no cost, additional fees will apply.
- 2.1.6 Customer shall prepare, execute, update, and maintain the Business Rules for implementation and operation of the Program. Customer's failure to timely prepare the Business Rules may impact the Project Time Line or compliance of Customer's Program with applicable laws. Verra Mobility shall not be liable for Customer's failure to update and maintain the Business Rules. To the extent that there is a conflict between the Business Rules and Agreement, the Agreement shall govern.
- 2.1.7 Customer is responsible for notifying Verra Mobility of any local legislative and/or ordinance changes in writing within forty-eight (48) hours of the first read of the proposed legislation. Verra Mobility will not be responsible for complying with any change in applicable local law, until such time as Verra Mobility has been notified by Customer in writing of the change in Law and, if applicable, Customer's Business Rules have been updated by Customer. In the event of a change in Law, excluding a change in Customer's local law, which would increase the cost of Verra Mobility's provision of the Services, Verra Mobility may propose a Fee increase to Customer. If the parties cannot mutually agree on the Fee change, Verra Mobility may terminate this Agreement. In the event of a change in or adoption of a local law of Customer, which would increase the cost of Verra Mobility's provision of the Services, Verra

Mobility shall provide Customer with a Fee increase consistent with Verra Mobility's increased operating cost, and Customer shall be obligated to pay such increased Fees.

- 2.1.8 Customer is responsible for all final jurisdictional issues, including but not limited to as they pertain to issuance of Citations, adjudication of Violations, and intergovernmental authorities.
- 2.1.9 Once a Notice to Proceed is granted to Verra Mobility in writing, Customer shall not issue a stop work order to suspend activity on the implementation process, unless Customer reimburses Verra Mobility for costs incurred up to the date the stop work order is issued.
- 2.1.10 Customer will comply with all applicable Laws relating to its conduct with respect to the Program. Customer shall not use the Camera Systems, the BOS, or the data captured by the Camera Systems or provided by NLETs or DMV data source providers for any purpose not permitted by Law.
- 2.1.11 Once a Camera System is installed and certified by Verra Mobility as operational, it shall be immediately put into service at the next available enforcement period or as otherwise mutually agreed to by the Parties.
- 2.1.12 Customer shall process each Event in accordance with state law and/or municipality ordinances within three (3) business days of its appearance in the law enforcement review queue, using the BOS to determine which Events constitute Violations that will be issued as Citations. In the event that Customer fails to process Events within this timeframe, Verra Mobility shall not be liable for failure of the BOS to allow Customer to issue a notice or Citation within statutory timeframes.
- 2.1.13 In the event that remote access to the BOS is blocked by Customer network security infrastructure, Customer's Department of Information Technology shall coordinate with Verra Mobility to facilitate appropriate communications while maintaining required security measures.
- 2.1.14 Customer shall be responsible for any reporting obligations that it has to any state or other regulatory body with respect to its operation of the Program or the payment of Citations.

2.2 STREETS AND TRAFFIC DEPARTMENT OPERATIONS

- 2.2.1 All Fixed Camera Systems are intended to remain installed for the duration of the Agreement. If Customer requests that Verra Mobility move a Fixed Camera System after initial installation, Customer shall pay for the total cost to relocate the System.
- 2.2.2 If a construction or improvement project requires an installed Camera System to be deactivated or requires a Camera System, including imbedded sensors, to be moved or removed, Customer shall pay a reduced monthly fee of \$2,500 per month for the deactivated Camera System during the time the Camera System is deactivated and pay any costs incurred by Verra Mobility for removing, and if applicable reinstalling, the System. If the System shall be reinstalled after project is completed, in lieu of paying the reduced monthly Fee while Camera System is deactivated Customer may instead elect through a Change Order, or other written modification to the Agreement, to extend the current term of the Agreement for the time period the Camera System was deactivated.
- 2.2.3 Prior to the installation of any System, Customer shall provide Verra Mobility information regarding any and all road construction or improvement projects scheduled during the term of this Agreement for any Approach designated for System installation. In addition, within thirty (30) days of becoming aware of anticipated construction that may result in the deactivation or removal of a System or otherwise impact an Approach during the term of this Agreement, Customer shall notify Verra Mobility of any such construction.

