

COUNCIL AGENDA

Monday, August 1, 2022



Ellensburg City Council meetings are broadcast on Charter/Spectrum Channel 191 and available to livestream on Ellensburg Community Television at ectv2.com or on YouTube at ECTV Ellensburg. Members of the public may attend City Council meetings either in person in the City Council Chambers, 501 N Anderson Street, Ellensburg, WA 98926 or by registering to attend remotely via video conference.

The Study Session will take place in the City Council Chambers, 501 N Anderson Street, Ellensburg, WA 98926. No public comment will be accepted. The meeting is available to livestream on YouTube at ECTV Ellensburg.

To attend the city council meeting virtually register here:
https://us02web.zoom.us/webinar/register/WN_V6KLEDudSxGjHHkAnFyOhA

AMERICANS WITH DISABILITIES ACT

The City of Ellensburg strives to make our services, programs, and activities readily accessible and usable by individuals with disabilities. Reasonable accommodations will be made upon request. Please furnish the ADA Coordinator with your request in sufficient time for the City to provide a reasonable accommodation by calling the City of Ellensburg ADA Coordinator at (509) 962-7222 or email ADACoordinator@ci.ellensburg.wa.us.

COUNCIL MEETING GUIDELINES FOR PUBLIC PARTICIPATION

All City Council meetings are broadcast on Charter/Spectrum Channel 191 and available to livestream on Ellensburg Community Television at www.ectv2.com or on YouTube at ECTV Ellensburg. You may also attend by phone, only, and listen to the meeting by following the registration instructions under “Remote testimony during the meeting,” below. Once you register, you will be sent a meeting invite with a phone number for the meeting.

City Council accepts testimony or comments in person or via remote testimony under Citizen Comment on Non-Agenda Items (Item No. 7) as well as for all other topics under the Regular Agenda. Testimony or comments will be accepted in the following manner:

SUBMISSION OF WRITTEN COMMENTS

- **Written comments submitted in advance of meeting**
Submit written comments by mail to Beth Leader, City Clerk, Ellensburg City Hall, 501 N. Anderson St., Ellensburg, WA 98926, or via email to: cityclerk@ci.ellensburg.wa.us. Comments received by 5 p.m. on the meeting date will be compiled, sent to the City Council and entered into the record.
- **Comments for public hearings**
Written comments must be received by the City Clerk by 5 p.m. on the meeting date. Comments can either be mailed to Beth Leader, City Clerk, Ellensburg City Hall, 501 N. Anderson St., Ellensburg, WA 98926, or sent via email to: cityclerk@ci.ellensburg.wa.us. Comments received by 5 p.m. on the meeting date will be compiled, sent to the City Council and entered into the record.

PROCEDURE FOR REMOTE PARTICIPATION DURING MEETING

1. ***Advance registration is required to provide public comment or hearing testimony via remote meeting attendance.*** Anyone wishing to speak on items under the Agenda must register prior to 7 p.m. the day of the meeting. Register for the meeting at: https://us02web.zoom.us/webinar/register/WN_V6KLEDudSxGjJHhKAnFyOhA Once registered, you will receive an email with the meeting link and phone number (for those who wish to call into the meeting).
2. **Join the meeting early**, as you may need to download the app in advance to participate. Once you've joined the meeting, your camera and microphone will be muted until you are recognized by the Mayor to speak.
3. Please note that there may be several items on the City Council Agenda that will precede the agenda item you wish to address.
4. **The Mayor will identify the agenda item** and ask if anyone wishes to speak on the matter.
5. Any interested person may provide comments: 1) under Item 7 on non-agenda items, or 2) on any listed agenda items. If you wish to speak, you must:
 - a) **Raise your “virtual hand”** in the corner of Zoom application on the computer screen or press *9 on your phone. Raising your hand signals the moderator that you wish to speak.
 - b) **Wait to be called upon by the Mayor** using your name, e-mail, or phone number used to log in to the teleconference.
6. **Please state your name, address, and whether you are representing only yourself or others.**

PROCEDURE FOR IN-PERSON PARTICIPATION (COUNCIL CHAMBERS)

- ◆ When recognized, approach the microphone provided on the right side of the room.
- ◆ Please state your name, address, and whether you are representing only yourself or others.
- ◆ Each speaker's comments are to be limited to 3 MINUTES.
- ◆ Submit written comments to the City Clerk.
- ◆ Speakers are cautioned not to make comments of a personal, impertinent or derogatory nature.
- ◆ Speakers may not identify themselves as candidates for elective public office or make any statements which assist or discuss the campaign of a candidate for elective office or discuss or campaign for or against a ballot proposition (unless the ballot proposition is being considered as part of the City Council agenda item).

PUBLIC COMMENT RULES FOR ALL MEETING PARTICIPANTS

1. Each speaker's comments are to be limited to 3 MINUTES.
2. Speakers are cautioned not to engage in conduct that disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting.
3. Speakers may not identify themselves as candidates for elective public office or make any statements which assist or discuss the campaign of a candidate for elective office or discuss or campaign for or against a ballot proposition (unless the ballot proposition is being considered as part of the City Council agenda item).

Please note: City Council Rules provide that no action will be taken by the Council at the meeting at which a subject is first introduced during the citizen comment period (Item 7 on the Agenda). Council may consider an item at a future meeting, thus you may wish to concisely state your concern and request placement of your matter on a future agenda. Staff will follow up with speakers as necessary.

CONSENT AGENDA

Members of the audience may request items be removed from the consent agenda by asking for recognition and making the request during Agenda Approval. Items will not be removed from the consent agenda unless your request is confirmed by a councilmember.

AGENDA ITEMS

If you wish to have an item placed on a Council agenda, a written request should be delivered to the City Manager's Office prior to noon on the Monday preceding the Council meeting. Assistance will be provided in preparing a request if you wish to contact the City Clerk at (509) 925-8614.

PUBLIC HEARINGS

City Council accepts testimony or comments in person or via remote testimony on a particular subject schedule for Public Hearing. Council will consider all testimony, respond to any questions, and take action after the public hearing is closed. Testimony or comments will be accepted in the following manner:

1. When recognized,
 - If attending in the Council Chambers, approach the microphone provided on the right side of the room.
 - If attending remotely, raise your "virtual hand" in the corner of Zoom application on the computer screen or press *9 on your phone.
2. Please state your name, address, and whether you are representing only yourself or others.
3. Please limit your comments to 5 MINUTES.
4. Submit written comments to the City Clerk.

**CITY OF ELLENSBURG
COUNCIL AGENDA
Council Chambers
501 North Anderson Street
Ellensburg, WA 98926
And Virtually via Zoom
Monday, August 1, 2022
6:00 PM – Study Session
7:00 PM - Regular Meeting**

Study Session [No Public Comment]

Ellensburg Community Cultural Arts Plan (ECCAP) Update
Executive Summary ECCAP

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Pledge of Allegiance

1. Call to Order and Roll Call

2. Proclamations

3. Awards and Recognitions

4. Approval of Agenda [No Public Comment]

5. Consent Agenda [No Public Comment]

Items listed below have been distributed to Councilmembers in advance for study and will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Agenda at the request of a Councilmember or at the request of a member of the public with concurrence of a Councilmember. Requests to remove items should be made under Item 4 Approval of Agenda.

5.A Approve Minutes of July 18, 2022 Regular Meeting
[7-18-22 Regular Meeting](#)

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5.B Acknowledge Minutes of Boards and Commissions
[EBDA/CenterFuse 6-8-22](#)
[Library Board 6-14-22](#)
[Parks & Recreation Commission 6-8-22](#)
[Planning Commission 5-12-22](#)
[Planning Commission 6-9-22](#)
[Public Transit Advisory Committee 5-21-22](#)
[Senior Citizen Advisory Commission 5-10-22](#)
[Senior Citizen Advisory Commission 6-14-22](#)
[Utility Advisory Committee 6-16-22](#)

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5.C	WWTF Roof and HVAC Replacement Project Acceptance	31
5.D	City Obligation for Kachess Dam Safety Modifications Kachess Dam Safety Repayment Contract	33
5.E	Approve Voucher Listing for August 1, 2022 8-1-22 Voucher Listing	59
6.	Petitions, Protests, and Communications	
6.A	Community Recreation Center and Field House Facility Discussion [Public Comment Opportunity]	60
7.	Citizen Comment on Non-agenda Issues	
8.	Business Requiring Public Hearings	
9.	Introduction and Adoption of Ordinances and Resolutions	
9.A	Second Reading of Ordinance 4892 Eliminating Requirement for Extension of Natural Gas Mains in Residential Subdivisions [Public Comment Opportunity] Ordinance 4892 - Natural Gas Infrastructure	62
9.B	Second Reading of Ordinance 4893 Approving Rezone Request P22-012 submitted by DNR Jensen Rentals, LLC, Property Owner [No Public Comment] Ordinance 4893	67
9.C	Second Reading of Ordinance 4894 Approving Rezone Request P22-015 Submitted by Matt Stalder, Agent for D & D Investment Group, Property Owner [No Public Comment] Ordinance 4894	72
10.	Unfinished Business	
11.	New Business	
11.A	2022 Second Quarter Financial Status and Investment Reports 2nd Quarter 2022 Financial Status Report [Public Comment Opportunity] Investment Report 2022 June	77
11.B	Affordable Housing Agreement Between City of Ellensburg and Stalder Interests, Inc. for 1st and Pine Street Properties [Public Comment Opportunity] Ellensburg - Stalder Interests Affordable Housing Agreement	93
11.C	Employment Agreement with Jamey Ayling for Community Development Director Position [Public Comment Opportunity] Employment Agreement Ayling 8-01-2022	148

12. Miscellaneous

12.A Manager's Report [No Public Comment]
[8-6-22 Manager's Report](#)

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12.B Councilmembers' Reports [No Public Comment]

13. Executive Session

14. Adjournment

Next Ord. 4895
Next Res. 2022-27



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 1, 2022

Item Title/Agenda Subject: Ellensburg Community Cultural Arts Plan (ECCAP) Update

Submitted by: Heidi Behrends Cerniwey City Manager Department

Recommended Action or Motion: This item is for discussion purposes only.

Background/Summary: In December of 2021, The City of Ellensburg (Ellensburg Arts Commission), the Ellensburg Downtown Association, Kittitas County Chamber of Commerce, Central Washington University, CenterFuse, and the Laughing Horse Arts Foundation affiliate organizations, along with members of the Ellensburg School District, invested in strategic planning to develop a comprehensive vision for the next 5-10 years for the arts and culture in Ellensburg. In this study session, the ECCAP team will walk through the process, the plan, the benefits for Ellensburg and the community at large, and speak to what is next in our implementation phase and opportunities for all stakeholders to build a thriving community that is driven by the creative arts cluster.

Previous Council Action: Ellensburg City Council approved the Arts Commission spending plan to contribute \$13,000 in Art Acquisition Fund reserves to the Ellensburg Community Cultural Arts Plan (ECCAP) development in 2021.

Analysis: N/A

Financial Impact: This item is for discussion purposes only.

Attachments:
[Executive Summary ECCAP](#)

Our Community Vision	Our Practical Framework	Our Obstacles	Our Strategic Directions
By 2032, as a result of arts and culture:	Three years from now, as a result of our efforts, we will see in place:	We recognize that we are blocked from our vision by:	We will address our contradictions and advance our vision by:
Ellensburg is a place where artists can live, work, and thrive. Ellensburg is an art-forward community bringing in new tourism and economic development. Ellensburg is a nationally recognized destination to experience, create, and participate in every aspect of artistic and cultural expression. Ellensburg has artist-led innovation in government, business, and placemaking. Ellensburg is a hub for providing lifelong arts education. Ellensburg has dedicated affordable space for innovation & creation within our community. Ellensburg provides spaces where everyone (residents, visitors, artists) has access to different art experiences and participation opportunities. Ellensburg is a diverse and inclusive community.	Resources to support professional artists and art businesses Focused commitment to youth arts education through partnerships Affordable artist housing zone Dedicated, funded position supporting arts Diverse cultural representation in leadership Completed, approved Feasibility Study for a PAC and Cultural Center Regional destination event State creative district designation and a recognized artistic brand Unity Park as an established asset for the arts	Values and priorities for different groups that are not aligned Unclear ways of talking about what we're doing Fragmented sense of identity that doesn't include the arts Entrenched structures that are hard to dislodge Widespread reluctance to step into leadership Self reinforcing structures & siloes Absence of structure to fill and retain our pipeline	Expanding Partnerships & Meaningful Connections Positioning Artists to Thrive Determining & Developing Resources for the Arts Communicating the Vision for a Thriving Arts Community
Synthesized from three community sessions, April 2022	Cultural Strategic Plan developed May 2022	By Ellensburg Arts Leadership Team	Facilitated by Una McAlinden, Creative Strategy Solutions



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of City Council, Regular Meeting

July 18, 2022

7:00 PM

**Council Chambers 501 North Anderson Street
Ellensburg, WA 98926
and remotely via Zoom**

Pledge of Allegiance

The Pledge of Allegiance was led by Councilmember David Miller

1. Call to Order and Roll Call

Roll Call Present: Rich Elliott, Nancy Goodloe, Nancy Lillquist, David Miller, Monica Miller (present remotely), Bruce Tabb, Adam Winn

Others present in person: City Manager Behrends Cerniwey, City Attorney Weiner, City Clerk Leader, Executive Assistant Gigstead, IT & Telecomm Manager Faubion, Public Works & Utilities Director Lyyski, Stormwater Manager Morrow, Assistant City Attorney Reiman and Power & Gas Manager Stanavich

Others present remotely via Zoom: Interim Community Development Director Ayling and four members of the public

2. Proclamations

3. Awards and Recognitions

4. Approval of Agenda

Councilmember Elliott moved to Approve the Agenda as presented. **Motion Approved 7-0.**

5. Consent Agenda

5.A. Approve Minutes of July 5, 2022 Regular Meeting

5.B. Approve Minutes of July 5, 2022 Joint Study Session

5.C. Acknowledge Minutes of Boards and Commissions

5.D. Award Bid Call 2022-12 - Rotary Park Field Light Installation

5.E. Latecomer and Reimbursement Agreement (Kittitas County Solid Waste) for Water/Sewer Oversizing on State Route 97 and Green Avenue

5.F. Acknowledge Designation of the CWU Representative on the Utility Advisory Committee.

5.G. Approve July 18, 2022 Voucher Listing

Councilmember Elliott moved to Approve the Consent Agenda as presented. **Motion Approved 7-0.**

6. Petitions, Protests, and Communications

7. Citizen Comment on Non-agenda Issues

Pat Kelleher, 6530 Wilson Creek Rd, spoke regarding posting of information to “Be Heard Eburg” on the City website and parking options for the Unity Park plan.

8. Business Requiring Public Hearings

8.A. Rezone Application P22-012, Submitted by DNR Jensen Rentals, LLC, Property Owner – Closed Record Hearing (quasi-judicial); and First Reading of an Ordinance Approving Rezone Application P22-012

The Mayor opened the public hearing. Jamey Ayling, Interim Community Development Director, presented information in the staff report.

Matthew Sweeny, applicant representative, commended City of Ellensburg Planning staff.

With no further comments or questions from the public or Council, the Mayor closed the public hearing.

Councilmember Tabb moved to Approve rezone request P22- 012 from Residential Suburban to Commercial Highway zoning, and adopt the Hearing Examiner’s Findings of Fact, Conclusions of Law, and Decision and Conditions of Approval. **Motion Approved 7-0.**

Councilmember Elliott moved to Approve conducting first reading of Ordinance 4893. **Motion Approved 7-0.**

8.B. Rezone Application P22-015, Submitted by Matt Stalder, Agent for D & D Investment Group, Property Owner – Closed Record Hearing (quasi-judicial); and First Reading of Ordinance 4894 Approving Rezone Application P22-015

The Mayor opened the public hearing. Jamey Ayling, Interim Community Development Director, presented information in the staff report.

With no questions or comments from the public or Council, the Mayor closed the public hearing.

Councilmember Tabb moved to Approve rezone request P22-015 from split zoning of Residential Suburban and Residential Medium to Residential Medium zoning, and adopt

the Hearing Examiner's corrected Findings of Fact, Conclusions of Law, and Decision and Conditions of Approval found in exhibit 1. **Motion Approved 7-0.**

Councilmember Elliott moved to Approve conducting first reading of Ordinance 4894. **Motion Approved 7-0.**

9. Introduction and Adoption of Ordinances and Resolutions

9.A. Ordinance Eliminating Requirement for Extension of Natural Gas Mains in Residential Subdivisions

Buddy Stanavich, Power and Gas Manager, presented information in the staff report. He presented information on the history of the gas utility. Council asked questions of staff.

Councilmember Tabb moved to Approve conducting first reading of Ordinance 4892. **Motion Approved 5-2.**

10. Unfinished Business

10.A. Gateway 1 Stormwater Retro-fit Bid Award and Acceptance, Bid Call 2022-09 Jon Morrow, Stormwater Manager, presented information in the staff report.

Councilmember Elliott moved to Approve bid award to Rotschy Inc. for Bid Call 2022-09 in the amount of \$6,682,449.56 and approve the necessary budget adjustments. **Motion Approved 7-0.**

10.B. Ad Hoc Committee on Homelessness Recommendation for Establishment of Year-round Overnight Sleep Center in Ellensburg/Kittitas County

City Manager, Heidi Behrends Cerniwey, presented information and background in the staff report.

Councilmember Tabb moved to Approve directing staff to move forward with development of a sleep center for people experiencing homelessness in collaboration with community partners and the County. **Motion Approved 7-0.**

10.C. Ellensburg Broadband Mapping and Strategic Plan Adoption

Ben Faubion, IT & Telecomm Manager, presented information in the staff report.

Councilmember Tabb moved to Approve adopting the Broadband Mapping & Strategic Plan as presented. **Motion Approved 7-0.**

11. New Business

11.A. Annual Comprehensive Plan Amendment Docket

Jamey Ayling, Interim Community Development Director, presented information in the staff report. He reviewed each of the submitted amendments for docketing. Council asked questions of staff.

Councilmember David Miller moved to Approve docketing proposals 22-01 through 22-05 in the Annual 2022 Comprehensive Plan Amendment Process. **Motion Approved 7-0.**

12. Miscellaneous

12.A. Manager's Report

The City Manager reviewed the report. It was requested of Council to set two public hearings for surplus of city property at the August 1, 2022 meeting.

Councilmember Elliott moved to Approve set two public hearings for August 1, 2022 for boundary line adjustments and surplus of city owned property with Solar Dolar and property at 1st Avenue and Pine Street for affordable housing. **Motion Approved 7-0.**

Councilmember Elliott moved to Approve designating Councilmember Monica Miller as Council representative for the Reed Park Master Plan stakeholder group. **Motion Approved 7-0.**

The City Manager reviewed the draft Process for Appointment for Position 4 council applicants.