- 2.2.4 Customer will design, fabricate, install and maintain camera warning signs required by Law for purposes of operating the Program. If Customer cannot provide such signage, Verra Mobility will do so, and Customer shall reimburse Verra Mobility for such costs. Even if Verra Mobility provides such signage, Customer shall remain responsible for maintaining such signage in compliance with applicable Laws. Customer is responsible for determining the placement/location of signs in compliance with applicable Laws.
- 2.2.5 Customer understands that proper operation of the Red Light Camera Systems requires access to traffic signal phase connections. Customer, therefore, shall provide access to traffic signal phase connections according to approved design. When traffic signal phase connections are not under the jurisdiction of Customer, it shall be Customer's responsibility to negotiate agreements with the owner or maintaining agency of the traffic signal controller and infrastructure in order to provide the required access to said phase connections and infrastructure and any costs associated with needed agreements shall be funded by Customer.
- 2.2.6 Customer understands that proper operation of the Red Light Camera System sometimes requires attachment of certain items of detection equipment to existing signal masts, mast arms and/or other street furniture. Customer, therefore, shall provide access to Verra Mobility to attach certain items of detection equipment to existing signal masts, mast arms and / or other street furniture if required for the proper operation of the System.
- 2.2.7 Customer shall allow Verra Mobility to access power from existing power sources at no cost and, if applicable, shall allow or facilitate access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each System within Customer's jurisdiction. If these items are not made available, the costs of any additional conduit or power infrastructure needed to support installation of the Camera System shall be funded by Customer. Verra Mobility may agree to cover these upfront costs and separately bill Customer through the monthly invoice over a period not to exceed one year. If existing power sources are not immediately available, Customer will allow Verra Mobility to use temporary power until the existing power is established. In situations where it is not possible to obtain electrical power from a pre-existing source, Customer shall bear the costs (or reimburse Verra Mobility) for obtaining/routing power. When access to power facilities is not under the jurisdiction of Customer, it shall be Customer's responsibility to negotiate any necessary agreements with the owner or maintaining agency of the power facility and infrastructure in order to provide required access to said power facilities and infrastructure. Any costs associated with the needed agreements shall be funded by Customer.
- 2.2.8 Customer shall approve or reject site plans submitted Verra Mobility within seven (7) business days of receipt. Customer shall use best efforts to ensure that the total duration between submittal and finalization does not exceed ten (10) days for plan approvals when plans are being reviewed and permitted by any state, county, and/or local agencies.
- 2.2.9 Customer, or any department of Customer, shall not charge Verra Mobility or its subcontractor(s) for building, construction, electrical, street use and/or pole attachment permits, including any fee for traffic control services and permits during installation or maintenance of a System. Customer shall also apply for, when in Customer's name, or coordinate the application for, when in the name of a Customer agency, school, or school district, and fund any and all needed state, local, and/or county permits, including any traffic control permits.
- 2.2.10 Customer shall issue all needed permits to Verra Mobility and its subcontractor(s) within three (3) business days of plan approval. Customer shall provide its best efforts to aid in achieving these timeframes for permit issuance when permitted by any state, local, and/or county agency.

- 2.2.11 If required by the submitted design plan for proper operation, Customer shall allow Verra Mobility to install vehicle detection sensors in the pavement of roadways within Customer's jurisdiction. Customer shall provide its best efforts to aid in acquiring any and all required permission and permits when the roadway is under the jurisdiction of the state or county.
- 2.2.12 Customer shall allow Verra Mobility to build Infrastructure into any existing Customer-owned easement.
- 2.2.13 If use of private property right-of-way is needed, Customer shall assist Verra Mobility in acquiring permission to build in existing utility easements as necessary. Any costs for private property right-of-way lease/rental costs shall be borne by Customer as it is expressly excluded from the base fee structure identified in the fee schedule.
- 2.2.14 Customer shall be responsible for the performance of any engineering or traffic safety studies as may be desired by Customer or required by laws applicable to Customer.

2.3 COURTS OPERATIONS

- 2.3.1 Customer is responsible for the adjudication of Citations in accordance with all applicable Laws.
- 2.3.2 Customer shall provide a judge or hearing officer and court facilities to schedule and hear disputed Citations.
- 2.3.3 Customer shall handle inbound and outbound phone calls and correspondence from defendants who have questions about disputes and other issues relating to Citation adjudication.
- 2.3.4 For NOTICES referenced in section 21 of this Agreement, Notice to the Court shall be directed to:

Spokane Municipal Court Administrator
Spokane Municipal Court
1100 W. Mallon Ave.
Spokane, WA. 99260
- 2.3.5 Verra Mobility shall provide Customer with access to its online BOS adjudication processing module which will enable the adjudication function to review cases, related images, and other related information required to adjudicate disputed Citations.
- 2.3.6 The Court designates the BOS adjudication processing module as its official Court electronic case filing system of record for all automated traffic safety camera civil infraction cases. Infraction Citations will be considered electronically transmitted to BOS, and therefore electronically filed with the Court, on the date the Spokane Police Department (SPD) citing officer electronically signs the Citation.
- 2.3.7 Verra Mobility will provide the Court with electronic data storage space sufficient for the storage and retention of Court data, images and documents for the program.
- 2.3.8 Verra Mobility shall comply with the Court's minimum requirements for scanning and storage as will be expressed in the Business Rules to be developed to effectuate Court requirements.
- 2.3.9 If a case is appealed from Spokane Municipal Court, Verra Mobility shall provide, if required by the Court, both a hard drive containing the above referenced case information place all of the above-referenced case information at a secured location with SFTP access to all appellate courts who will hear the case which may include Spokane County Superior Court, Washington

State Court of Appeals Division III and the Washington State Supreme Court until appellate review is exhausted and final judgment has been entered, or one of the parties to the appellate case chooses not to seek additional appellate review effectively ending the appellate process. If instead of using the online adjudication processing module in the BOS, Customer desires to integrate Verra Mobility data into its adjudication system, subject to feasibility, Verra Mobility shall provide a court interface. Verra Mobility shall provide a price proposal to Customer for the development of any such court interface.

- 2.3.10 Customer is responsible for entering all final dispositions of Citations including all payments of Citations into the BOS, either directly through the online adjudication processing module or through the court interface.

EXHIBIT C
FORM OF NOTICE TO PROCEED

Reference is made to the Professional Services Agreement by and between American Traffic Solutions, Inc., doing business as Verra Mobility (“Verra Mobility”) and _____ (“Customer”), dated as of [date] (the “Agreement”). Capitalized terms used in this Notice to Proceed shall have the meaning given to such term in the Agreement.

Customer hereby designates this implementation of Systems at the Approaches listed below. Verra Mobility shall make its best efforts to install a System within sixty (60) days of permits being granted and power delivered for each agreed-upon Approach, providing that Customer has received permission for all implementations in writing from any third-party sources.

Below is a list of Approaches provided by Customer, which have been analyzed based on traffic volumes, road geometry, and existing infrastructure and are believed to be locations at which a System would increase public safety.

Execution of this Notice to Proceed by Customer shall serve as authorization for the installation of Systems for all Approaches designated as follows:

Approach (Direction and Roadway)	Type of Enforcement	Camera System Solution (# of Cameras per Approach)

Customer understands that implementation and installation of any Approach is subject to Site Selection Analysis and engineering results.

Customer recognizes the substantial upfront costs Verra Mobility will incur to construct and install the Systems for the above listed Approaches. Customer agrees that the Systems authorized by this Notice to Proceed for the above-listed Approaches shall remain installed and operational for the duration of the current term of the Agreement. Verra Mobility reserves the right to bill Customer for any upfront costs associated with the Approaches listed above in the event Customer elects to cancel or suspend the installation.

IN WITNESS WHEREOF, Customer has executed this Notice to Proceed as of the date written below.

[CUSTOMER]

By: _____
Name: _____ Date _____
Title: _____

ACKNOWLEDGED AND AGREED TO BY:

AMERICAN TRAFFIC SOLUTIONS, INC.