Councilmember Elliott moved to Approve the submitted process for Council Position 4 and set a special meeting for September 12, 2022 at 6:00 pm. **Motion Approved 7-0.**

12.B. Councilmembers' Reports

- Councilmember Elliott attended the Planning Commission, EBDA/CenterFuse and reported on behavioral health issues in the community
- Councilmember Goodloe reported on the DEI commission
- Councilmember Monica Miller attended the Senior Citizens Advisory Commission, Library Board and Parks and Recreation Commission meetings
- Mayor Lillquist reported on Yakima Basin Fish and Wildlife Recovery Board grant funding and reminded Council of the TIP Strategies meeting on Wednesday, July 20, 2022 at 5:30 pm.

13. Executive Session

14. Adjournment

Meeting adjourned at 9:13 pm

Mayor

ATTEST:

City Clerk



Centerfuse

Ellensburg Business Development Authority
BOARD OF DIRECTORS MEETING MINUTES
Regular meeting held synchronously in-person and virtually
Wednesday, June 8, 2022
4:00-5:30 PM

Members in Attendance: Garrett Poshusta, Chair; Grant Clark, Treasurer; Del Bankston, Secretary; John Perrie, Board Member; Jennifer Lubanski, Board Member; and Jared Vallejo, Board Member

Excused: Andreas Bohman, Vice Chair; Bob Rapp, Board Member; and James Jankowski, Board Member

Others present: Rich Elliott, Ellensburg City Council liaison; and Margaret Reich, Executive Director. CWU Cat Tank team Miguel Gomez, Rob Ogburn and Lauren Odette joined at 5 PM.

1. Meeting Called To Order

Meeting was called to order at 4:00 PM

2. Approval of Agenda

Motion to approve the meeting's agenda by Del Bankston, second by Grant Clark. Motion approved by unanimous vote.

3. Approval of Minutes

Motion to approve May 2022 regular meeting minutes by Grant Clark, second by Del Bankston. Motion approved by unanimous vote.

4. Board Business

a. Organizational Effectiveness

Grant Clark, Treasurer presented the financial reports, and discussed the Solarity CD maturing 6/14. Executive Director Reich requested Council member Elliott provide information on the city's economic development fund activity.

Executive Director Reich confirmed the two tenants at the airport have agreed to sign new leases, sign a transitional occupancy agreement, and switch units effective July 1, 2022. The water main in the park strip outside unit #1 needs to be lowered to facilitate access to the north bay door. Executive Director Reich secured a quote from the city in the amount of \$2,892.40 to lower the water utilities. The County and CenterFuse could cost share this expense.



Motion to approve expenditure of 50% of the cost to lower utilities at the EBDA Airport Business Park, 3110 N. Airport, by Jared Vallejo, second by Del Bankston. Motion approved by unanimous vote.

Executive Director Reich shared received a staffing study proposal from 501 Commons. Board members discussed the distinction between performing the staffing study internally versus getting an external validation. Board directed staff to have another conversation with 501 Commons, locate an existing job description for a possible additional position and connect with CWU student who is interested in working with CenterFuse this summer.

b. Build Local Capacity

Board member Lubanski shared information about the Creative District implementation phase. Executive Director Reich spoke about the progress on the Washington Commerce Building for the Arts grant. TIP Strategies is planning a meeting for July 20th.

c. Marketing

The board Marketing Advisors met to discuss which analytics would be meaningful to share with the board. A sample was provided.

d. Business Recruiting

Members of the CWU Cat Tank planning team, Miguel, Lauren and Rob, joined the board to provide feedback on what worked and what we might work on together next year.

5. **For the good of the order**

Chair Poshusta talked about community interest in a retail maker's space.

6. **Adjournment** – time 5:40 Motion to adjourn by Del Bankston

Drafted: 6/13/2022

Approved: *Del Bankston*

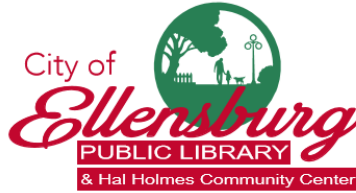
Submitted by: Margaret Reich

CITY OF ELLENSBURG

Date of Meeting:

Time of Meeting:

Place of Meeting:



LIBRARY BOARD

June 14, 2022

4:30 p.m.

Council Conference
Room/ZOOM

Marty Blackson, Chair, term expires December 31, 2022

Loretta Gray, Secretary, term expires December 31, 2022

Mary Holmgren, term expires December 31, 2026

Andreina Delgado, term expires December 31, 2023

Julie Cloninger, term expires December 31, 2024

Andrea Sledge, term expires December 31, 2026

Mary James, term expires December 31, 2022

I. CALL TO ORDER

Chair Blackson called the meeting to order at 4:32 pm

II. ATTENDANCE

PRESENT: Marty Blackson, Andreina Delgado, Loretta Gray, Mary Holmgren, Mary James, Andrea Sledge

COUNCIL LIASON: None

ABSENT: Julie Cloninger

VISITOR: None

STAFF: Josephine Camarillo and Sue Hart

III. APPROVAL OF AGENDA

Motion made by Mary Holmgren to approve the agenda, seconded by Mary James, **motion approved.**

IV. APPROVAL OF MINUTES

Motion made by Mary James to approve the May minutes, seconded by Mary Holmgren, **motion approved.**

V. CORRESPONDENCE AND CITIZEN COMMENTS

None

VI. REPORTS

A. Director's Report: (1) The director attended the Washington State Libraries (WSL) Diversity, Equity, and Inclusion symposium. (2) Aimee Nezhukumathathi provided a kids poetry workshop. (3) The Summer Reading Program will be starting, with the theme "Oceans of Possibilities." (4) Adjustments to the collection and circulation statistics were discussed. (5) Hal Homes continues to be busy (55 events).

B. Budget Report: The Library budget is doing as expected.

C. Friends of the Library Report: The semi-annual book sale was successful, with record sales.

VII. UNFINISHED BUSINESS

A. City Attorney reviewed Collection Development Policy and proposed combining Policy and Censorship and Reconsideration of Library Materials documents into one. Josephine will create a new draft incorporating both documents and send to Board for review.

VIII. NEW BUSINESS

A. Sue Hart presented the Summer Reading Program [SRP]. Theme this summer is Oceans of Possibilities.

IX. UPCOMING PROGRAMS

For June, the following are scheduled: (1) Library Club meeting, (2) Friends of the Library meeting, (3) Summer Reading Program Kick-Off, (4) Children's Storytime, (5) Hillia Hula at Mt. View Park

X. UNSCHEDULED BUSINESS

None

XI. NEXT MEETING

July 12, 2022

XII. ADJOURNMENT

With no further discussion, meeting adjourned.

Respectfully submitted,
Loretta Gray, Secretary



Parks & Recreation Advisory Commission Meeting Minutes – June 8, 2022

DATE OF MEETING: June 8, 2022
MEMBERS PRESENT: Laci Harrison, Ali Brown, Fiona Corner, KT Kelleher, Nick Zentner, Jackie Adams
OTHERS PRESENT: Parks & Recreation Director Case, City Manager Behrends Cerniwey, Council Liaison Monica Miller, Brian Bishop, Walker Macy Landscape Architects, Jen Montessor, Walker Macy Landscape Architects, Mark Johnson, Signal Architecture, Nikki Watanabe, Signal Architecture
LOCATION: Meeting was held in the City Council Chambers and Remotely

CALL TO ORDER – Director Case called the meeting to order at 7:25pm after a 25-minute delay due to remote meeting connectivity issues. Commission Chair Harrison was on the call however due to an illness was unable to chair the meeting and the Commission is currently without a Vice Chair.

MEETING MINUTES - The meeting minutes from the May 11, 2022 meeting were approved. ***All in favor.***

NEW BUSINESS – Unity Park Concept Plan & Vision Statement Review – Brian Bishop Walker|Macy – Mr. Bishop provided the Commission with information related to the following:

- Project timeline & next steps
- Park site information which included scale comparisons to other downtown parks located throughout the Pacific Northwest, climatic issues such as wind and sun and how those effect park design and use
- Key design program & features that are believed to be known. These elements include a comfort station, event infrastructure upgrades, plaza/seating areas, interactive water feature, flexible lawn/soft surface area, and art.
- Previous work Walker Macy performed on the park plan in 2018/19
- Information shared with Walker Macy at the May 6th stakeholders meeting that was different than what we heard in 2018/19. This would include the desire for a permanent, not temporary stage, removal of the existing building (former Wells Fargo bank), and that Pearl Street will remain open to vehicles and not changed into a pedestrian zone.
- Laid out specific design principles which will serve as the guiding vision throughout park design and development:
 - Be the central space for Ellensburg's daily gatherings and special events.
 - Feel open, inclusive, and welcoming to residents and visitors alike.
 - Support a flexible range of event types and sizes.
 - Extend the draw of downtown Ellensburg visitors and across four seasons.
 - Be 'of Ellensburg'
- Reviewed park plan concepts 'A' & 'B'
- Discussed key features which is an attempt to drill down and be more specific about things like the water feature, does the community want a splash pad or something like a water sculpture.
- A discussion about what 'Of Ellensburg' means to you?

Comments, feedback, and questions from the Commission:

- Questions about stage in Concept B – northwest corner of the park
- Comment about location of water feature in Concept A
- Unity Park should be peaceful and tranquil, not a place you would have a sprayground at
- There were comments and questions about a sprayground spray to waste or recirculation system
- A comment was made about the feasibility of placing solar on the sunshades
- Fixed vs rotating art pieces
- The discussions of what 'Of Ellensburg' means to Commission members included:
 - Geology and the use of materials like basalt
 - Valleys, mountains, the gorge
 - Sustainability, reusing, recycling
 - Rodeo, Ellensburg Blue
 - Central concept; center of the state and home to Central Washington University
 - Ellensburg is the heart of Washington

OLD BUSINESS – Whitfield Triangle Surplus Update – City staff from the Community Development Department and Parks & Recreation Department met with some of the Whitfield Triangle neighbors on May 26th to discuss the potential surplus of Whitfield and to ascertain their concerns about a potential surplus and to share staff's development recommendation if the site were to remain in city ownership. The issues will be brought back to Council at a future meeting with the request that they provide staff with direction on next steps.

ITEMS FOR JULY 13, 2022 MEETING

Unity Park updates if available.

STAFF REPORT 1. The Rotary Park field lights installation project will be out to bid in the upcoming weeks. The addition of field lights will benefit local organizations that use the park as well as tournaments that are hosted out at the park. 2. Palouse to Cascade Reconnection Route trail work is scheduled to begin in early June. This section of the trail will go from the intersection of 14th & Alder to the PTC trailhead at the Events Center. 3. On May 16, 2022 the City Council held a study session to discuss indoor recreational needs of the community, specifically the need for a community recreation center, a fieldhouse, and if we should keep any of the four existing recreational facilities. The outcome of the discussion was to have staff begin researching the options of community recreation center and fieldhouse.

Meeting adjourned at 8:45pm.



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes Planning Commission, Regular Meeting

May 12, 2022

5:45 PM

Council Chambers 501 North Anderson Street

Ellensburg, WA 98926

And remotely via Zoom

1. Call to Order and Roll Call

Roll Call Present In-Person: Fred Padjen, Beverly Heckart, Ed Harrel

Roll Call Present-Via Zoom: , Sathy Rajendran, Geraldine O'Mahony

Absent: Sigrid Davison (excused), George Bottcher

Also present: Jamey Ayling, Interim Community Development Director; Rich Elliott, Council Liaison

2. Approval of Agenda

Commissioner Heckart moved to Approve the Agenda as amended. **Motion Approved 5-0.**

3. Approval of the Minutes

3.A. Approve Minutes of the April 14, 2022 Regular Meeting

Commissioner Heckart moved to Approve the Minutes with the corrections noted. **Motion Approved 5-0.**

4. New Business

- a. Discussion on prioritized Housing Action Plan Strategies – ADU Construction
Director Ayling provided a description of the existing Accessory Dwelling Unit standards and an explanation of achieving implementation strategies of the Housing Action Plan through the encouragement of ADUs. Ayling shared with the commission the idea of the city providing pre-approved ADU plans similar to the City of Lacey and their preapproved drawing program.
Commissioners discussed options of size minimums and maximums for ADUs and whether they were necessary. Ayling committed to taking the commissioners comments and producing a clean version of ADU standards to bring back for review at the next meeting.
- b. Review the Land Use Chapter for potential Comp Plan Update
Director Ayling presented the land use chapter of the comp plan checking with the commission to see if there were any portions of the chapter that the commission

would suggest for a docket request. The Commission didn't have any additional items specific to be docketed.

5. Unfinished Business

6. Citizen Comment

- 7. Staff Update** Director Ayling provided Commissioner Heckart with a gift for her 12 years of dedication to the commission and thanked her for her service on the Commission. Ayling provided an overview of the process to fill the vacancy created on the Planning Commission with Beverly's expiring term.

8. Commission Representative Update

- 9. Adjournment** Chairman Padjen adjourned the meeting at 6:38 p.m.



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes Planning Commission, Regular Meeting

June 9, 2022

5:45 PM

Council Chambers 501 North Anderson Street

Ellensburg, WA 98926

And remotely via Zoom

1. Call to Order and Roll Call

Roll Call Present In-Person: Fred Padjen, George Bottcher

Roll Call Present-Via Zoom: Sathy Rajendran, Sigrid Davison, Beverly Heckart, Ed Harrel

Absent: Geraldine O'Mahony

Also present: Jamey Ayling, Interim Community Development Director; Rich Elliott, Council Liaison, Rose Mary Meyer, League of Women's Voters (Observer)

2. Approval of Agenda

Commissioner Harrel moved to Approve the Agenda. **Motion Approved 6-0.**

3. Approval of the Minutes

3.A. Table Approval of Minutes of the May 12, 2022, Regular Meeting

4. New Business

- a. Discussion on prioritized Housing Action Plan Strategies – ADU Construction
Director Ayling provided a description of the existing Accessory Dwelling Unit standards and an explanation of achieving implementation strategies of the Housing Action Plan through the encouragement of ADUs. Chair Padjen opened up the floor for discussion of 15.540.40 revised version. Discussion ensued. Elliott spoke on fire, life, and safety regulations. Commissioner Bottcher made a motion to accept City Code 15.540.040 Accessory Dwelling Unit standards as revised. Discussion open.
Motion Approved 6-0.

- b. The Shoreline Master Program is required to be updated in 2022. Ayling reported he is working with the Department of Ecology in a combined process. An open house is scheduled for next week. Ayling shared the process.

5. Unfinished Business

6. Citizen Comment

7. **Staff Update** Director Ayling updated the Planning Commission that July 15th there will be a Public Hearing for a Conditional Use Permit of storage units. Ayling reported

Affordable Housing Committee approval of pre-approved plan sets for Accessory Dwelling Units. The Planning Commission has not filled the vacancy.

8. **Commission Representative Update**

9. **Adjournment** Chairman Padjen adjourned the meeting at 6:52 p.m.

PUBLIC TRANSIT ADVISORY COMMITTEE MEETING MINUTES

City of Ellensburg
Date & Time of Meeting
Place of Meeting

Minutes of PTAC Meeting
May 21, 2022 3:30 PM
Hybrid Meeting

1. Call to Order and Roll Call

Roll Call Present: Bruce Tabb, Christopher King, Josh Hackney, Joey Bryant, Adan Mendoza

Roll Call Absent: Yngrid Winter, Bob Mersinger

Also Present: Betsy Dunbar — COE, Ryan Lyyski – COE, Lisa LaPorte – HopeSource, Spencer Klewin - HopeSource

2. Approval of Agenda

- Motion by Josh Hackney to approve the April 19, 2022 PTAC Meeting Agenda.
Motion Affirmed by all.

3. Follow Up Items

- Joey Bryant will request the sustainability survey results.
- Betsy will follow up with Josephine regarding the committee's question about working with CWU's Arts Commission.

4. Ridership Stats

- April 2022 ridership stats were shared for all transportation services.

5. Agenda Items

- The Public Transit Operating Extension and Amendment Agreement was reviewed by the committee. A motion was made by Joey Bryant to recommend the City Council approve the Public Transit Operating Extension and Amendment Agreement.
Motion Affirmed by all.
- The Paratransit Operating Extension and Amendment Agreement was reviewed by the committee. A motion made by Joey Bryant to recommend the City Council approve the Paratransit Operating Extension and Amendment Agreement.
Motion Affirmed by all.

6. Transit Marketing Updates

- The Central Transit Marketing Plan accomplishments were reviewed. It was recommended to use the City's Public Information Officer, Nicole to assist with additional social media posts.

PUBLIC TRANSIT ADVISORY COMMITTEE MEETING MINUTES

7. Marketing Updates

- Joey Bryant will let us know when the next Parent/Student Orientation will occur in order to participate.
- Central Transit will be participating in Bike to Renslow event.
- Bruce Tabb suggested we reach out to FISH to see how Central Transit can help more people access their services.

8. Transit Updates:

- After the Enhanced Cabulance discussion, it was determined to have another meeting with all parties to discuss additional concerns.

9. Approval of Minutes

- Motion by Josh Hackney made to approve the minutes of the April 19, 2022 PTAC Meeting. **Motion Affirmed by all**

10. Next PTAC Meeting:

The next regular PTAC meeting will be held on June 21, 2022.

11. Adjournment:

With no further discussion, the meeting was adjourned at 4:58 p.m.

Betsy Dunbar

Drafted: 5-22-2022

Approved: 7-19-22



CITY OF ELLENSBURG

Minutes of Senior Citizens Advisory Committee

May 10, 2022

1:00 PM

Date of Meeting

Time of Meeting

Place of Meeting

**City Hall Council Conference Room and
Zoom**

Roll Call Present: Wendy-Jean Fischer, Edward Bracken, Marcia Hedrick, Mildred Miller, Ed Sendelbach

1. CALL TO ORDER

1:00 pm call to order

2. ROLL CALL

3. APPROVAL OF MINUTES

Councilmember Wendy-Jean Fischer moved to . **Motion 5-0.**

3.A. April 2022 Minutes

4. CITIZEN COMMENT ON NON-AGENDA ITEMS

Wendy-Jean Fischer asked how the camera installation progress is going.

5. OLD BUSINESS

Open house: Commission stated that it was disappointing to not have anyone attend. Maybe another attempt with adding a barbeque during the summer.

6. NEW BUSINESS

7. COMMISSION MEMBERS REPORTS/OTHER BUSINESS

7.A. AAC April Budget

8. STAFF REPORTS

- April Daily Check in's: 704
- April New/Renew Users: 15

April daily check in's: 704 (March 66)

April new/renew users: 15 (March 19)

Cancelled the Tea Room and Mariner's Game due to lack of participants. Stay tuned for future trips and possible cancellations.

8.A. AAC Survey

No additional comments on the satisfaction survey.

9. ADJOURNMENT

- Next Senior Advisory Commission Meeting Tuesday, June 14, 2022 in the City Hall Council Conference Room

1:36 pm adjournment

Councilmember Wendy-Jean Fischer moved to 1:36 pm adjournment . **Motion 5-0.**



CITY OF ELLENSBURG

**Minutes of Senior Citizens Advisory
Committee
June 14, 2022
1:00 PM
Adult Activity Center and Zoom**

**Date of Meeting
Time of Meeting
Place of Meeting**

Roll Call Present: Wendy-Jean Fischer, Mildred Miller, Ed Sendelbach

Absent: Edward Bracken, Marcia Hedrick

1. CALL TO ORDER

There was no meeting held due to lack of a quorum.

2. ROLL CALL

3. APPROVAL OF MINUTES

3.A. May 2022 Meeting Minutes

4. CITIZEN COMMENT ON NON-AGENDA ITEMS

5. OLD BUSINESS

6. NEW BUSINESS

- Senior Citizen Advisory Commission Nomination
 - Chair
 - Vice Chair

7. COMMISSION MEMBERS REPORTS/OTHER BUSINESS

7.A. AAC May 2022 Budget

8. STAFF REPORTS

- May Daily Check In's: 596
- May New/Renew Users: 34

8.A. Joint Study Session with the City Council

9. ADJOURNMENT

- Next Senior Advisory Commission Meeting Tuesday, July 12, 2022 in the City Hall Council Conference Room



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Utility Advisory Committee

June 16, 2022

3:30 PM

Council Chambers

1. CALL TO ORDER

Chairperson Goodloe called the meeting to order at 3:30 pm.

2. ROLL CALL

Members present: Nancy Goodloe, Chair; Ed Barry, Vice Chair; Nancy Lillquist, City Council; Nate Sitton, City Utility Customer; Shane Scott, CWU; Bryan Clark, KITTCOM. Jim Goeben, Telecom Customer.

Also present: Ryan Lyyski, Public Works & Utilities Director; Darren Larsen, Assistant Utilities Director; Kim Bowie, Operations Analyst; Darin Yusi, Gas Engineer; Terry Weiner, City Attorney; Buddy Stanavich, Power & Gas Manager; Ben Faubion, IT, Heidi Behrends Cerniwey, City Manager; Jon Morrow, Stormwater Manager; Derek Mayo, Engineering Services Manager; Julie Coppock, Rate Analyst.

One member of the public and others present remotely via Zoom.

3. APPROVAL OF MINUTES

3.A. Approve minutes - May 19, 2022 regular meeting minutes

Committee member Barry moved to approve the minutes. **Motion approved. 6-0**

4. APPROVAL OF CONSENT AGENDA

No items.

5. CORRESPONDENCE AND CITIZEN COMMENTS ON NON-AGENDA ITEMS

Fred Padjen requested utility staff seek to use methane recovery fuel created by the Wastewater Treatment Plant onsite instead of putting it into the gas distribution network.

6. TELECOMMUNICATIONS UTILITY DISCUSSION ITEMS

6.A. Telecommunications Issues and Updates

Ben Faubion gave an update on telecommunications.

6.B. Ellensburg Broadband Mapping and Strategic Plan

Nancy Lillquist moved to forward a favorable recommendation to City Council to accept the Ellensburg Broadband Mapping and Strategic Plan and staff continue to evaluate the status of broadband development. **Motion approved. 6-0**

7. ELECTRIC, NATURAL GAS, WATER, WASTEWATER, STORMWATER UTILITY DISCUSSION ITEMS

7.A. Residential Natural Gas Extension Policy Review

Buddy Stanavich, Power & Gas Manager presented a timeline of the City of Ellensburg's natural gas utility.

Shane Scott left the meeting at 4:45 pm

Nancy Lillquist moved to forward a favorable recommendation to City Council to rescind the ordinance passed in 2014 that requires natural gas extension to new developments. **Motion approved. 3-1 (Sitton opposed).**

8. INFORMATIONAL ITEMS

8.A. Public Works & Utilities Issues and Updates

Staff shared key points on departmental issues and updates.

9. NEXT MEETING

9.A. July 21, 2022 at 3:30 pm

10. ADJOURNMENT

With no further discussion, the meeting adjourned at 5:07 pm.

Kim Bowie

Recording Secretary

Drafted: 6/17/2022

Approved: 7/21/2022



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 1, 2022

Item Title/Agenda Subject: WWTF Roof and HVAC Replacement Project Acceptance

Submitted by: Mike Helgeson Public Works & Utilities

Recommended Action or Motion: Staff is recommending that City Council accept the WWTF Roof and HVAC Replacement Project as complete.

Background/Summary: Staff realized an imminent need for the replacement of the roof of the administration building at the Wastewater Treatment Facility (WWTF). Shortly thereafter, staff discovered that the HVAC unit that provides temperature control for the laboratory, which is inside the administrative building, was failing and also in need of replacement. Staff therefore went out to bid for both projects in one bid call (2021-09) because the HVAC unit is a rooftop unit.

The City of Ellensburg solicited bids (Bid Call 2021-09), with bids being due July 1st, 2021. The City received one bid that was deemed Non-Responsive due to errors made in the unit pricing. Because no bids were received, staff was able to negotiate a contract with MBI Construction Services to complete the work as outlined in Bid Call 2021-09.

Work on the Wastewater Treatment Facility (WWTF) Roof and HVAC Replacement Project is complete. City staff recommends that City Council accept both projects as complete.

The UAC, at its July 21, 2022 meeting, forwarded a favorable recommendation to Council to accept the WWTF Roof and HVAC Replacement Project as complete.

Previous Council Action: At the July 19, 2021 City Council meeting, pursuant to RCW 35.23.352(1), Council adopted Resolution 2021-22, rejecting the single bid received for Bid Call 2021-09.

At the August 16, 2021 City Council meeting, Council approved award of the contract to MBI Construction Services Inc. for the

WWTF Roof and HVAC Replacement Projects. (Project #21-066 & 21-067)

Analysis:

Staff drafted a Memo of Understanding with MBI to signify that the work would be completed as outlined in Bid Call 2021-09. The contract that was awarded to MBI by City Council was for \$160,981.45. Three change orders were executed with MBI during the project:

1. Due to long and unanticipated lead times that would have made it impossible to complete the roof before winter. An alternate supplier of roofing material was used with a significantly shorter lead time, but at a higher price.
2. Due to the discovery of dry rot on the pedestal supporting the exhaust fan for the Laboratory, a change order was executed to remove the fan, rebuild the curb, and re-install the fan.
3. Due to a mistake made by the supplier of the HVAC unit, alterations needed to be made in the wiring to incorporate the new unit. All costs associated with this change order were incurred by MBI and the supplier of the unit and no costs to the City.

The increase to the contract due to these change orders was \$9,749.00 for a total contract amount of \$170,730.45.

Financial Impact:

There was \$60,000 budgeted in 2022 for the WWTF Admin Building Roof Project. Staff requested to move that amount into the 2021 budget with a supplemental appropriation of \$34,000. Staff also requested a supplemental appropriation of \$68,000 for the replacement of the HVAC unit. Council approved these requests in conjunction with the award of the contract at the August 16, 2021 meeting.

Staff requested and Council approved a carry forward in the amount of \$85,080.02 from 2021 to 2022 to pay the remainder of the contract.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 1, 2022

Item Title/Agenda Subject: City Obligation for Kachess Dam Safety Modifications

Submitted by: Ryan Lyyski Public Works & Utilities

Recommended Action or Motion: Authorize the Mayor to sign the attached Pay as you Go contract with Bureau of Reclamation for repairs at Kachess Dam.

Background/Summary: Part of the City's water portfolio includes a 6,000 acre foot surface water right obtained through the United States Bureau of Reclamation. The water right obligates the City and other users to participate in maintenance and repairs on the Yakima River storage and conveyance system. The Bureau of Reclamation needs to make repairs on Kachess Dam and has prepared the attached agreement for the City to sign as the City's obligation on the project.

Previous Council Action: N/A

Analysis: The Bureau's work schedule anticipates construction during the years of 2023-2027. The proposed repayment schedule is estimated; however, and is subject to change. The agreement is set up so that the City will not be paying interest on the construction as long as the City makes the annual payments.

At their July 21, 2022 meeting, the Utility Advisory Committee forwarded a favorable recommendation to City Council authorizing the Pay as you Go contract with Bureau of Reclamation for repairs at Kachess Dam.

Financial Impact: The City's portion of the work will be budgeted in upcoming Water Division budgets. These amounts have also been included in the Cost of Service Analysis that has recently been performed for the City. The City's anticipated annual payments are as follows:

September 1, 2023 \$56,542

September 1, 2024 \$92,524

September 1, 2025 \$11,308
September 1, 2026 \$5,997
September 1, 2027 \$4,969

Attachments:

[Kachess Dam Safety Repayment Contract](#)



United States Department of the Interior

BUREAU OF RECLAMATION
1150 North Curtis Road
Boise, ID 83706-1234

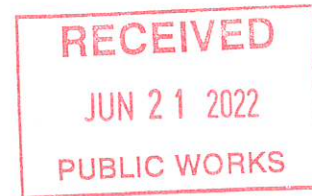


IN REPLY REFER TO:

CPN-6322

2.2.4.23

CERTIFIED – RETURN RECEIPT REQUESTED



City Manager
City of Ellensburg
501 N. Anderson Street
Ellensburg, WA 98926

Subject: Contract for Repayment of Kachess Dam Safety of Dams Modification Costs, Yakima Project, Washington

Dear Contractor:

Enclosed is a proposed repayment contract for the repayment of the City of Ellensburg's (City) proportionate share of the costs for the Safety of Dams modification work at Kachess Dam. The City's estimated repayment obligation is \$171,340.

Background of the Safety of Dams Work

Over the past several years, the Bureau of Reclamation (Reclamation) has corresponded with the City regarding construction work at Kachess Dam required to correct the safety deficiencies identified by Reclamation's Safety of Dams (SOD) Program as authorized by the Reclamation Safety of Dams Act of 1978, as amended (SOD Act).¹ The costs of construction of the Kachess Dam SOD modification are subject to Federal funding procedures and repayment requirements. Pursuant to the SOD Act and Reclamation policy, the reimbursable project purposes are required to repay 15 percent of the total SOD modification cost, with the remaining 85 percent being nonreimbursable and borne by the United States Treasury. Each Yakima Project Storage Division contractor is responsible for repaying its respective share of the 15 percent reimbursable portion of the total SOD modification cost.

How the Estimated Repayment Obligation was Determined

The total cost of the SOD modification work at Kachess Dam is currently estimated at \$37 million, with the 15 percent reimbursable portion estimated to be \$5.55 million. The reimbursable project purposes are Irrigation and Municipal and Industrial (M&I) water supply and, based on the proportional net present benefits evaluated in the *Kachess Dam Safety of Dams Economic Benefits Analysis Report*, the \$5.55 million reimbursable construction costs are

¹ Past written communications include letters dated April 14, 2022, June 30, 2021, August 20, 2020, and October 8, 2019. Copies of these letters are available to be resent upon request.

allocated 93 percent to Irrigation water supply ($\$5,161,500 = \$5,550,000 \times 0.93$) and 7 percent to M&I water supply ($\$388,500 = \$5,550,000 \times 0.07$).

Under existing contract(s) with Reclamation, the City receives a water supply from facilities of the Yakima Project Storage Division, which includes Kachess Dam, for M&I use. Based on the amount of contracted Yakima Project Storage Division water provided, the City's share is 44.10305 percent of the amount allocated to M&I water supply. Thus, the City's estimated repayment obligation is \$171,340 (44.10305% of \$388,500), subject to actual final SOD modification costs. The actual amount of the repayment obligation could be more or less than the above estimate.

Repayment Terms of the Proposed Contract

The proposed repayment contract provides for annual payments to be made during each year of the construction period which is anticipated to be calendar years 2023-2027. It is intended that payments will be made in the year the construction costs are incurred, thereby avoiding the potential accrual and application of interest. However, some contractors expressed a desire for more flexibility in making annual payments during the construction period. Therefore, the repayment contract also provides for postponement of annual payment(s) subject to certain terms and conditions providing for the application of Interest During Construction.

The general feedback from the contractors was a preference to pay off their repayment obligations during the construction period, thereby avoiding accrual and application of interest on the M&I portion during the repayment period after substantial completion of SOD work. Therefore, the proposed contract does not provide for traditional repayment occurring after substantial completion. However, this option is still available to the City. If the City desires to request the preparation of a traditional repayment contract, please submit your request in writing to the point of contact identified below by July 8, 2022. Reclamation's costs of developing such a contract would be added to the City's repayment obligation.

Next Steps

We anticipate award of procurement contract(s), in the fall of this year, for pre-modification construction activities to begin in 2023 on Kachess Dam. It is imperative that repayment contracts are in place prior to the awarding of construction contracts for the SOD work. Therefore, the signed contracts need to be returned to this office no later than **August 12, 2022**.

During review of the enclosed contract, please note that there are blank spaces in Explanatory Recital 2(i) pertaining to documentation of environmental compliance required for the execution of the contract, which is in the process of being completed. Reclamation will fill in these blank spaces with handwritten documentation details at the time the contract is executed on behalf of the United States.

If the enclosed contract is acceptable to the City, please have the appropriate representative(s) sign and date both copies and have the signatures notarized in the spaces provided. Then please return both copies of the contract to this office in the stamped, self-addressed envelope. Once

received and upon completion of environmental compliance, the contracts will be signed on behalf of the United States. A fully executed original will be returned for the City's records.

If you have any questions about the enclosed contract, please contact Mr. Michael Cobell, Economist, Reclamation Law Administration, at (208) 378-5223 or via email at mcobell@usbr.gov. For the hearing impaired please call the Federal Relay System at (800) 877-8339 (TTY).

Sincerely,

JENNIFER
CARRINGTON

Digitally signed by
JENNIFER CARRINGTON
Date: 2022.06.16 13:53:24
-08'00'

Jennifer J. Carrington
Regional Director

Enclosure: In duplicate

For Internal Use
Reference Date: _____

Contract No.: 22SD102177
Type: Pay-Go

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Yakima Project, Storage Division

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE CITY OF ELLENSBURG FOR
REPAYMENT OF SAFETY OF DAMS COSTS

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**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

YAKIMA PROJECT, STORAGE DIVISION

**CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE CITY OF ELLENSBURG FOR
REPAYMENT OF SAFETY OF DAMS COSTS**

1. **THIS REPAYMENT CONTRACT**, hereinafter referred to as the "Contract," is made pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, including the Reclamation Safety of Dams Act of 1978 (Public Law 95-578; 43 U.S.C. § 506, et seq.), as amended; all of which are commonly referred to as the Federal Reclamation Laws, between the **UNITED STATES OF AMERICA**, hereinafter referred to as the "United States," acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as "Reclamation," and the **CITY OF ELLENSBURG**, hereinafter referred to as the "Contractor," a municipal corporation existing under and by virtue of the laws of the State of Washington.

WITNESSETH THAT:

2. **EXPLANATORY RECITALS**

The following statements are made in explanation:

(a) **WHEREAS**, the United States completed construction of Kachess Dam in 1912 as a feature of the Storage Division, Yakima Project (Project); and

- (b) **WHEREAS**, the Reclamation Safety of Dams Act of 1978 (Public Law 95-578; 43 U.S.C. § 506, et seq.), as amended, authorizes the Secretary of the Interior, through Reclamation, to perform Safety of Dams modifications; and
- (c) **WHEREAS**, investigations and studies completed under Reclamation's Safety of Dams Program have confirmed that dam safety issues exist at Kachess Dam that contribute to the risk of failure, and Reclamation has concluded that the possibility of the failure modes and the associated potential loss of life, property damages, and loss of benefits requires that risk reduction actions be implemented at Kachess Dam; and
- (d) **WHEREAS**, the Commissioner of Reclamation has approved certain work to make the dam safe while providing project benefits and protecting downstream property and lives; and
- (e) **WHEREAS**, the need for Safety of Dams modifications at Kachess Dam results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes, and thus the Reclamation Safety of Dams Act of 1978 (Public Law 95-578; 43 U.S.C. §506, et seq.), as amended, and Reclamation policy provide that 15 percent of the costs incurred for the Safety of Dams modifications shall be allocated to authorized reimbursable purposes of the structure, and thus are reimbursable by the Irrigation and Municipal and Industrial water supply purposes users; and
- (f) **WHEREAS**, the Contractor is a Project water user that benefits from the Project and is responsible for repayment of its proportionate share of the reimbursable cost of the corrective Safety of Dams Modifications; and
- (g) **WHEREAS**, pursuant to the contract of December 21, 1971 (Contract No. 14-06-100-7216), as such contract may have been supplemented and amended, the Contractor receives a supply of water from Project Storage Division facilities, which includes Kachess Dam, for

Municipal and Industrial use. Based on the amount of contracted Project water provided pursuant to the above-referenced contract, the Contractor's proportionate share of the Total Reimbursable Cost allocable to Municipal and Industrial water supply is determined to be 44.10305 percent; and

(h) **WHEREAS**, the Contractor desires and is willing to repay its proportionate share of the reimbursable cost for the modification of Kachess Dam as the construction work proceeds, and Reclamation is agreeable to such arrangements as provided hereinafter; and

(i) **WHEREAS**, Reclamation has met all environmental compliance requirements for the execution of this Contract through preparation and issuance of _____, _____ approved on _____;

NOW, THEREFORE, in consideration of the mutual covenants and stipulations herein contained, it is mutually agreed by and between the parties hereto as follows:

3. **DEFINITIONS**

The following terms, whenever used in this Contract, shall have the following respective meanings:

(a) "Contracting Officer" means the Regional Director of the Columbia-Pacific Northwest Interior Region 9 of the United States Bureau of Reclamation, as the Federal official authorized to execute and administer this Contract on behalf of the United States in accordance with applicable Federal Reclamation Law, regulation, and policy.

(b) "Contractor's Repayment Obligation" means the Contractor's share of the Total Reimbursable Cost to correct the deficiencies at Kachess Dam.

(c) “Interest During Construction” or “IDC” means the amount of annual interest that accrues on Federal expenditures during the period of construction of the Safety of Dams Modifications.

(d) “Irrigation Use” means the use of water to irrigate land primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto.

(e) “Municipal and Industrial Use” means the use of water for municipal, industrial, and miscellaneous other purposes not falling under the definition of Irrigation use or within another category of water use under an applicable Federal authority.

(f) “Safety of Dams Act” means the Reclamation Safety of Dams Act of 1978 (Public Law 95-578; 43 U.S.C. § 506, *et seq.*), as amended by the Reclamation Safety of Dams Act Amendments of August 28, 1984 (Public Law 98-404), October 27, 2000 and several subsequent Acts, including (Public Law 106-377), December 3, 2004 (Public Law 107-117, Public Law 108-439), and December 18, 2015 (Public Law 114-113).

(g) “Safety of Dams Modifications” means any work or modifications identified by Reclamation as necessary to correct safety deficiencies at Kachess Dam.

(h) “Substantial Completion” means the point that Reclamation determines, in its sole discretion, that the Safety of Dams Modifications work is far enough along that the dam safety risk has been reduced to an acceptable level.