By: _____
Name: _____ Date _____
Title: _____

EXHIBIT D
DMV SERVICES SUBSCRIBER AUTHORIZATION

Date:

Frank L. Minice, Executive Director/CEO
National Law Enforcement Telecommunications System, Inc. (NLETS)
1918 W. Whispering Wind Drive
Phoenix, AZ 85085

Dear Mr. Minice:

Re: Authorization for ORI Code: _____

The CUSTOMER authorizes American Traffic Solutions, Inc. dba. Verra Mobility to use the CUSTOMER ORI ----- for the limited purpose of obtaining vehicle registration information through NLETS.

This letter acknowledges that a contract to perform automated enforcement between the CUSTOMER and American Traffic Solutions, Inc., doing business as Verra Mobility ("Verra Mobility") is in force. As a requirement of and in performance of that contract between the CUSTOMER and Verra Mobility, it will be necessary for Verra Mobility to access NLETS for motor vehicle data on our agency's behalf.

This program will operate within the Axis environment under partner ORI AZNLETS97.

Please accept this letter as authorization from the CUSTOMER for Verra Mobility to run motor vehicle inquiries for this purpose. This authorization will automatically expire upon the termination of the contract between CUSTOMER and Verra Mobility; and, such authorization is limited to violations detected by the automated enforcement camera systems.

By completing the information below and signing this letter, I am stating that I am a member of and have the authority to extend this authorization on behalf of the CUSTOMER.

SUBSCRIBER INFORMATION

Subscriber Agency/Name

NLETS Agency ORI

Name/Title of Authorized

Representative

Mailing Address

Telephone

Email

Signature of Authorized Representative

Date Signed

Fax

EXHIBIT E
RETENTION SCHEDULE***

[This schedule to be completed by Customer in conformity with their applicable state and local law prior to execution of the Agreement.]

<u>Type of Record</u>	<u>Minimum Verra Mobility Retention Period</u>
Violation Images* (including video clips and related metadata)	3 years after final disposition of case
Non-Violation Images (including video clips and related metadata)**	Thirty (30) days.
Warning Notice Images (including video clips and related metadata)	3 years after communication provided
Individually Identifiable Violation Records*	3 years after final disposition of case
Individually Identifiable Non-Violation Records**	90 days.
Audio recording from contact center	90 days from call
Written correspondence with citizens regarding Violations	3 years after communication received or provided, whichever is later, then destroy
Camera System Calibration/Certification Records	3 years
Maintenance Records	3 year
Other Program Records	6 years from termination of the Agreement

- * Violation Image: an image of a Violation issued as a Citation.
Individually Identifiable Violation Records: a record containing individually identifiable information pertaining to a Violation issued as a Citation.
- ** Non-Violation Image: an image of an Event not issued as a Citation.
Individually Identifiable Non-Violation Records: a record containing individually identifiable information pertaining to an Event not issued as a Citation.
- *** Retention period is not applicable upon termination of the Agreement and the data is provided to Customer pursuant to Section 15 of the Agreement.

This records retention schedule does not apply to any Event data captured by the Camera System, but not uploaded into BOS. For the avoidance of doubt, this records retention schedule does not apply to any records related to any Pilot Data.

EXHIBIT F
FORM PARTICIPANT AGREEMENT AND THE SUBMERCHANT AGREEMENT

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.

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

Committee Agenda Sheet

Public Safety & Community Health Committee

Submitting Department	Police Department
Contact Name	Maj. Eric Olsen
Contact Email & Phone	eolsen@spokanepolice.org 509-835-4505
Council Sponsor(s)	CP Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Photo Enforcement Contract
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>In 2006, members of the Public Safety Committee asked the Police Department to look into photo enforcement for the City. In March of 2008, a contract was signed with American Traffic Solutions, now Verra Mobility, to bring this traffic safety program to Spokane.</p> <p>Since then, two five-year extensions were granted, the last of which expires November 2023.</p> <p>This briefing paper is to submit the new contract for approval.</p>
Proposed Council Action	Approval of new contract
Fiscal Impact Total Cost: <u>Click or tap here to enter text.</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: Traffic Calming Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.) This is a revenue generating program with funds going to the Traffic Calming Fund. It should be noted, Verra Mobility is reducing our monthly camera fee at a savings of approximately \$121,000 over the life of the contract.	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? Careful consideration and research, based on crash statistics among other factors, is given to placement of each camera system with the goal of reducing crashes and the severity of those crashes through enforcement of red lights and speed zones.	
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 citations get issued to the registration of the car, not to a specific driver, so we have no way to collect this data.	