(i) “Total Reimbursable Cost” means 15 percent of the actual total Safety of Dams Modifications cost to correct the deficiencies at Kachess Dam, as provided in the Safety of Dams Act and Reclamation policy.

4. **CONTRACT TERM AND SCOPE**

(a) This Contract shall become effective upon the date of signature of the last signatory party herein, and its provisions shall remain in effect until the Contractor has paid all amounts owed to the United States under this Contract.

(b) This Contract does not affect other contracts between the United States and the Contractor unless the terms of those other contracts are contrary to the terms of this Contract, in which case the terms of this Contract shall prevail. This Contract shall not be deemed a new or amended contract for the purposes of Section 203(a) of the Reclamation Reform Act of 1982 (96 Stat. 1263 to 1274).

5. **SAFETY OF DAMS MODIFICATIONS WORK TO BE PERFORMED**

(a) The United States will finance and perform all construction of the Safety of Dams Modifications work. The Safety of Dams Modifications work is anticipated to begin in calendar year 2023 and is estimated to be Substantially Complete in calendar year 2027. The Safety of Dams Modifications are projected to include the following work, described below, as may be further defined by the Contracting Officer:

- (1) Clearing and grubbing of trees in the construction project area.
- (2) Development of access roads and construction contractor use areas.
- (3) Upgrade electrical service to dam site.
- (4) Fabrication and delivery of pipes.
- (5) Excavation of foundation for outlet works conduit extension.
- (6) Construction of conduit extension.
- (7) Placement of a four-sided diaphragm filter around conduit extension.
- (8) Installation of concrete around the pipe downstream of the conduits.
- (9) Construction of a stability berm above the filter zone.

- (10) Installation of a drainage system and inspection well.

Should it appear necessary or desirable to the Contracting Officer either before or during construction, Safety of Dams Modifications work may be modified in design or location, work may be eliminated, or other work may be added thereto, in keeping with the objectives of this Contract. The Contracting Officer will notify the Contractor, in advance, of any substantial change in modification requirements or work.

- (b) The Contracting Officer shall determine and notify the Contractor in writing when the work as described in this article is Substantially Complete.

6. **COST OF MODIFICATIONS AND CONTRACTOR'S REPAYMENT OBLIGATION**

- (a) The total estimated cost for Safety of Dams Modifications is thirty-seven million (\$37,000,000) dollars, of which fifteen percent (15%), or an estimated five million five hundred and fifty thousand dollars ($\$5,550,000 = \$37,000,000 \times 0.15$) is the Total Reimbursable Cost.

- (b) Based on economic benefit calculations performed by Reclamation ninety-three percent (93%) of the Total Reimbursable Cost is to be allocated to Irrigation water supply and is estimated to be five million one hundred sixty-one thousand and five hundred dollars ($\$5,161,500 = \$5,550,000 \times 0.93$), hereinafter referred to as the "Allocated Reimbursable Cost to Irrigation Water Supply." Seven percent (7%) of the Total Reimbursable Cost is to be allocated to Municipal and Industrial water supply and is estimated to be three hundred eighty-eight thousand and five hundred dollars ($\$388,500 = \$5,550,000 \times 0.07$), hereinafter referred to as the "Allocated Reimbursable Cost to Municipal and Industrial Water Supply."

- (c) The Contractor's Repayment Obligation is the Contractor's proportionate share of the Allocated Reimbursable Cost to Municipal and Industrial Water Supply and shall be

44.10305 percent of the Allocated Reimbursable Cost to Municipal and Industrial Water Supply. Accordingly, the Contractor's Repayment Obligation is estimated to be one hundred seventy-one thousand three hundred forty dollars ($\$171,340 = \$388,500 \times 0.4410305$). This obligation may be adjusted under the provisions of Article 8 and Article 9 of this Contract.

(d) The Contractor understands that the figures in sub-articles 6(a)-(c) above are estimates only and that the Contractor is responsible for its proportionate share of the actual cost of Safety of Dams Modifications. It is understood that the total costs of Safety of Dams Modifications may exceed the estimated costs due to circumstances encountered during the performance of the Safety of Dams Modifications. If this occurs, the Contractor is responsible for its proportionate share of the additional costs. Likewise, if the actual costs are less than the estimated costs, it is understood that the Contractor is only responsible for its proportionate share of the actual costs.

(e) The Contracting Officer, at his/her discretion, will make reasonable efforts to complete the Safety of Dams Modifications within the cost estimate in sub-article 6(a) above. If it becomes evident during the course of the Safety of Dams Modifications that the costs will exceed the estimate, the Contracting Officer will inform the Contractor of this conclusion in writing with documentation of the reason for the additional costs and an itemized summary of the costs incurred.

7. Omitted.

8. **MUNICIPAL AND INDUSTRIAL WATER SUPPLY ALLOCATION -
REPAYMENT OF CONTRACTOR'S OBLIGATION**

(a) Annual Payments During the Construction Period:

(1) The Contractor agrees to make annual payments for the repayment of the Contractor's Repayment Obligation, without interest, in the same proportion to Reclamation's

expenditure of Safety of Dams Program funds, beginning in the year that the Safety of Dams Modifications work is initiated through the year in which the Contracting Officer provides the Contractor with written notice of the Substantial Completion of the Safety of Dams Modifications work. On or before **September 1** of each year during the construction period of the Safety of Dams Modifications work the Contractor shall pay to the United States its annual amount identified as due and payable on the schedule shown in Exhibit B, which may be updated, as provided herein, from time to time without amendment of this Contract.

(2) After the execution of this Contract, the Contractor may request that any portion of a required annual payment(s), including the full amount(s), be postponed and added to the amount scheduled to become due in a subsequent or later year during the construction period: *Provided*, that such a request be made in writing to the Contracting Officer at least one-hundred eighty (180) days prior to the required annual payment becoming due: *Provided, further*, that unless and until the Contracting Officer grants written approval to the Contractor, as provided in sub-article 8(b), the Contractor shall make its annual payments as scheduled in Exhibit B.

(b) Postponement of Annual Payments – Interest Charges Applicable:

(1) The total amount of the Contractor's required annual payment(s) requested to be postponed shall be subject to Interest During Construction charges and accrual during the postponement period until the amounts are repaid.

(2) The interest rate used for determining the Interest During Construction charges applicable to the amount of postponed annual payment(s) shall be the rate determined by the Secretary of the United States Treasury which is in effect for the fiscal year in which federal funds are expended for the Safety of Dams Modifications work.

(3) Within sixty (60) days of receipt of the Contractor's request made pursuant to sub-article 8(a)(2), the Contracting Officer will provide written notice of approval of Contractor's request. A revised and updated Exhibit B will be issued by the Contracting Officer at such time.

(c) Prepayments Authorized:

Notwithstanding the schedule of payments provided in Exhibit B, the Contractor may prepay all or any portion of the outstanding balance of the Contractor's Repayment Obligation prior to the payment becoming due.

9. STATEMENT OF COSTS

The costs which make up the various obligations to be paid by the Contractor to the United States under this Contract shall embrace all expenditures of whatsoever nature or kind in discharge of the obligations undertaken pursuant to Article 5(a), including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, material and equipment, engineering, legal work, superintendence, administration, overhead, general inspection services, and claims of all kinds, whether or not involving the negligence of officers, agents, or employees of the United States. The Contracting Officer's determinations as to what costs are properly chargeable under this Contract, and as to the classification of those charges for repayment purposes, shall be conclusive.

10. TITLE

Title to the works and facilities constructed, repaired, or replaced pursuant to this Contract shall be and remain in the United States.

11. STANDARD PROVISIONS

The Standard Provisions applicable to this Contract are listed below. The full text of these articles is attached as Exhibit A and is hereby made a part of the Contract.

- a. Charges for Delinquent Payments
- b. General Obligation - Benefits Conditioned Upon Payment
- c. Confirmation of Contract
- d. Notices
- e. Contingent on Appropriation or Allotment of Funds
- f. Officials Not to Benefit
- g. Changes in Contractor's Organization
- h. Books, Records, and Reports
- i. Equal Employment Opportunity
- j. Compliance with Civil Rights Laws and Regulations
- k. Certification of Nonsegregated Facilities
- l. Medium for Transmitting Payments
- m. Contract Drafting Considerations

IN WITNESS WHEREOF, the parties hereto have signed their names as of the day and
year first above written.

CITY OF ELLENSBURG

By: _____

Title: _____

Date: _____

(SEAL)

ATTEST:

By: _____

Title: _____

THE UNITED STATES OF AMERICA

By: _____

Regional Director
U.S. Bureau of Reclamation
Columbia-Pacific Northwest Interior
Region 9

Date: _____

STATE OF WASHINGTON)

:ss

County of _____)

On this ____ day of _____, 20 __, personally appeared before me _____ and _____, known to me to be the official(s) of the CITY OF ELLENSBURG that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said CITY OF ELLENSBURG and on oath stated they are authorized to execute said instrument.

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

(SEAL)

Notary Public in and for the
State of _____
Residing at: _____
My commission expires: _____

* * * * *

STATE OF IDAHO)

: ss

County of Ada)

On this ____ day of _____, 20 __, personally appeared before me _____, known to me to be the official of the UNITED STATES OF AMERICA that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said UNITED STATES OF AMERICA, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

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

(SEAL)

Notary Public in and for the
State of IDAHO
Residing at: _____
My commission expires: _____

STANDARD PROVISIONS

CHARGES FOR DELINQUENT PAYMENTS

a. (1) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(2) The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

(3) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

b. (1) The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

(2) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Yakima Project, Storage Division facilities during any period in which the Contractor is in arrears in the advance payment of the any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The Contractor shall not deliver water under the terms and conditions of this Contract for lands or parties that are in arrears in the advance payment of operation and maintenance charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Contractor.

CONFIRMATION OF CONTRACT

c. Promptly after the execution of this Contract, the Contractor will provide evidence to the Contracting Officer that, pursuant to the laws of the State of Washington, the Contractor is a legally constituted entity and the contract is lawful, valid, and binding on the Contractor. This Contract will not be binding on the United States until the Contractor provides evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this article, the Contractor may provide or the Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the State of Washington, confirming the proceedings on the part of the Contractor for the authorization of the execution of this Contract.

NOTICES

d. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Columbia-Pacific Northwest Interior Region 9, Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706-1234, and on behalf of the United States, when mailed, postage prepaid, or delivered to City Manager, City of Ellensburg, 501 N. Anderson Street, Ellensburg, Washington 98926. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

e. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

f. No Member of or Delegate to the Congress, Resident Commissioner or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S ORGANIZATION

g. While this Contract is in effect, no change may be made in the Contractor's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

BOOKS, RECORDS, AND REPORTS

h. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Contractor's water supply data; water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

EQUAL EMPLOYMENT OPPORTUNITY

i. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, 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.

(2) The Contractor will, in all solicitations or advancements 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, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement 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.

(5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) 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 his 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.

(7) 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 Sept. 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.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the 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 a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

j. (1) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(2) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on

the grounds of race, color, national origin, disability, or age. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(3) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

(4) Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

CERTIFICATION OF NONSEGREGATED FACILITIES

k. The Contractor hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. The Contractor further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract

or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.

MEDIUM FOR TRANSMITTING PAYMENTS

1. (1) All payments from the Contractor to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(2) Upon execution of the Contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

CONTRACT DRAFTING CONSIDERATIONS

m. This Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains.

EXHIBIT B

SCHEDULE OF ESTIMATED PAYMENTS OF CONTRACTOR'S SAFETY OF DAMS REPAYMENT OBLIGATION

The total estimated cost for the Safety of Dams Modifications is thirty-seven million (\$37,000,000) dollars. The Total Reimbursable Cost is estimated at five million five hundred and fifty thousand dollars ($\$5,550,000 = \$37,000,000 \times 0.15$). Based on economic benefit calculations performed by Reclamation ninety-three percent (93%) of the Total Reimbursable Cost is to be allocated to the Irrigation water supply and is estimated to be five million one hundred sixty-one thousand and five hundred dollars ($\$5,161,500 = \$5,550,000 \times 0.93$). Seven percent (7%) of the Total Reimbursable Cost is to be allocated to Municipal and Industrial water supply and is estimated to be three hundred eighty-eight thousand and five hundred dollars ($\$388,500 = \$5,550,000 \times 0.07$).

As provided in Article 6 of the Contract, the Contractor's Repayment Obligation is the Contractor's proportionate share of the Allocated Reimbursable Cost to Municipal and Industrial Water Supply, which is 44.10305 percent of \$388,500 and estimated to be \$171,340.

Based on the currently anticipated construction schedule and budget for the Safety of Dams Modifications work the Contractor's annual payments during the period of construction are:

Payment Date Due	Payment Amount
September 1, 2023	\$56,542
September 1, 2024	\$92,524
September 1, 2025	\$11,308
September 1, 2026	\$5,997
September 1, 2027	\$4,969

The Contractor's Repayment Obligation and the estimated payment amounts displayed above do not reflect any adjustment for the assessment and accumulation of Interest During Construction, which may become due in accordance with the terms of Article 8, in which case the Contractor will be provided a revised Exhibit B by the Contracting Officer.

VOUCHER APPROVAL

I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED, OR THAT ANY ADVANCE PAYMENT IS DUE AND PAYABLE PURSUANT TO A CONTRACT OR IS AVAILABLE AS AN OPTION FOR FULL OR PARTIAL FULFILLMENT OF A CONTRACTUAL OBLIGATION, AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF ELLENSBURG, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIM.


AUDITING OFFICER

7/26/22
DATE

CLAIMS VOUCHERS AUDITED AND CERTIFIED BY THE AUDITING OFFICER HAVE BEEN RECORDED ON THE ATTACHED LISTING, WHICH HAS BEEN MADE AVAILABLE TO THE COUNCIL AS OF THIS **1ST DAY OF AUGUST 2022**. THE COUNCIL, BY A VOTE, HAS APPROVED FOR PAYMENT THE VOUCHERS INCLUDED IN THE ABOVE LIST AND FURTHER DESCRIBED AS FOLLOWS:

Claims Fund				Total Amounts
Check #'s	158297	TO	158501	\$ 1,371,701.56
EFT #'s	5623	TO	5655	\$ 1,579,086.96

Payroll Fund				Total Amounts
Check #'s	95762	TO	95777	\$ 9,399.95
Direct Deposits	68585	TO	69032	\$ 429,750.90

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

ATTEST: _____
CITY CLERK



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 1, 2022

Item Title/Agenda Subject: Community Recreation Center and Field House Facility Discussion

Submitted by: Brad Case Parks and Recreation

Recommended Action or Motion: Discuss and provide feedback to guide next step(s).

Background/Summary: At their April 15, 2022 retreat, the Council affirmed and later adopted five strategic priorities for the City, one of which was sustainable infrastructure. Highlighted throughout the development of the 2016-2022 park comprehensive plan update was the need for improved park facilities, both indoor and outdoor. The average age of the City's four indoor recreation facilities - Adult Activity Center, Stan Bassett Youth Center, Ellensburg Racquet & Recreation Center, and Kittitas Valley Memorial Pool & Fitness Center - is 53 years old. To that end the City will need to explore options to address the future recreational needs of the community.

Previous Council Action: At its May 16, 2022 Council study session, Council heard a presentation from staff regarding indoor recreation facilities. The discussion focused on the current recreation facilities and what programs are offered at those facilities, future indoor recreational needs, an overview on previous work done by an ad hoc community center committee, and an overview on a field house concept and how that facility could serve our community.

At the conclusion of the presentation, Council requested that staff proceed with researching both a community recreation center and field house. Council also indicated that they would be interested in possibly collocating all of the City's existing recreation facilities into one or two facilities such as a field house and community center.

Analysis: Staff will be sharing a slide presentation with Council reviewing operational and construction costs for a new community

recreation center and field house, facility location, what could be included in these two recreation facilities, and efficiencies created in current programming with collocation of these two facilities.

Financial Impact:

No impact at this time.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 1, 2022

Item Title/Agenda Subject: Second Reading of Ordinance 4892 Eliminating Requirement for Extension of Natural Gas Mains in Residential Subdivisions

Submitted by: Buddy Stanavich Public Works & Utilities

Recommended Action or Motion: Conduct second reading and adoption of Ordinance 4892 to eliminate the requirement that developers extend gas mains to new subdivisions.

Background/Summary: At its April meeting, the City's Utility Advisory Committee (UAC) requested staff provide background/overview and history of the City's gas utility and energy supply to begin discussions on the natural gas infrastructure expansion requirements. At the June 16 UAC meeting, staff provided an overview of natural gas utilization, history of the natural gas utility, uncertainty of current regulatory environment, and several policy options.

Currently, residential subdivision developers are required to provide trenching, sand bedding and backfill for the extension of natural gas through the development, per ECC 15.260.070. The City then installs the utility extension. Connecting residential units to the utility is not required.

Previous Council Action: In 2013, the City Council added a requirement for extension of natural gas mains along with other utilities into and through in subdivisions, a "dig once" policy.

At the July 18, 2022 Ellensburg City Council Meeting, Council conducted first reading of Ordinance 4892 to eliminate the requirement that developers extend gas mains to new subdivisions.

Analysis: At the June 16, 2022 Utility Advisory Committee (UAC) meeting, staff provided an overview and history of the natural gas utility, an overview of development utilizing natural gas in residential units, and the estimated impacts to the electric utility from shifting energy load from gas to electric. The UAC recommended staff prepare an Ordinance for the City Council

to consider removal of the requirement for gas infrastructure extensions in residential subdivisions.

Financial Impact:

Below is a table that reflects average costs of utilities in subdivisions.

RESIDENTIAL CONNECTIONS (Recent Averages)					
Utility	Cost Per Lot	Share	CITY COSTS	DEVELOPER COSTS	CUSTOMER COSTS*
Water	\$9,653	28%	\$0	\$9,653	\$4,600
Sewer	\$14,350	41%	\$0	\$14,350	\$2,600
Light	\$8,887	25%	\$0	\$8,887	\$750
Gas	\$1,968	6%	\$317	\$1,650	\$0

*Residential connection fee per lot paid by building permit applicant

Attachments:

[Ordinance 4892 - Natural Gas Infrastructure](#)

ORDINANCE NO. 4892

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO CHAPTER 15.260 “SUBDIVISIONS” AND AMENDING SECTION 15.260.070 OF THE ELLENSBURG CITY CODE.

WHEREAS, the Washington State Clean Energy Transformation Act (“CETA”), chapter 19.405 of the Revised Code of Washington (“RCW”), commits Washington to an electricity supply free of greenhouse gas emissions by 2045; and

WHEREAS, the Washington State Climate Commitment Act (“CCA”), chapter 70A.45 RCW, establishes a comprehensive program to reduce carbon pollution and achieve greenhouse gas limits set in state law; and

WHEREAS, the City of Ellensburg requires housing developers to extend natural gas distribution infrastructure in subdivisions as a mechanism to continue promulgating energy choices to its current and future customers; and

WHEREAS, continuing extension of natural gas utility mains throughout subdivisions can be accomplished at minimal cost in comparison to other utility costs; and

WHEREAS, the City’s Utility Advisory Committee recommended eliminating requirement for developers to extend natural gas mains in subdivisions at its June 16, 2022 meeting;

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington do hereby ordain as follows:

Section 1. Section 15.260.070 of the Ellensburg City Code, as last amended by Section 1 of Ordinance 4656, is hereby amended to read as follows:

15.260.070 Preliminary subdivision – Required minimum improvement standards.

A. Public Works Improvements. In order to meet the public interest, the following minimum public works improvements shall be required and shall be constructed in accordance with the public works development standards and other city utility standards:

1. Installation of concrete curbs and gutters according to the public works development standards;
2. Construction of streets in accordance with the public works development standards;
3. Installation of monuments and monument cases in accordance with the public works development standards;

4. Installation of storm drainage system including inlet, pipe, manholes, detention or retention facilities if deemed necessary, all in accordance with the public works development standards;
5. Installation of iron pipe or reinforcing rods at the corners of all lots, plots or tracts in accordance with the public works development standards;
6. Construction of sidewalks on abutting sides of all public streets in accordance with the public works development standards; and
7. Installation of water and sewer mains, water service lines and side sewers to serve each lot platted in accordance with the public works development standards.

B. Public Utility Improvements. In order to meet the public interest, the following minimum public electric utility improvements, and public natural gas utility improvements, if applicable, shall be required to be constructed within the subdivision and shall be constructed in accordance with the public works development standards and the public works and utilities department development standards:

1. Installation of underground ducts, manholes and vaults to accommodate the electrical distribution system within the subdivision; and
- ~~2. Trenching and installation of all necessary public facilities for natural gas distribution within the subdivision; and~~
32. Communication and television signal service facilities with ducting provided for communication and television service at the right-of-way crossings through a minimum two-inch PVC duct type unless otherwise required by the city based on recommendation from the respective utility. [Ord. 4804 § 1, 2018; Ord. 4656 § 1 (Exh. O2), 2013.]

Section 2. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this ordinance.

Section 3. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 1st day of August, 2022.

MAYOR

ATTEST:

CITY CLERK

Approved as to form:

CITY ATTORNEY

Publish:

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4892 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4892 was published as required by law.

BETH LEADER



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 1, 2022

Item Title/Agenda Subject: Second Reading of Ordinance 4893 Approving Rezone Request P22-012 submitted by DNR Jensen Rentals, LLC, property owner

Submitted by: Jamey Ayling Community Development

Recommended Action or Motion: Conduct second reading and adopt Ordinance 4893.

Background/Summary: The rezone request is for two parcels located on the south side of Vantage Highway, east of Pfenning Road, in Ellensburg; Kittitas County Assessor's Parcel ID#'s 171933 and 181933; addressed 1900-1930 Vantage Highway. After taking evidence at the open record hearing on June 15, 2022 and considering the record, the Hearing Examiner recommended that City Council approve the rezone from Residential-Suburban (R-S) to Commercial Highway (C-H), with conditions. The request is consistent with the City's Comprehensive Plan future land use designation of Community Mixed Use. At the conclusion of the closed record hearing City Council approved a motion to adopt the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law Decision and Conditions of Approval.

A State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS) was issued on March 21, 2022 for this site-specific rezone.

Previous Council Action: City Council held a closed record hearing on July 18, 2022 to consider Hearing Examiner Andy Kottkamp's June 16, 2022 Recommended Findings of Fact, Conclusions of Law Decision and Conditions of Approval pertaining to the site-specific rezone request submitted by DNR Jensen Rentals, LLC, property owner. The rezone request was approved at the conclusion of the hearing and was immediately followed by first reading of Ordinance 4893.

Analysis: City Council has adopted the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision

and Conditions of Approval, therefore the ordinance reflects the applicable conclusions and findings to adopt the zone change as discussed and approved by City Council on July 18, 2022. The ordinance also directs staff to make appropriate changes to the City's zoning map and to the Geographic Information System (GIS) data.

Financial Impact:

None at this time.

Attachments:

[Ordinance 4893](#)

ORDINANCE NO. 4893

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO ZONING AND AMENDING TITLE 15 OF THE ELLENSBURG CITY CODE BY CHANGING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY WITHIN THE CITY OF ELLENSBURG FROM RESIDENTIAL SUBURBAN (R-S) TO COMMERCIAL HIGHWAY (C-H).

WHEREAS, on January 27, 2022 the City received an application (P22-012) from property owner DNR Jensen Rentals, LLC, requesting a rezone of two parcels located on Vantage Highway, Parcel ID Numbers 171933 and 181933 (“application”); and

WHEREAS, the application proposed to rezone the parcels from Residential Suburban (R-S) to Commercial Highway (C-H); and

WHEREAS, pursuant to ECC Table 15.210.050(D), a Site-Specific Rezone Application is processed under a Type IV review, which requires a Hearing Examiner recommendation to City Council after an Open Record Hearing, with the final decision to be made by City Council after a Quasi-Judicial Closed Record Hearing; and

WHEREAS, the SEPA official for the City issued a Determination of Non-Significance (DNS), on March 21, 2022; and

WHEREAS, the Hearing Examiner held a duly noticed open record hearing on June 15, 2022, received evidence and heard testimony regarding the proposed rezone; and

WHEREAS, the Hearing Examiner on June 16, 2022, issued Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval for the rezone request from R-S to C-H; and

WHEREAS, the Ellensburg City Council held a duly noticed closed record hearing on July 18, 2022 and at the conclusion of the hearing approved a motion to adopt the Hearing Examiner’s Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval, and to approve the applicant’s request to rezone the subject property from R-S to C-H;

NOW, THEREFORE, the City Council of the city of Ellensburg, Washington, do hereby ordain as follows:

Section 1. The City Council adopts the findings of fact and conclusions based thereon, made and entered by the Hearing Examiner in support of the recommendation to the City Council for approval with regard to the rezone for the hereinafter described property located on Vantage Highway, with Parcel ID Numbers 171933 and 181933 as set forth in the Hearing Examiner’s “Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval,” dated June 16, 2022, attached as Exhibit A.

Section 2. Title 15 of the Ellensburg City Code is hereby amended by changing the city's zoning map as adopted in ECC 15.300.020 for the following described area from Residential Suburban (R-S) to Commercial Highway (C-H):

ACRES 1.12; N1/2 NW1/4 TAX 14 & 15 OUT OF TAX 13 (PTN PARCEL A, B20/P8);
SEC 06, TWP 17, RGE 19

ACRES .35, CD. #9717; SEC. 6; TWP. 17; RGE. 19 NW 1/4 PT. LOT 4 NO. MIL. RR
TAX 8

Section 3. That the official zoning map of the City of Ellensburg, as well as the Geographic Information System (GIS) data shall be amended to incorporate the land use classifications herein provided.

Section 4. Except as modified herein, each and every provision of the City Land Development Code, Title 15, as amended, shall remain in full force and effect.

Section 5. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance.

Section 6. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 7. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage, approval and publication as required by law.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 1st day of August, 2022.

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

Publish:

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4893 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, that Ordinance No. 4893 was published as required by law.

Beth Leader



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 1, 2022

Item Title/Agenda Subject: Second Reading of Ordinance 4894 Approving Rezone Request P22-015 Submitted by Matt Stalder, Agent for D & D Investment Group, Property Owner

Submitted by: Jamey Ayling Community Development

Recommended Action or Motion: Conduct second reading and adoption of Ordinance 4894

Background/Summary: The rezone is for one parcel approximately 23,687 square feet and is located north of Helena Ave, and west of Airport Way, in Ellensburg; Kittitas County Assessor's Parcel ID #782733; addressed as 503 E Helena Avenue. After taking evidence at the open record hearing on June 15, 2022 and considering the record, the Hearing Examiner recommended that City Council approve the rezone from Residential-Suburban (R-S) and Residential-Medium (R-M) to Residential-Medium (R-M), with conditions. The request is consistent with the City's Comprehensive Plan future land use designation of Urban Neighborhood. At the conclusion of the closed record hearing City Council approved a motion to adopt the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law Decision and Conditions of Approval.

A State Environmental Policy Act (SEPA) Mitigated Determination of Non-Significance (MDNS) was issued on April 11, 2022 for this site-specific rezone.

Previous Council Action: City Council held a closed record hearing on July 18, 2022 to consider Hearing Examiner Andy Kottkamp's June 16, 2022 Recommended Findings of Fact, Conclusions of Law Decision and Conditions of Approval pertaining to the site-specific rezone request submitted by Matt Stalder, agent for D & D Investment Group, property owner. The rezone request was approved at the conclusion of the hearing and was immediately followed by first reading of Ordinance 4894.

Analysis: City Council has adopted the Hearing Examiner's

Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval, therefore the ordinance reflects the applicable conclusions and findings to adopt the zone change as discussed and approved by City Council on July 18, 2022. The ordinance also directs staff to make appropriate changes to the City's zoning map and to the Geographic Information System (GIS) data.

Financial Impact:

None at this time.

Attachments:

[Ordinance 4894](#)

ORDINANCE NO. 4894

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO ZONING AND AMENDING TITLE 15 OF THE ELLENSBURG CITY CODE BY CHANGING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY WITHIN THE CITY OF ELLENSBURG FROM RESIDENTIAL SUBURBAN (R-S) AND RESIDENTIAL MEDIUM (R-M) TO RESIDENTIAL MEDIUM (R-M).

WHEREAS, on February 15, 2022 the City received an application (P22-015) from Matt Stalder, agent for property owner D & D Investment Group, requesting a rezone of a parcel located at 510on Vantage Highway, Parcel ID Number 782733 (“application”); and

WHEREAS, the application proposed to rezone the parcels from Residential Suburban (R-S) and Residential Medium (R-M) to Residential Medium (R-M); and

WHEREAS, pursuant to ECC Table 15.210.050(D), a Site-Specific Rezone Application is processed under a Type IV review, which requires a Hearing Examiner recommendation to City Council after an Open Record Hearing, with the final decision to be made by City Council after a Quasi-Judicial Closed Record Hearing; and

WHEREAS, the SEPA official for the City issued a Mitigated Determination of Non-Significance (MDNS), on April 11, 2022; and

WHEREAS, the Hearing Examiner held a duly noticed open record hearing on June 15, 2022, received evidence and heard testimony regarding the proposed rezone; and

WHEREAS, the Hearing Examiner on June 16, 2022, issued Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval for the rezone request from R-S and R-M to R-M; and

WHEREAS, the Ellensburg City Council held a duly noticed closed record hearing on July 18, 2022 and at the conclusion of the hearing approved a motion to adopt the Hearing Examiner’s Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval, and to approve the applicant’s request to rezone the subject property from R-S and R-M to R-M;

NOW, THEREFORE, the City Council of the city of Ellensburg, Washington, do hereby ordain as follows:

Section 1. The City Council adopts the findings of fact and conclusions based thereon, made and entered by the Hearing Examiner in support of the recommendation to the City Council for approval with regard to the rezone for the hereinafter described property located at 503 E Helena Avenue, with Parcel ID Number 782733 as set forth in the Hearing Examiner’s

“Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval,” dated June 16, 2022, attached as Exhibit A.

Section 2. Title 15 of the Ellensburg City Code is hereby amended by changing the city’s zoning map as adopted in ECC 15.300.020 for the following described area from Residential Suburban (R-S) and Residential Medium (R-M) to Residential Medium (R-M):

ACRES .53, CD. 8735-E; SEC 26; TWP 18; RGE 18; PTN SE1/4 SE1/4 (PARCEL A, B22/P248)

Section 3. That the official zoning map of the City of Ellensburg, as well as the Geographic Information System (GIS) data shall be amended to incorporate the land use classifications herein provided.

Section 4. Except as modified herein, each and every provision of the City Land Development Code, Title 15, as amended, shall remain in full force and effect.

Section 5. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance.

Section 6. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 7. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage, approval and publication as required by law.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 1st day of August, 2022.

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

Publish:

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4894 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, that Ordinance No. 4894 was published as required by law.

Beth Leader



CITY COUNCIL AGENDA REPORT

City Council Meeting Date:	August 1, 2022
Item Title/Agenda Subject:	2022 Second Quarter Financial Status and Investment Reports
Submitted by:	Jerica Pascoe Finance Department
Recommended Action or Motion:	Accept 2022 Second Quarter Financial Status and Investment Reports as presented.
Background/Summary:	Attached are the 2022 Second Quarter Financial Status and Investment Reports for the period ending June 30, 2022. The 2022 Second Quarter Financial Status report represents General Fund status, Governmental fund type tax revenues, and citywide revenues and expenditures. The City's Financial Management Policy provides that Council will receive updated information relating to the City's Financial Reports on a quarterly basis.
Previous Council Action:	The Second Quarter 2022 Financial Status and Investment Reports were presented to the Finance Committee at the July 25, 2022 meeting.
Analysis:	Year-end projections were made based on current situation on June 30, 2022. Projections were made with the economic recovery in mind and using 2021 trends. Key items – 2022 Second Quarter: • General Fund revenues are expected to come in above budget while expenditures are projected to come in below budget. (Table 1, Page 1) • Revenue remitted from State of Washington Sales Tax Activity is up 7% over 2nd quarter 2021 (Table 2 Page 2) ◦ City Assistance is up 41% ◦ Hotel/Motel Lodging is up 38% ◦ Local Criminal Justice is up 14% ◦ Marijuana Excise Tax is up 27% ◦ Motor Vehicle Fuel Tax (MVFT) is down 1% ◦ Liquor Excise Tax is down 2% ◦ Marijuana Excise Tax is up 27% • Year-End tax revenue is projected to come in approximately 1.6% above budget. (Table 3, Page 3)

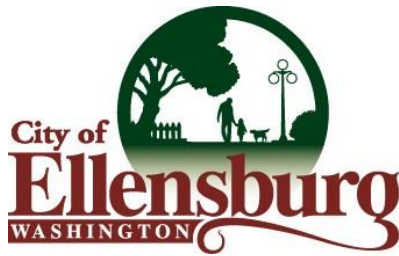
- Sales tax revenue projected .16% above budget. (Table 3, Page 3)
 - Local Criminal Justice .1% – \$6,160 above budget (Table 4, Page 4)
 - Retail Sales for Public Transit .2% - \$4,526 above budget
 - Retail Sales for Public Safety .3% - \$14,637 above budget
 - Regular Retail Sales .85% – \$21,020 above budget
 - Retail Sales for Housing .1% – \$2,907 above budget
 - Retail Sales for Housing (State Credit) - at budget
- B&O Tax revenue projected 2.45% above budget. (Table 3, Page 3)
- Other Tax revenue projected 18.26% above budget. (Table 3, Page 3)
- Property Tax revenue projected at budget. (Table 3, Page 3)
- January through June 2022 sales tax receipts were 6% higher than January through June 2021 receipts. (Table 5, Page 5)
 - The majority of this increase was in Retail Trade and Accommodation and Food Services.
- Utility tax revenues were .55% higher than 2nd quarter 2021. (Table 6, Page 6)
- General Fund revenues are expected to come in above budget and expenditures are projected to come in below budget. Revenues projected approximately \$91 thousand above budget. Expenditures projected approximately \$2 million below budget. (Table 7, Page 7)
- The total excess revenues over expenditures for all funds through 2nd quarter was \$6.9 million. \$4.73 million of the excess of revenue over expense is from the enterprise and internal service funds in which rates are set to provide for replacement and capital projects. (Table 9, Page 9)
- The City had \$71,405,975.16 in excess cash invested. (Investment report, page 1)

Financial Impact: None

Attachments:

[2nd Quarter 2022 Financial Status Report](#)
[Investment Report 2022 June](#)

City of Ellensburg Washington



Quarterly Financial Status Report

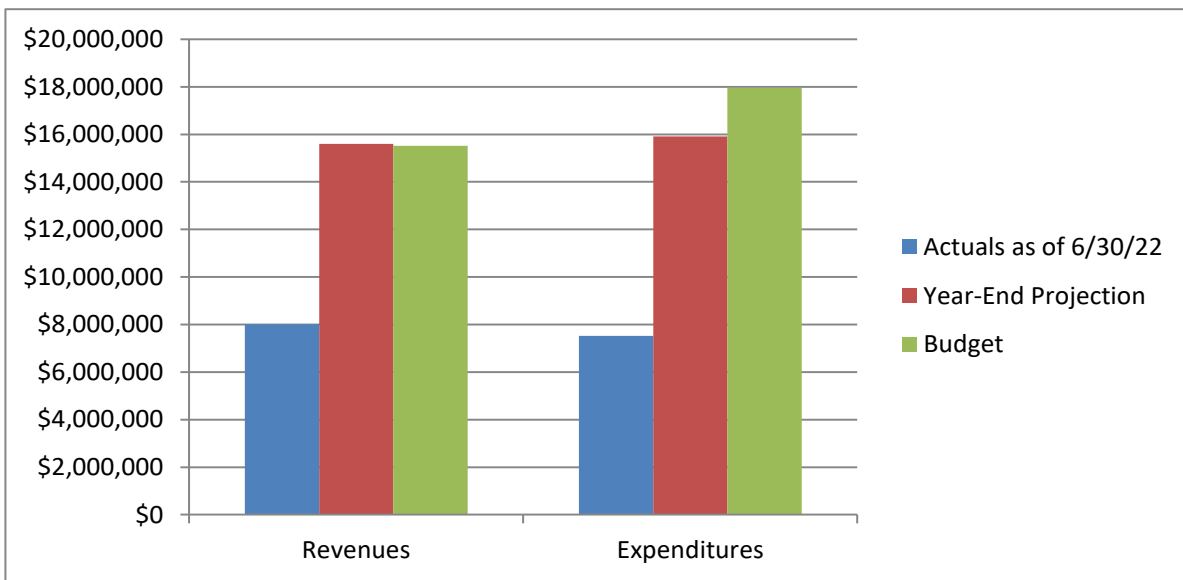
For the Quarter Ending June 30, 2022

AS OF 07/20/22

General Fund

The Governmental Funds' major funding sources include Property Tax, Sales Tax, Utility Taxes, Licenses & Permit Fees, and Charges for Services. Sales Tax is the largest tax revenue source for the City at approximately 55%, followed by Utility Tax at 20%, Property Tax at 19%, and Other Taxes at 6% of the City tax revenue. Tax revenue is approximately 17% of the total City revenues budgeted in 2022.