< Business Lookup

License Information:

[New search](#) [Back to results](#)

Entity name: AMERICAN TRAFFIC SOLUTIONS, INC.

Business name: VERRA MOBILITY

Entity type: [Profit Corporation](#)

UBI #: 602-548-774

Business ID: 001

Location ID: 0001

Location: Active

Location address: 1150 N ALMA SCHOOL RD
MESA AZ 85201-3000

Mailing address: 1150 N ALMA SCHOOL RD
MESA AZ 85201-3000

Excise tax and reseller permit status: [Click here](#)

Secretary of State status: [Click here](#)

Endorsements

Endorsements held at this location	License #	Count	Details	Status	Expiration date	First issuance date
Auburn General Business - Non-Resident	BUS-36563	1		Active	Oct-31-2024	Sep-14-2022
Bothell General Business - Non-Resident				Active	Feb-29-2024	Feb-16-2023
Burien General Business - Non-Resident	11451			Active	Oct-31-2024	Jun-04-2015
Federal Way General Business - Non-Resident	08-102700-00-1			Active	Oct-31-2024	Jun-06-2008
Issaquah General Business - Non-Resident				Active	Oct-31-2024	May-21-2007
Kirkland General Business - Non-Resident				Active	Oct-31-2024	May-29-2019
Lynnwood General Business - Non-Resident	013799-07-201			Active	Oct-31-2024	Jan-03-2019

Endorsements held at this location	License #	Count	Details	Status	Expiration date	First issuance date
Marysville General Business - Non-Resident	4535CON1017			Active	Oct-31-2024	Jun-29-2017
Mercer Island General Business - Non-Resident	160759			Active	Oct-31-2024	Oct-09-2019
Puyallup General Business - Non-Resident	2007249			Active	Oct-31-2024	Jun-23-2008
Spokane General Business - Non-Resident	T12053338BUS			Active	Oct-31-2024	Oct-15-2012
Wenatchee General Business - Non-Resident	100292			Active	Oct-31-2024	Oct-16-2019

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

Governing people	Title
AVRAHAM, RAPHAEL	
BALDWIN, JONATHAN	
COLLINS, REBECCA	
CONTI, CRAIG	
KOEHN, BRIAN	
RENZI, CHRISTOPHER	
ROBERTS, DAVID	
WILLIAMS, KRISTIN	
YOUNG, KRISTEN	

Registered Trade Names

Registered trade names	Status	First issued
AMERICAN TRAFFIC SOLUTIONS, INC.	Active	Oct-17-2005
VERRA MOBILITY	Active	Jun-20-2018

The Business Lookup information is updated nightly. Search date and time: 10/11/2023 10:53:27 AM



Agenda Sheet for City Council Meeting of:
10/23/2023

Date Rec'd	9/27/2023
Clerk's File #	ORD C36452
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	CITY COUNCIL
Contact Name/Phone	MATT BOSTON 6820
Contact E-Mail	MBOSTON@SPOKANECITY.ORG
Agenda Item Type	Special Budget Ordinance
Agenda Item Name	0320 - ARPA TRANCHE 7 ALLOCATION

Agenda Wording

An ordinance amending Ordinance No. C36345, passed by the City Council December 12, 2022, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2023, making appropriations to the various funds of the City of Spokane govern

Summary (Background)

With a lack of a permanent/ongoing funding source for the Trent Shelter, ARPA funds will be either reallocated from previously identified funding sources or allocated from the unallocated funds in order to bridge the gap for the funding deficit identified in 2024.