Table 1



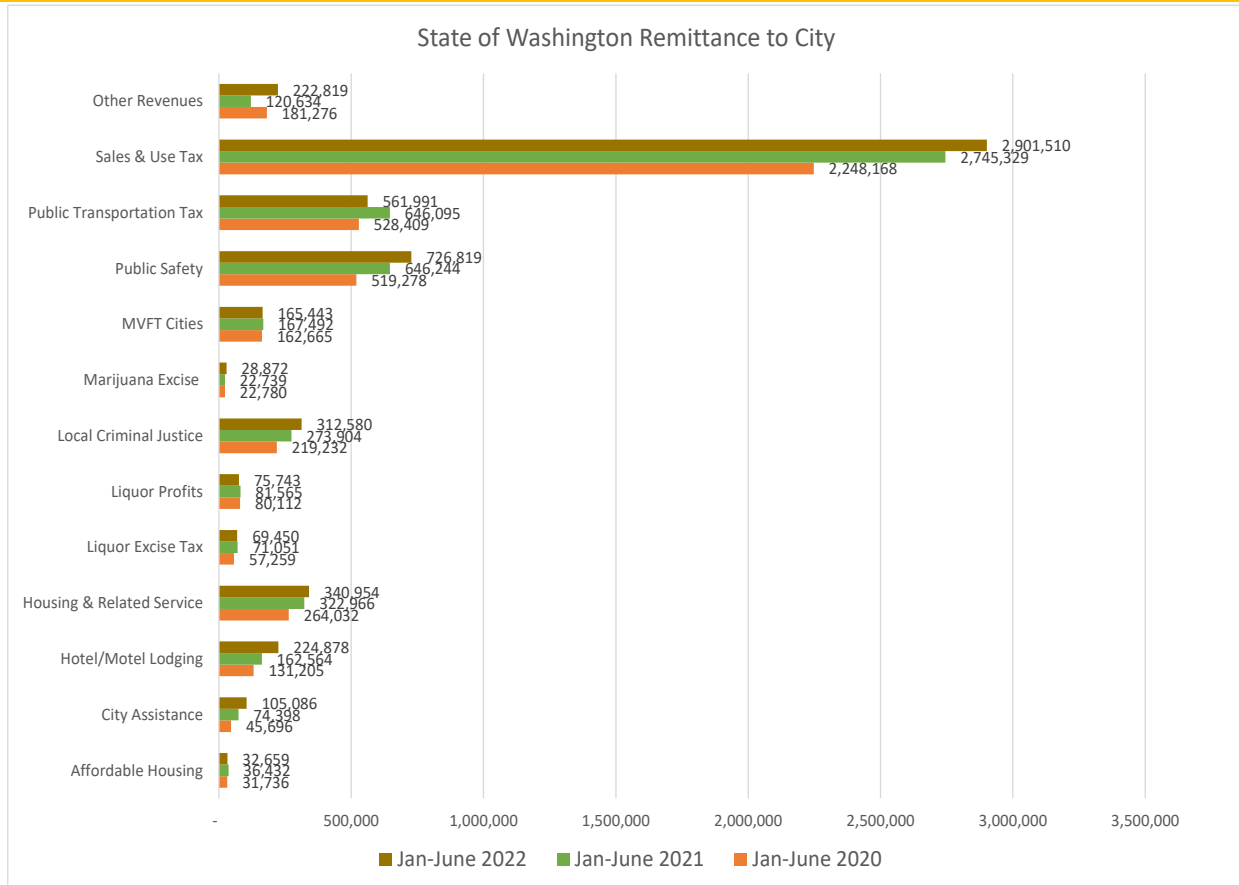
NOTE: The above graph illustrates the difference between year-to-date actuals through June, year-to-date projections as of 6/30/22, and revised budget through June.

Second quarter projections were made as of the current situation on 6/30/2022. Projections were made with the continued economic recovery in mind and using 2021 trends. Please keep in mind, these projections were based on the limited information known by local governments as of the end of June. General Fund expenditures are expected to come in below budget as required by Chapter 35.33 RCW. Budgeted expenditures reflect all adjustments that were taken to Council for approval through May of 2022. Revenue projections were done on an individual basis and will be discussed further in this report. The original '2022 Budget' amounts were set in 4th quarter of 2020. During the time this budget was built many numbers were down and projected to stay down due to the uncertainty of COVID19. In May of 2022 we brought forward 2022 supplemental budget requests and updated the 2022 revenue budget numbers for many of the following revenues.

Governmental Funds Tax Revenue

Table 2

CITY OF ELLENSBURG Year-to-Date Revenue Remitted from State of Washington Sales Tax Activity - Cash Jan-June '21 Compared to Jan-June '22 Table 2



	Receipts Dates Jan-June 2020	Receipts Dates Jan-June 2021	Receipt Dates Jan-June 2022	Increase/ (Decrease)	% Inc (Dec)
Affordable Housing	31,736	36,432	32,659	(3,773)	0%
City Assistance	45,696	74,398	105,086	30,688	41%
Hotel/Motel Lodging	131,205	162,564	224,878	62,314	38%
Housing & Related Service	264,032	322,966	340,954	17,988	6%
Liquor Excise Tax	57,259	71,051	69,450	(1,601)	-2%
Liquor Profits	80,112	81,565	75,743	(5,822)	0%
Local Criminal Justice	219,232	273,904	312,580	38,676	14%
Marijuana Excise	22,780	22,739	28,872	6,133	27%
MVFT Cities	162,665	167,492	165,443	(2,049)	-1%
Public Safety	519,278	646,244	726,819	80,575	12%
Public Transportation Tax	528,409	646,095	561,991	(84,104)	-13%
Sales & Use Tax	2,248,168	2,745,329	2,901,510	156,181	6%
Other Revenues	181,276	120,634	222,819	102,185	85%
Totals	4,491,848	5,371,413	5,768,804	397,391	7%

Table 3



	Actuals as of 06/30/22	Year-End Projection	Budget	% Projected Over/(Under) Budget
Sales Tax *	\$4,996,783	\$9,993,566	\$9,978,000	0.16%
B&O Tax **	1,876,972	3,653,380	3,565,980	2.45%
Other Tax ***	478,084	1,213,307	1,026,000	18.26%
Property Tax	48,002	3,563,857	3,563,857	0.00%
	\$7,399,841	\$18,424,111	\$18,133,837	1.60%

* SALES TAX includes tax portions for public transit, affordable housing, public safety, and regular retail sales

**B&O TAX includes utility, gambling etc.

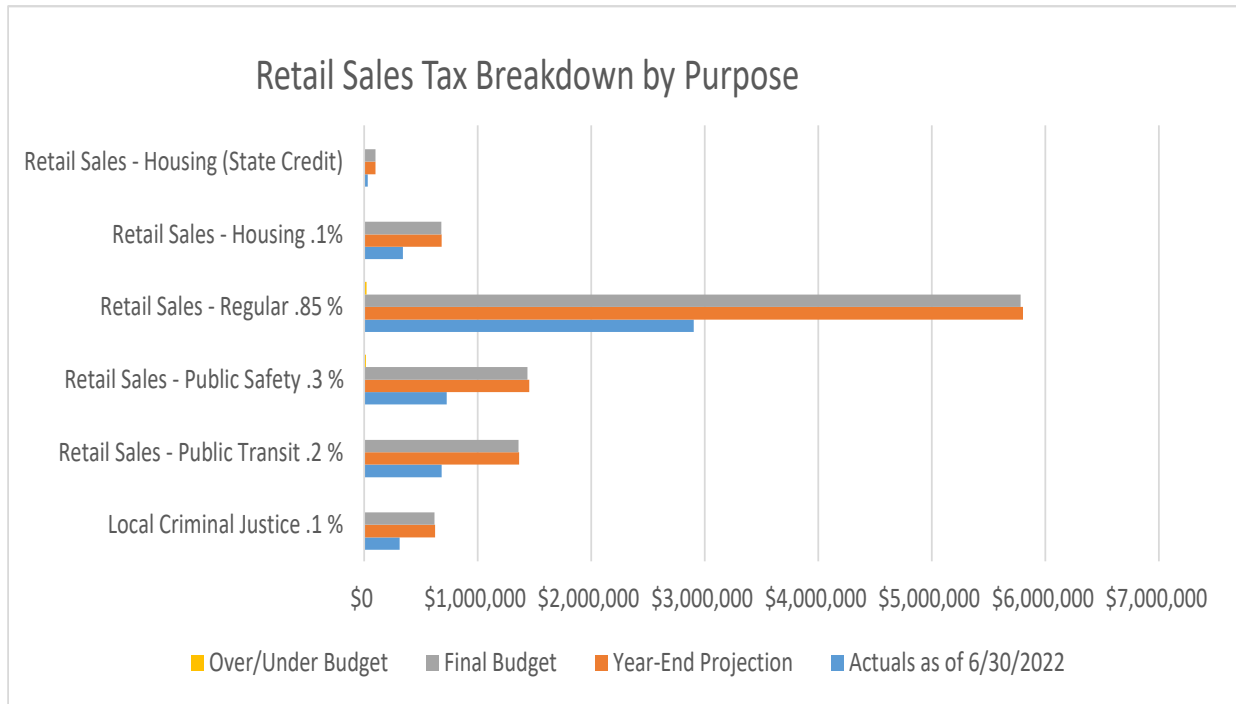
*** OTHER TAX includes leasehold and other excise taxes including hotel/motel tax

Overall governmental fund tax revenue is projected to come in approximately \$290 thousand or 1.6% above budget. Hotel/Motel Tax was the hardest hit governmental fund tax revenue with COVID-19 shutdowns and saw the longest comeback. However, Hotel/Motel Tax revenue has finally reached pre-covid levels. In 2020 it was budgeted at 62% of 2019. In 2020 Hotel/Motel Tax Revenue came in at 61.15% of 2019. In 2021 Hotel/Motel Tax revenue came in at 89.48% of 2019. January thru June 2022 revenues are 8.7% higher than January thru June 2019 revenues.

Sales Tax

Table 3 breaks down the difference of budgeted less projected by tax purpose. It is important to note that this includes retail sales and use tax that is restricted for public transit, public safety, and affordable housing purposes. Sales tax revenue received in January is for November 2021 activity. We used the average trend of sales tax over the past 6 months in order to project through year-end. Budgets were updated in May of 2022.

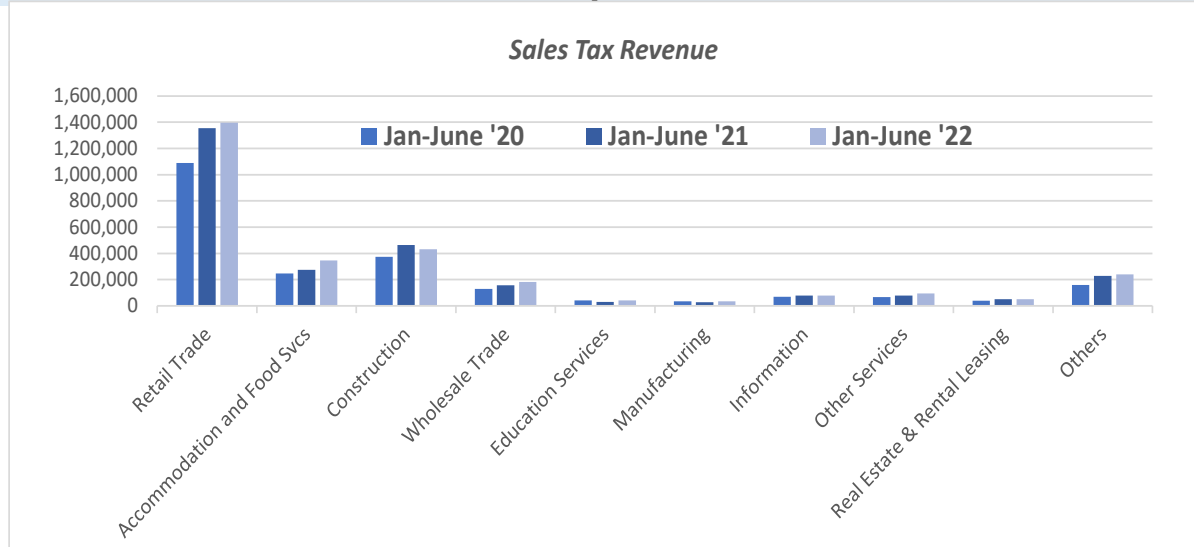
Table 4



	Actuals as of 6/30/2022	Year-End Projection	Final Budget	Projected Over/Under Budget
Local Criminal Justice .1 %	\$312,580	\$625,160	\$619,000	\$6,160
Retail Sales - Public Transit .2 %	682,263	1,364,526	1,360,000	\$4,526
Retail Sales - Public Safety .3 %	726,819	1,453,637	1,439,000	\$14,637
Retail Sales - Regular .85 %	2,901,510	5,803,020	5,782,000	\$21,020
Retail Sales - Housing .1%	340,954	681,907	679,000	\$2,907
Retail Sales - Housing (State Credit)	32,658	99,000	99,000	\$0
	\$4,996,783	\$10,027,251	\$9,978,000	\$49,250

Table 5

Year-to-Date Sales Tax Activity - Cash Basis Jan-June 2021 Compared to Jan-June 2022



	Receipts Dates <u>Jan-June '20</u>	Receipts Dates <u>Jan-June '21</u>	Receipt Dates <u>Jan-June '22</u>	Increase/ <u>(Decrease)</u>	% Inc <u>(Dec)</u>
Retail Trade	1,088,321	1,355,542	1,396,509	40,967	3%
Accommodation and Food Svcs	246,564	274,576	347,242	72,666	26%
Construction	373,869	463,713	432,598	-31,115	-7%
Wholesale Trade	130,442	156,482	182,111	25,629	16%
Education Services	41,763	30,671	42,879	12,208	40%
Manufacturing	34,435	26,968	35,563	8,595	32%
Information	68,355	77,856	77,976	120	0%
Other Services	66,480	78,330	95,717	17,387	22%
Real Estate & Rental Leasing	38,918	51,609	50,660	-949	-2%
Others	159,021	229,583	240,255	10,672	5%
Total	\$ 2,248,168	\$ 2,745,330	\$ 2,901,510	\$ 156,180	6%

Source: Dept of Revenue Sales Tax Reports - 2022 information: reporting revenue **received** January thru June

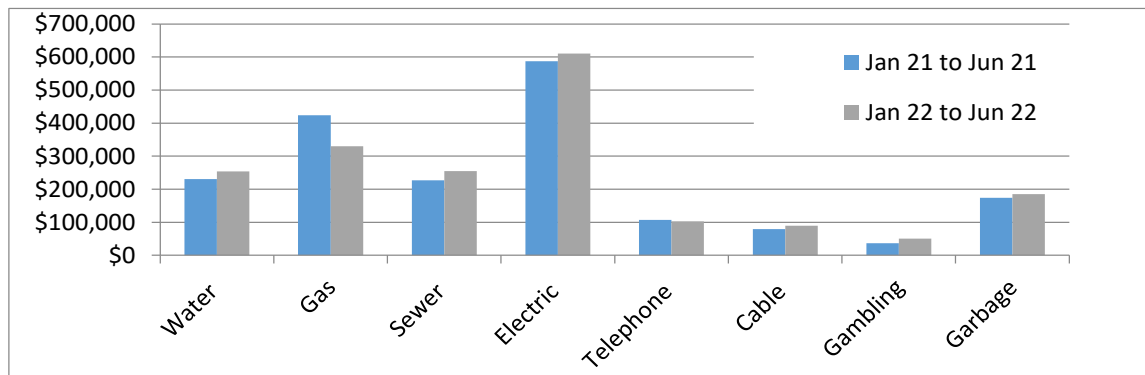
Retail sales tax is distributed monthly reflecting 20 different categories. The above graph reflects the top nine categories with 11 categories being identified within the “Others” category. “Education showed the highest percentage increase over 2nd quarter 2021 with “Accommodation and Food Services” showing the highest dollar increase. Regular retail sales tax revenue had a **3% overall increase** over the same period last year. These numbers do not include the .03% for criminal justice, the .02% for public transit, or the .01% for housing and related services. **These revenues are for sales from November through April.**

Utility Tax

The City generates utility tax revenues from the sale of the City's gas, electric, water, and sewer utilities as well as utility taxes on cable television, telephone, and garbage collection. The cable utility tax revenue includes both the General Fund and the Special Revenue funds. January through June water, gas, sewer, and electric utility taxes are for December through May sales.

Table 6

CITY OF ELLENSBURG
Year-to-Date Utility Tax Activity - Cash Basis
January-June 2021 Compared to January-June 2022



	Receipt Dates <u>Jan 21 to Jun 21</u>	Receipt Dates <u>Jan 22 to Jun 22</u>	Increase/ <u>(Decrease)</u>	% Inc <u>(Dec)</u>
Water (10.5%)	\$231,037	\$253,798	\$22,761	9.85%
Gas (6%)	424,251	330,179	(94,072)	-22.17%
Sewer (10.5%)	227,031	254,793	27,762	12.23%
Electric (6%)	587,588	610,430	22,841	3.89%
Telephone (6%)	106,673	102,691	(3,982)	-3.73%
Cable (1.075%)	79,115	89,761	10,646	13.46%
Gambling (varies 2%-8%)	36,849	49,966	13,117	35.60%
Garbage (8.1%)	174,171	185,353	11,183	6.42%
Total	<u>\$1,866,715</u>	<u>\$1,876,972</u>	<u>\$10,256</u>	<u>0.55%</u>

Revenue was recorded as cash basis for this report.

Telephone and cable taxes will continue to decrease as landlines and cable television have become less common. Residents using cell phone numbers from out of the area are not paying this local telephone tax.

Table 7

General Fund				
Revenues and Expenditures - Budget and Projected				
For the Period Ending June 30, 2022				
	2022 Budget	2022 Projected	2022 Actual YTD	Budget less Projected
Revenues				
Taxes	\$7,559,681	\$7,801,616	\$4,155,009	-\$241,935
Licenses & Permits	797,483	\$340,404	178,956	\$457,079
Intergovernmental	526,424	\$669,169	309,600	-\$142,745
Charges For Fees	4,502,485	\$4,583,908	2,250,531	-\$81,422
Fines & Forfeits	149,400	\$196,979	100,024	-\$47,579
Misc.	200,873	\$236,039	131,105	-\$35,166
Transfers	1,775,677	\$1,775,677	887,838	\$0
Other Receipts	0	0	0	\$0
Total	\$15,512,023	\$15,603,790	\$8,013,065	-\$91,767
Expenditures by Dept				
NonDept	\$1,485,043	\$1,367,853	\$837,443	\$117,190
Finance	2,203,453	\$2,048,302	940,505	\$155,151
City Manager	1,335,634	\$1,279,660	579,233	\$55,974
Police	5,427,836	\$4,669,667	2,281,988	\$758,169
Community Develop.	1,798,756	\$1,344,572	622,286	\$454,184
Engineering	1,189,962	\$940,638	420,319	\$249,324
Parks & Recreation	3,163,810	\$2,979,699	1,250,803	\$184,111
Library	1,270,126	\$1,205,666	552,833	\$64,460
Economic Development	75,000	\$75,000	40,500	\$0
Total	\$17,949,620	\$15,911,057	\$7,525,910	\$2,038,563
Excess of Revenues over	-\$2,437,597	-\$307,267	\$487,155	-\$2,130,330
Beginning Balance	5,303,136	5,303,136	5,303,136	\$0
Other Receipts	0			\$0
Ending Fund Balance	\$2,865,539	\$4,995,870	\$5,790,291	\$2,130,330

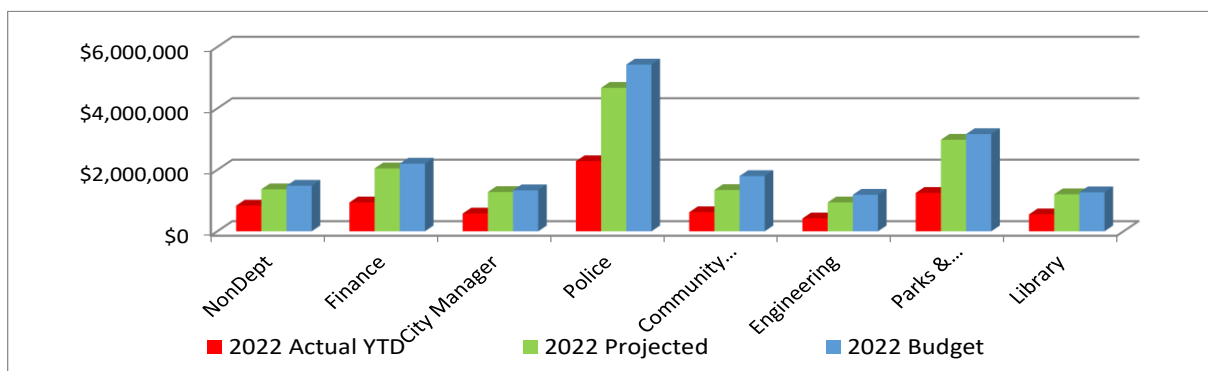


Table 8

DEBT ACTIVITIES	Issued Date	Maturity Date	Original Amount	Balance as of 06/30/22	2022 Debt Payment
General Obligation					
Library Bonds *	2003/2014	2022	1,905,000	180,000	185,400
Maintenance Bond - Pool	2010	2030	2,935,000	1,522,006	212,200
2017 GOI Bond - Public Safety Bldg.	2017	2037	7,200,000	6,899,229	562,326
Telecom Utility - LTGO Taxable **	2016	2036	290,243	226,029	19,072
			12,330,243	8,827,264	978,998
Revenue Bonds					
Stormwater Bond *****	2020	2039	3,000,000	5,000,000	216,501
Water Sewer *****	2016	2029	6,990,000	5,490,000	761,819
Gas	2016	2036	859,015	655,460	52,115
Electric- Refunding***	2005/2014	2025	3,650,000	1,455,000	396,200
Electric	2014	2033	4,540,000	4,450,000	205,925
Water	2013	2022	2,416,431	119,142	241,643
Water/Sewer *****	2021	2040	51,000	2,741,344	0
			21,506,446	19,910,946	1,874,203

* Library Bonds were refunded in 2014 with a new bond which has a lower interest rate.

** LTGO Taxable 20 year bonds in 2016

*** Electric Bonds were refunded in 2014 with a new bond which has a lower interest rate

**** Water/Sewer Bonds refunded in 2016 with a new bond at a lower interest rate

***** Up to \$10 million Waterworks Utility Bond for Water and Sewer Utilities. Draw period ends Nov. 30, 2022

Citywide Report

The table on the next page- Revenues and Expenditures-Actual shows that the City brought in approximately \$6.9 million more than it spent in 2022 YTD. \$4.7 million of the excess of revenue over expense is from the utility and internal service funds. General Fund (including managerial funds) saw a net gain of \$.55 million. *Table 8 reduces utility revenues by the outstanding utility receivable amounts to convert revenue amounts to cash basis.

Investment Report

See attachment, which shows the breakdown of our investment portfolio. The goal of our investment is safety, liquidity, and yield. To have safety and liquidity, most of our investments reside in the State Pool.

Table 9

All City Funds Revenues and Expenditures- Actual For the Quarter Ending June 30, 2022			
	Revenue	Expenditures	Excess of Revenue Over Expenditures
General Fund	\$8,013,065	\$7,525,910	\$487,155
Special Revenue Funds			
Street	1,233,503	1,074,196	159,307
Arterial	1,521,021	1,266,622	254,399
Traffic Impact	56,104	200,860	(144,756)
Ellensburg Public Transit	1,372,065	742,271	629,794
Criminal Justice	731,855	590,020	141,835
Drug Fund	2,977	5,106	(2,129)
Sales Tax	2,912,298	2,966,999	(54,701)
CATV	50,210	43,286	6,924
Parks Acquisition	44,083	8,250	35,833
Arts Acquisition	50,763	4,584	46,179
Lodging Tax	226,984	98,337	128,647
Housing & Related Service	378,154	750,000	(371,846)
COVID-19 Funds	0	67,645	(67,645)
Debt Funds			
Public Safety Bond	562,327	281,163	281,164
Maintenance Bond	212,800	10,859	201,941
Library Bond	100,725	2,700	98,025
LID Guarantee Fund	269	0	269
Capital Funds			
Capital Const. Bond Projects	0	566	(566)
Sidewalk	230,003	30,849	199,154
Enterprise Funds			
Stormwater	774,738	687,529	87,209
Telecommunications	282,935	113,401	169,534
Gas	5,499,029	4,091,305	1,407,724
Electric	10,726,932	8,202,724	2,524,208
Water	2,711,479	3,172,982	(461,503)
Sewer	2,613,600	2,177,805	435,795
Internal Service Funds			
Shop	1,305,166	700,885	604,281
Health Insurance	1,155,917	1,202,810	(46,893)
Risk Management	689,987	665,077	24,910
IT	773,687	784,320	(10,633)
Library Trust	908	666	242
Hal Holmes	6,722	0	6,722
Fire Relief	189,426	53,618	135,808
Total	\$44,429,732	\$37,523,345	\$6,906,387
Managerial Funds of the General Fund			
* Utility Revenue amounts have been converted to cash basis			

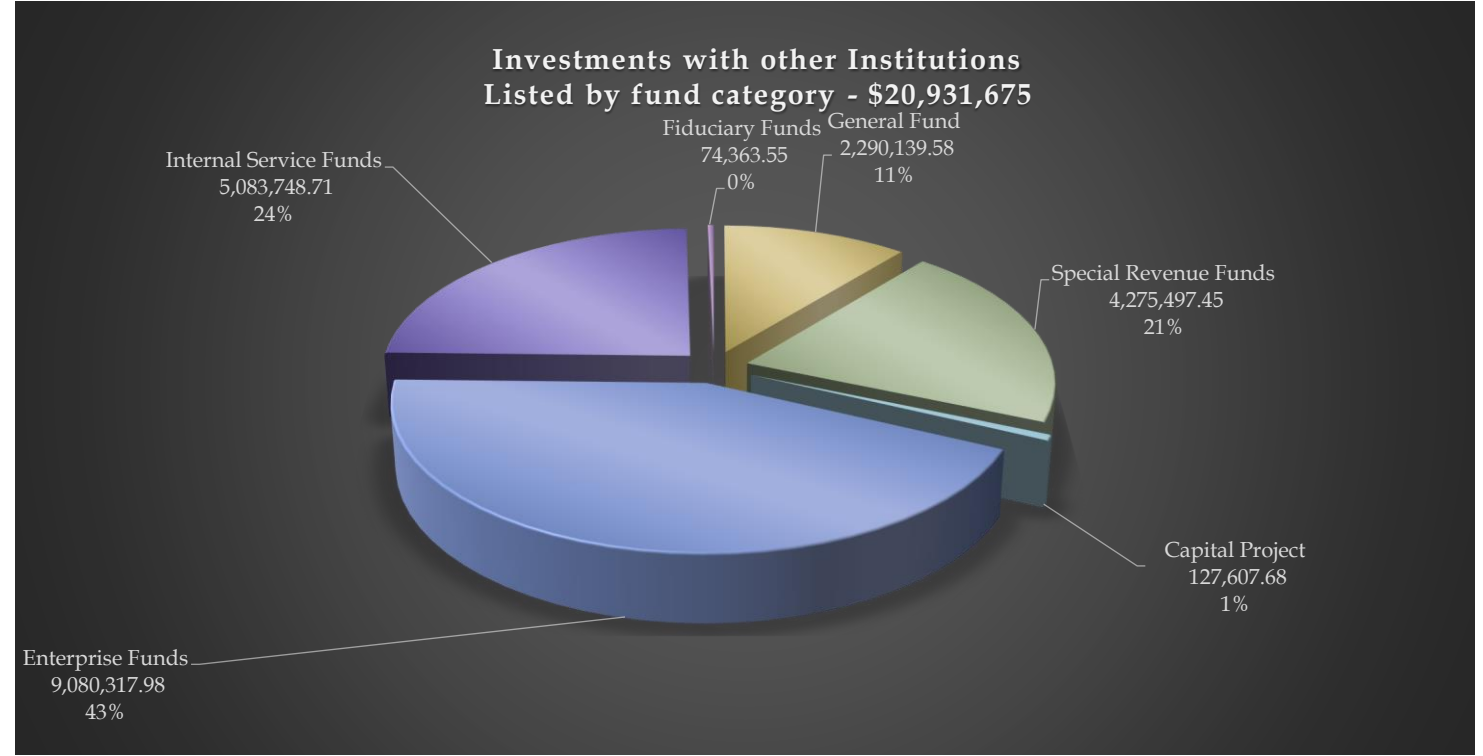
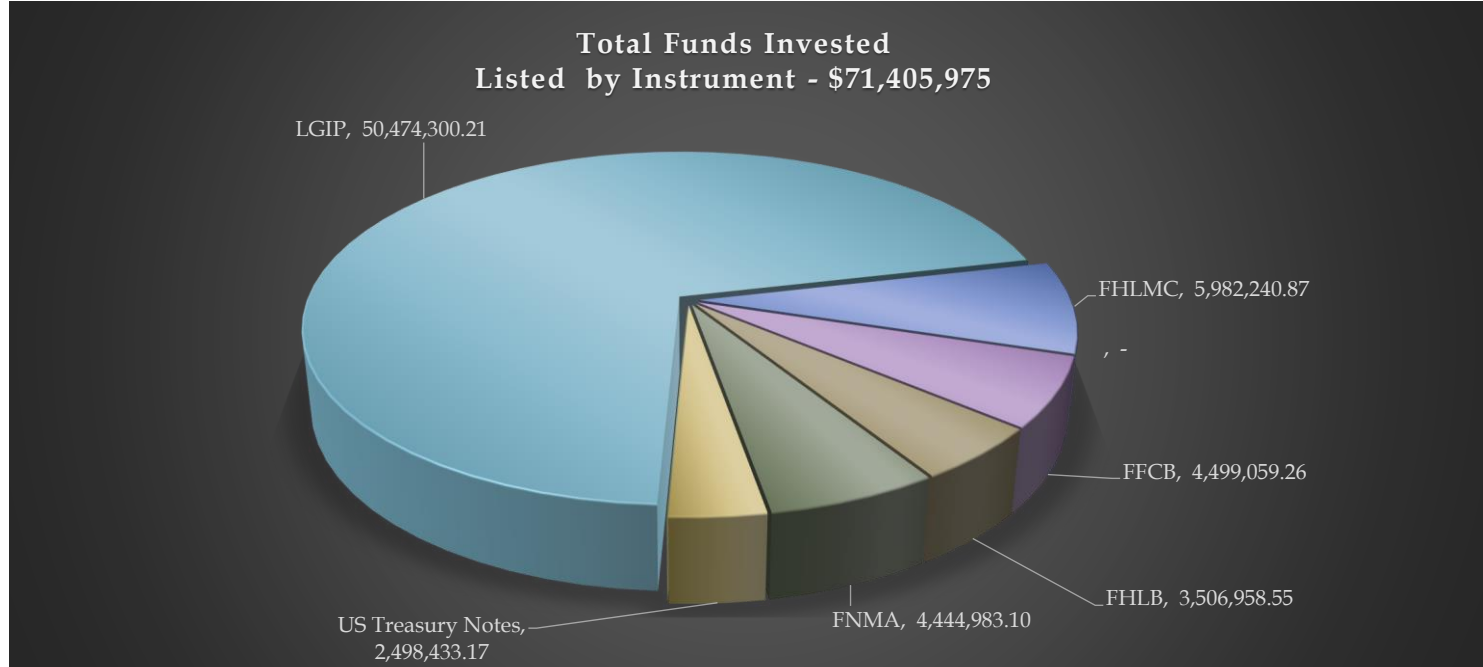
CITY OF ELLENSBURG - Investment Report As of 6/30/2022

The City will diversify its investments by security type and institution. The following schedule provides the maximum holdings in any one type of investment with any one type of issuer.

Funds invested \$ 71,405,975.16

Bench Marks

- 1-year Treasury Constant Maturity - 3.07%
- 2-year Treasury Note - 3.03%
- External Investments - 1.11%
- Local Govt. Investment Pool (LGIP)-Gross Earnings Rate - 1.0153%
- Interest earned in June - \$62,975



CITY OF ELLENSBURG - Investment Report As of 6/30/2022

Investments with other Institutions

Type of Authorized Security	Maximum Holdings and Issuer Limitations	maximum \$ amount that can be invested	% limitation per issuer	% of portfolio invested	Current Investment Holding Amount	Name	Amount Invested w/Issuer	% of Issuer Holding	Yield to Maturity	Expected Annual Earnings
U.S. Treasury Bills, Notes, Bonds or Certificates	100% of Portfolio	\$71,405,975	no limitation	29 %	\$20,931,675	#48 FFCB3133EJGU7 Settled 10/5/18 purchase: \$996,823.28 Matures 12/16/2022	996,823	1 %	3.03 %	27,100
						#49 FHLB 3130AFW94 Settled 3/11/19 purchase: \$1,003,640.56 Matures 2/13/24	1,001,456	1 %	2.46 %	25,000
						#51 Matured 2/11/22	-	0 %	2.30 %	0
						#53 FFCB 1.85 Settled 7/19/19 purchase: \$1000925. Matures 02/01/23	1,000,231	1 %	1.85 %	18,500
						#54 FFCB 1.6 8/14/23 Corp Settled 10/10/19 purchase: \$505,345.94. Matures 08/14/23	502,005	1 %	1.38 %	8,000
						#56 US Treas Strip 1.55 Settled 01/08/2020 purchase: \$999,741.04 Matures 11/15/23	999,741	1 %	1.55 %	15,500
						#57 FNMA corp Settled 01/08/2020 purchase: \$1,003,603.11 Matures 10/15/24	1,001,802	1 %	1.63 %	16,250
						#58 FNMA Corp Settled 01/08/20 purchase: \$1,500,940.08 Matures 09/06/22	1,500,157	2 %	1.53 %	20,625
						#59 FHLMC Settled 06/15/20 purchase: \$998,312.89 Matures 05/27/25	998,313	1 %	0.54 %	5,000
						#63 FHLMC Settled 07/15/2020 purchase: \$ 1,000,131.94 Matures 6/26/23	1,000,044	1 %	0.25 %	2,500
						#65 Treasury Strip.45 Settled 02/11/21 purchase: \$ 499,619.01 Matures 2/15/26	499,619	1 %	0.45 %	2,250
						#66 FNMA Settled 06/14/21 purchase: \$995,948.42 Matures 8/25/25	995,948	1 %	0.50 %	5,000
						#67 FFCB Settled 06/14/21 purchase: \$2,000,000 Matures 6/14/24	2,000,000	3 %	0.32 %	6,400
						#68 FHLB Settled 8/9/21 purchase: \$1,006,671.67 Matures 6/12/26	1,005,337	1 %	0.65 %	7,500
						#69 FHLMC Settled 08/9/21 purchase: \$3,985,346 Matures 3/30/26	3,983,884	6 %	0.63 %	20,400
						#70 FHLB Settled 11/4/21 purchase: \$1,500,192.5 Matures 1/2/25	1,500,165	2 %	0.77 %	11,550
						#71 FNMA Settled 3/17/22 purchase: \$947,076.44 Matures 11/07/25	947,076	1 %	2.07 %	20,700

CITY OF ELLENSBURG - Investment Report As of 6/30/2022

#72 US Treas Settled 3/18/22 purchase: \$999,073.12 Matures 8/31/24	999,073	1%	1.95%	19,500
Subtotal Funds	20,931,674.95	\$ 231,775.00		
External Investments		1.11% AAY		

Investment in State of Washington Investment Pool

State of WA Investment Pool	100% of Portfolio	\$71,405,975	no limitation	71%	50,474,300.21	State of WA Local Government Investment Pool	50,474,300.21	71%	1.0153%	\$ 512,465.57
State Investment Pool							1.02% AAY			

AAY = Average Annual Yie
FHLMC - Federal Home Loan Mtg Corp
FHLB - Federal Home Loan Bank
FFCB - Federal Farm Credit Bank
FNMA- Federal National Mortgage Assn

Sorted by Maturity

Security	Description	Rate	Par	Maturity	Months Left to Maturity	Investment #
3135gow33	FNMA NONCALLABLE	1.53	1,500,000	9/6/2022	9	58
3133EJGU7	FFCB NONCALLABLE	3.03	1,000,000	12/16/2022	13	48
3133EKUA2	FFCB NONCALLABLE	1.85	1,000,000	2/1/2023	14	53
3137EAES4	FHLMC	0.25	1,000,000	6/26/2023	19	63
3133EKZK5	FFCB	1.6	500,000	8/14/2023	20	54
912833LP3	US TREASURY NONCALLABLE	1.55	1,061,000	11/15/2023	24	56
3130AFW94	FHLB NONCALLABLE	2.5	1,000,000	2/13/2024	26	49
3133EMH62	FFCB Callable starting 12/14/2021	0.32	2,000,000	6/14/2024	30	67
9128282U3	US TREASURY NONCALLABLE	1.9522	1,000,000	8/31/2024		72
3135GOW66	FNMA NONCALLABLE	1.62	1,000,000	10/15/2024	35	57
3130APKD6	FHLB Callable starting 4/28/2022	0.77	1,500,000	1/28/2025	38	
3134GVYP7	FHLMC	0.54	1,000,000	5/27/2025	42	59
3135GO5X7	FNMA NONCALLABLE	0.375	1,000,000	8/25/2025	45	66
3135GO6G3	FNMA NONCALLABLE	2.0706	1,000,000	11/7/2025		71
912833LY4	US TREASURY NONCALLABLE	0.45	511,000	2/15/2026	51	65
3134GWWP7	FHLMC CALLABLE starting 3/30/23	0.63	4,000,000	3/30/2026	52	69
3130AMFS6	FHLB NONCALLABLE	0.65	1,000,000	6/12/2026	54	68
Total Par			21,072,000			

Investment by Fund/Category	
General Fund	2,290,139.58
Special Revenue Funds	4,275,497.45
Capital Project	127,607.68
Enterprise Funds	9,080,317.98
Internal Service Funds	5,083,748.71
Fiduciary Funds	74,363.55
Total	20,931,674.95
LGIP	50,474,300.21
	-
Total	71,405,975.16

Investment by Instrument	
US Treasury Notes	2,498,433.17
State of WA Bonds	-
LGIP	50,474,300.21
FHLMC	5,982,240.87
	-
FFCB	4,499,059.26
FHLB	3,506,958.55
FNMA	4,444,983.10
	-
Total	71,405,975.16

- difference



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 1, 2022

Item Title/Agenda Subject: Affordable Housing Agreement Between City of Ellensburg and Stalder Interests, Inc. for 1st and Pine Street Properties

Submitted by: Jamey Ayling Community Development

Recommended Action or Motion: Authorize the City Manager to sign the attached Affordable Housing Agreement with Stalder Interests, Inc. and associated attachments for development of affordable housing on surplus parcels located at 1st and Pine Streets.