Lease? NO Grant related? NO Public Works? NO
Fiscal Impact **Budget Account**

Expense	\$ \$6,124,073.64	# ARPA
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	BYRD, GIACOBBE	<u>Study Session\Other</u>	9/28 Study Session
<u>Division Director</u>		<u>Council Sponsor</u>	Bingle, Wilkerson, and Zappone
<u>Finance</u>		<u>Distribution List</u>	
<u>Legal</u>		gbyrd@spokanecity.org	
<u>For the Mayor</u>		mboston@spokanecity.org	
<u>Additional Approvals</u>			
<u>Purchasing</u>			

Committee Agenda Sheet

Finance & Administration Committee

Submitting Department	City Council
Contact Name	Matt Boston
Contact Email & Phone	mboston@spokanecity.org
Council Sponsor(s)	CM Bingle, CM Wilkerson, CM Zappone
Select Agenda Item Type	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: 5
Agenda Item Name	ARPA Allocation
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>With a lack of a permanent/ongoing funding source for the Trent Shelter, ARPA funds will be either reallocated from previously identified funding sources or allocated from the unallocated funds in order to bridge the gap for the funding deficit identified in 2024.</p> <p>ARPA funds from the following programs will be reallocated towards the Trent Shelter:</p> <ul style="list-style-type: none"> - \$1,200,000 Mobile Medical – the program had issued an RFP and the City has deemed this a failed search from the response received. - \$300,000 Eviction Defense – the program had put out an RFP and received no response/deemed a failed search - \$112,586.98 Administrative Support/Legal – The City no longer is in need of the services contracted for eligibility review of the programs defined. - \$120,000 Community Engagement Coordinator – This position was intended as an outreach employee within Council office, but was no longer deemed necessary as Community engagement was absorbed by current Council and Administration staff. <p>ARPA funds from the following programs will be funded through a different funding source (HB 1590) and reallocated towards the Trent Shelter:</p> <ul style="list-style-type: none"> - \$4,000,000 in ARPA funding for affordable housing, specifically the project known as “Liberty Park Terrace II” will be funded from HB 1590 dollars, as there has been no draws on the property and the City is concerned with the status/timing of project in relation to the deadlines of allocation and spend enforced by the U.S. Department of Treasury <p>\$391,486.66 in ARPA funding is currently unallocated and will be allocated to the funding of the Trent Shelter.</p>
Proposed Council Action	Approve 10/16
Fiscal Impact Total Cost: <u>\$6,124,073.64</u> Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring	

Specify funding source: American Rescue Plan Act

Expense Occurrence ☒ One-time ☐ 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?
Funding for homelessness and housing efforts impacts historically excluded and impacted 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?
No data will be collected on these disparities.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?
Effectiveness of the program will be evaluated by the City's CHHS department in conjunction with point in time counts, transitions to housing, and other metrics deemed appropriate.

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?
These proposals do not impact the above policies.

ORDINANCE NO C36452

An ordinance amending Ordinance No. C36345, passed by the City Council December 12, 2022, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2023, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2023, and providing it shall take effect immediately upon passage," and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2023 budget Ordinance No. C36345, as above entitled, and which passed the City Council December 12, 2022, it is necessary to make changes in the appropriations of the American Rescue Plan Fund and the Housing Local Sales Tax Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

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

The City of Spokane does ordain:

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

- 1) Increase appropriation by \$391,484 funded from the city's direct allocation of the State and Local Fiscal Recovery Fund of the American Rescue Plan Act.
- 2) Reallocate the appropriation of \$4,000,000 previously appropriated for the purpose of affordable housing.
- 3) Reallocate the appropriation of \$1,200,000 previously appropriated for the purpose of mobile medical services.
- 4) Reallocate the appropriation of \$300,000 previously appropriated for the purpose of eviction defense.
- 5) Reallocate the appropriation of \$112,587 previously appropriated for the purpose of administrative support/legal evaluation.
- 6) Reallocate the appropriation of \$120,000 previously appropriated for the purpose of a community engagement coordinator.
- A) Of the reallocated and increased appropriation, \$6,124,071 is provided solely for homelessness services.

Section 2. That in the budget of the Housing Local Sales Tax Fund, and the budget annexed thereto with reference to the Housing Local Sales Tax Fund, the following changes be made:

- 1) Increase appropriation by \$4,000,000.
- A) Of the increased appropriation \$4,000,000 is provided solely for affordable housing projects.

Section 3. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to provide appropriation authority to fund critical services and accessibilities to the community, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date