Background/Summary: As of 2021, there are an estimated 20,000 people living in the City of Ellensburg and the City is expected to grow at a rate of 2 percent each year for the next 20 years. To accommodate this level of growth, 333 new housing units will need to be built each year. With rental vacancy rates of less than 1 percent, the City is already lacking in housing stock to meet current demands.

One of the best indicators for affordable housing needs is the number of households that are cost burdened. A household is considered to be cost burdened if they spend more than 30 percent of their income on housing and basic utility costs. As of 2018, there is an estimated 964 non-student households that are cost burdened living in Ellensburg. The vast majority of cost burdened households earn less than 80 percent of Area Median Income. Given the strong housing market in Ellensburg and the extremely low vacancy rates, without some form of subsidy the market is not likely to provide housing that is affordable to households earning less than 80 percent of Area Median Income.

The City of Ellensburg recognizes the importance of attainable housing in fostering a healthy and livable community. In order to help address the local housing needs, consistent with the Revised Code of Washington (RCW) 39.33.015, the City of Ellensburg identified two City-owned parcels on the corner of 1st and Pine surplus declaration for the development of affordable housing.

Previous Council Action: At the June 7, 2021 City Council Meeting, Council received a recommendation from the Affordable Housing Commission to authorize the construction of a 57 unit apartment complex for persons who make less than 80% AMI. Council approved the application and issued an award letter to Stalder Interests Inc. on September 7, 2021 which stipulated conditions of approval for the project.

At the October 18, 2021 City Council Meeting, Council declared the property surplus and authorized the disposition thereof upon completing an Affordable Housing Agreement with the developer for an affordable housing project.

Analysis: The 1st and Pine property consists of two parcels 937033 and 617033, approximately 0.50 acres, located between Pine and Ruby Streets, north of 1st Avenue. The parcels are legally described as follows:

Parcel 937033: Lots 3 and 4, Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County.

Parcel 617033: Lot 5, Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County.

The City purchased the property along with another parcel on the southeast corner of 2nd Avenue and Pine Street for \$532,000 in 2003 with bond proceeds. The northernmost parcel is used for Hal Holmes Community Center parking and the two southern parcels are currently in use as a community garden. In November 2019, the City conducted a valuation of the property by comparing the property to two undeveloped parcels (15733 and 337433) within a few blocks of the subject parcels. Based on that comparison, the valuation for the City's 0.50 acre property is \$158,188.73.

The 1st and Pine property parcels will be transferred to Stalder Interests, LLC for the public benefit purpose of providing affordable housing. The surplus of the subject parcel will facilitate the development of a 57 unit apartment complex for households earning no more than 80 percent of Area Median

Income. The project will be substantially similar in overall design to the proposal submitted by the developer and approved by Ellensburg City Council at its June 7, 2021 meeting. The project is also subject to the terms of and conditions of the of the City's September 8, 2021 Award Letter. As part of the contractual agreement and transfer of land ownership a restrictive covenant will be required to help ensure the property will be retained as affordable housing consistent with RCW 39.33.015. The Agreement requires completion of the project by no later than 18 months following closing on the property transfer through escrow, which should occur later this month.

Prior to transfer of the parcels, the City will notify FISH (Lessee of the parcels for the Community Garden area) that the lease will be terminated at the end of the current garden season later this Fall. Staff will schedule a discussion of alternative community garden sites for the September 6 City Council meeting.

Financial Impact:

Total estimated value of both properties is \$292,297.13.

Attachments:

[Ellensburg - Stalder Interests Affordable Housing Agreement](#)

AFFORDABLE HOUSING AGREEMENT

by and between

CITY OF ELLENSBURG

and

STALDER INTERESTS, INC.

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ATTACHMENTS

ATTACHMENT NO. 1	MAP
ATTACHMENT NO. 2	LEGAL DESCRIPTION OF THE SITE
ATTACHMENT NO. 3	SCHEDULE OF PERFORMANCE
ATTACHMENT NO. 4	RESERVED
ATTACHMENT NO. 5	CERTIFICATE OF COMPLETION OF CONSTRUCTION
ATTACHMENT NO. 6	CITY DEED
ATTACHMENT NO. 7	AFFORDABLE HOUSING COVENANT
ATTACHMENT NO. 8	AWARD LETTER

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the “Agreement”), dated, for identification purposes only, as of _____, 2022 (the “Effective Date”) is entered into by and between the **CITY OF ELLENSBURG**, a municipal corporation (“City”), **STADLER INTERESTS, INC.**, a Washington corporation (the “Developer”).

RECITALS

A. City is a municipal corporation which, as part of its governmental operations, seeks to add to the community’s supply of affordable housing units that are actively managed, which constitutes a public use and purpose and an essential governmental function for which public moneys may be spent, and other aid given and a proper public purpose, necessary in the public interest.

B. City currently owns that certain property consisting of approximately one-half (0.5) of an acre, known as 1st and Pine (the “Site”) within the corporate limits of the City of Ellensburg. Pursuant to Resolution 2021-32, the City Council has declared such property surplus to the City’s needs and has authorized disposal of the Site pursuant to RCW 39.33.015 for the public benefit purpose described in Resolution 2021-32 and RCW 39.33.015, namely to provide affordable housing for low-income and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons. For this purpose “low-income” refers to an earnings threshold of 80% of AMI as set forth in RCW 43.63A.510.

C. Developer will develop the Site with a fifty-seven (57) unit multifamily development (“Project”) providing permanent housing to persons and families of limited income, as more particularly provided herein, with all of the dwelling units on the Site to be restricted to occupancy by low-income residents. The Project will be substantially similar in overall design to the proposal submitted by the Developer and approved by the Ellensburg City Council at its June 7, 2021 meeting. The Project is also subject to the terms and conditions of the City’s September 8, 2021 Award Letter, a copy of which is included hereto as Attachment 8.

D. Developer has requested assistance from City in the form of contribution of the Site.

E. By this Agreement, and subject to the terms and conditions herein, City desires to aid in the implementation of the Project as more fully described herein. The permitted income levels of the tenants of each Housing Unit and the permissible rents price to be charged for occupancy of each Housing Unit are set forth in detail in this Agreement and the Regulatory Agreement, in order to ensure compliance with the requirements this Agreement and other applicable federal and state laws and regulations.

F. Initially capitalized terms used in these Recitals are defined in these Recitals and in Section 1.1.

G. The Project is in the vital and best interest of City and the health, safety and welfare of the residents of the City, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms. As used in this Agreement (and in all other Project Documents, unless otherwise defined), the following capitalized terms shall have the following meanings:

“**Affiliate**” means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer which, if Developer is a partnership or limited liability company, shall include each of the constituent partners or members, respectively thereof. The term “control” as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of at least 50% of the voting rights attributable to the shares of the controlled corporation and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

“**Affordability Period**” means the duration of the affordable housing requirements that are required by this Agreement and set forth in the Regulatory Agreement. The Affordability Period shall continue until the later to occur of (i) the fifty-first (51st) anniversary of the Effective Date, or (ii) the fiftieth (50th) anniversary of the date the Certificate of Completion of Construction is issued to Developer.

“**Area Median Income**” or “**AMI**” means the Area Median Income for Kittitas County, Washington, as published annually, effective July 1, by the U.S. Department of Housing and Urban Development – HOME Income Limits.

“**Building Permit**” means the building permit(s) issued by City and required for the Improvements.

“**Certificate of Completion of Construction**” means Attachment No. 5.

“**City**” means the City of Ellensburg, a Washington municipal corporation.

“**City Code**” means the municipal code of City as amended from time to time.

“**City Conveyance**” means the conveyance by which Developer shall acquire title to the Site from City.

“**City Deed**” means a grant deed by which City will convey the Site to Developer. The form of the City Deed shall be substantially as set forth as Attachment 6.

“**City Conveyance Developer Certificate**” means the certificate delivered by Developer to the City as a condition of Closing.

“**City-Developer Purchase Price**” means the sum of \$158,188.73, which shall be deemed to be the value of the Site established upon conveyance of the Site to the Developer pursuant to Section 2.1 of this Agreement.

“**City Manager**” means the City Manager of City and the authorized designee(s) of the City Manager. Whenever the consent, approval or other action of the “City Manager” is required herein such consent may be provided by the City Manager or the authorized designee(s).

“**Civil Permits**” means the permit(s) issued by the City and required to construct the on-site utilities and infrastructure serving the Project.

“Conditions Precedent” shall have the meaning set forth therefor in Section 2.1.4 hereof.

“Construction” means the entire work of construction, development and improvement of the Site which is required pursuant to this Agreement, including as set forth in the Scope of Development and the Design Development Drawings.

“Construction Contract” means the contract entered into by and between General Contractor and Developer, if the General Contractor is not the Developer, for the construction of the Project, as approved by City Manager pursuant to this Agreement in the City Manager’s reasonable discretion.

“County” means the County of Kittitas, Washington.

“County Recorder” means the County Auditor or other official charged with recording of documents pertaining to title to land.

“Design Development Drawings” is defined in Section 4.2.

“Developer” means Stadler Interests, Inc., as defined in the first paragraph hereof.

“Effective Date” means the date of this Agreement.

“Eighty Percent Households” means households earning not greater than 80% of Kittitas County AMI, adjusted for household size.

“Environmental Claim” means (i) any judicial or administrative enforcement actions, proceedings, claims, orders (including consent orders and decrees), directives, notices (including notices of inspection, notices of abatement, notices of noncompliance or violation and notices to comply), requests for information or investigation instituted or threatened by any governmental authority pursuant to any Governmental Requirement; or, (ii) any suits, arbitrations, legal proceedings, actions or claims instituted, made or threatened that relate to any damage, contribution, cost recovery, compensation, loss or injury resulting from the release or threatened release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Hazardous Materials, or the violation or alleged violation of any Governmental Requirement, or the general, manufacture, use, storage, transportation, treatment, or disposal of Hazardous Materials.

“Environmental Laws” as used in this Agreement means all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. Section 9601, et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601, et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, et seq., the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001, et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801, et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f, et seq.; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer, or the Site.

“Escrow” means, unless the context requires otherwise, the escrow established for the recording of the City Deed and the Regulatory Agreement.

“Escrow Holder” means the holder of the Escrow, as designated by City.

“Event of Default” has the meaning set forth in Section 7.1.

“Fair Housing Laws” means the Fair Housing Act of 1968 as amended from time to time (42 U.S. Code Sections 3601-3619 and 3631), and State laws pertaining to housing including without limitation the Washington Law Against Discrimination, Chapter 49.60 RCW.

“Financing Plan” means a plan which accounts for all sources necessary for the construction of the Improvements; such Financing Plan is to be subject to review and approval by the City Manager.

“General Contractor” means the general contractor (which may be the Developer) engaged to supervise the subcontractors in the performance and completion of the construction of the Improvements. The General Contractor shall be reasonably acceptable to and approved by the City Manager, in the City Manager’s reasonable discretion. The parties acknowledge that the General Contractor may perform actual construction work for a portion of the Development, and may hire Subcontractors who shall be reasonably approved by the City Manager.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the state, the County, City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over Developer or the Project. The Governmental Requirements shall be deemed to require, without limitation, the payment of fees charged by governmental agencies having jurisdiction over the development of the Site.

“Hazardous Material” or **“Hazardous Materials”** means: (a) any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Washington, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “dangerous wastes”, “hazardous substances”, “hazardous household substances”, “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under RCW Title 70, Chapter 70.105, (ii) petroleum, (iii) asbestos and/or asbestos containing materials; (iv) lead-based paint or any lead based or lead products; (v) polychlorinated biphenyls, (vi) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903), (vii) Methyl-tertiary Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); (viii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any “Environmental Laws” (as defined above) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (ix) lead based paint pursuant to and defined in the Lead-Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. §4800, et seq., specifically §§4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including without limitation alcohol, aspirin, tobacco and saccharine.

“Hazardous Materials Contamination” means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Effective Date) emanating from the Site.

“Housing Unit” or **“Housing Units”** means the fifty-seven (57) individual dwelling units at the Site to be constructed, leased, managed, and operated by Developer as long term affordable housing and in implementation of the Project.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Loan” means a mortgage loan insured by the Federal Housing Administration under Section 221(d)(4) of the National Housing Act, as amended.

“Improvements” means all of the improvements all improvements required to be made under this Agreement and all other Project Documents.

“Indemnitees” means City and its elected officials, officers, employees, attorneys, contractors, elective and appointive boards and commissions, representatives, agents, and volunteers.

“Legal Description of the Site” means Attachment 2.

“Low-Income Household” means Eighty Percent Households.

“Map” means Attachment 1 hereof.

“Owner’s Title Policy” is defined in Section 2.4.

“Parties” means City and Developer.

“Project” is defined in Recital D above.

“Project Documents” means, collectively, this Agreement, the Regulatory Agreement, and the City Deed.

“RCW” means the Revised Code of Washington.

“Regulatory Agreement” means an instrument substantially in the form of Attachment 7 hereto.

“Remediation” is defined in Section 4.16.

“Rent” means the total of monthly payments by tenants of a Housing Unit for use and occupancy for the Housing Unit and facilities associated therewith, including utility allowance as established by the local public housing authority or as otherwise set by HUD.

“Schedule of Performance” means that certain Schedule of Performance attached hereto as Attachment 3, which generally sets forth the time for performing the various obligations of this Agreement. The time periods set forth in the Schedule of Performance for City approval of submittals, including without limitation any plans and drawings, submitted to City by Developer shall only apply and commence upon Developer’s complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any of City Manager’s obligations of review and/or approval hereunder; provided,

however, that the City Manager shall notify Developer of an incomplete submittal as soon as is practicable. The Schedule of Performance is subject to modification from time to time upon prior written authorization of Developer and the City Manager on behalf of City. In addition to Section 8.2 extensions, the City Manager retains authority to extend times for performance for up to three hundred (300) days as all such extensions are aggregated.

“**Scope of Development**” shall have the meaning set forth in Section 4.1 hereof.

“**Site**” means that property so designated in the Legal Description of the Site and the Map.

“**Subcontractor**” and “**Subcontractors**” means, individually and collectively, one or more subcontractors hired by Developer or General Contractor for the Improvements to perform and complete, or to engage and supervise others to perform and complete, the construction of the Improvements. Developer shall submit to City information regarding the entity serving as the Subcontractor for any portion of the construction of the Improvements, including compliance with plans approved by City and the obtaining by Developer of all required licenses, certifications, insurance, etc., as reasonably requested by the City Manager.

“**Title Company**” means AmeriTitle or another title insurer designated by City.

“**WAC**” means the State of Washington Administrative Code as amended from time to time.

1.2 Singular and Plural Terms. Any defined term used in the plural in this Agreement or any Project Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 References and Other Terms. Any reference to this Agreement or any Project Document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation.”

1.4 Exhibits Incorporated. All attachments and exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

2. DISPOSITION OF THE SITE

2.1 Sale of the Site. As of the Effective Date, City holds fee title to the Site. Developer has completed its investigation of the Site and, provided all required permits and land use approvals are obtained with conditions acceptable to Developer, in its sole and absolute discretion, Developer shall deliver written notice to City of its intention to proceed with the Improvements. Developer’s investigation may have included, in Developer’s sole and absolute discretion: physical inspection of the Site, including, but not necessarily limited to, inspection and examination of soils, environmental factors, hazardous substances, archaeological information, geological, engineering and other tests, a review and investigation of zoning, permits and entitlements, review of all governmental matters affecting the Site, an appraisal of the Site, and such other matters pertaining to the Improvements as Developer deems appropriate. Developer shall have the right to, at any reasonable time and from time to time to inspect (or have its consultants inspect) the Site, and Developer shall not conduct any invasive soil, gas or groundwater sampling at the Site without first submitting a work plan to City which is acceptable to City in its reasonable discretion. No later than

ten (10) days after its receipt of any such proposed work plan from Developer, City shall notify Developer in writing whether it approves or reasonably disapproves of such work plan. All fees and other expenses incurred by Developer relating to the inspection of the Site shall be Developer's obligations. In the event Developer constructs the Improvements, all fees and expenses incurred by Developer relating to the inspection of the Site will be included in the total development cost. Developer agrees to repair any damage caused by Developer or Developer's consultants in making any inspection.

The purchase price for the sale of the Site by City to Developer, subject to all of the terms and conditions of this Agreement, shall be the City-Developer Purchase Price provided payment of such purchase price will be deferred and deemed satisfied if Developer performs its obligations under this Agreement including without limitation the renting of Housing Units to Low-Income Households in compliance with the Agreement.

2.1.1 Access to Site Prior to the Closing. Prior to the City Conveyance, representatives of the Developer shall have the right of access to all portions of the Site for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, including without limitation the investigation of the environmental condition of the Site. The Developer agrees to notify the City in writing prior to undertaking any studies or work upon the Site prior to the City Conveyance. The City may require the Developer to execute a right of entry agreement satisfactory to City legal counsel prior to commencing such studies or work. Any preliminary work by the Developer shall be undertaken only after securing any and all necessary permits from the appropriate governmental agencies. The Developer shall indemnify, defend, and hold City harmless from any claims, losses, liabilities, and damages arising out of the activities of the Developer as set forth in this section. In addition, in the event that the Developer causes any damage to any portion of the Site, the Developer pursuant to this section shall promptly restore the Site as nearly as possible to the physical condition existing immediately prior to the Developer's entry onto the Site.

2.1.2 Conditions Precedent. City shall not convey title to any of the Site to, unless and until each and every one of the following conditions precedent (the "City Conveyance Conditions Precedent," which City Conveyance Conditions Precedent are solely for the benefit of City) has been fully satisfied, as determined in good faith by the City Manager (each of which conditions, if it requires action by Developer, shall also be a covenant of Developer):

(a) Financing Plan. Developer shall have submitted and shall have obtained approval of the City Manager of a Financing Plan. In addition, as a part of the Financing Plan, evidence of due formation and good standing shall have been filed with the Washington Secretary of State a copy shall be provided to City. In addition, Developer shall provide evidence that it has secured financing commitments for the Project that are sufficient to finance the Project, and shall provide a pro forma project budget that includes all funding sources for the Project. In addition, Developer shall have certified in writing to City that the financing commitments, affordable housing subsidies, and required equity contributions, are together projected to be sufficient to pay for the Construction of the Improvements through completion of the Project.

(b) Project Documents. Developer shall have delivered to the Escrow Holder, in recordable form, the Regulatory Agreement, duly executed by Developer.

(c) Civil Permits. Developer shall have satisfied all conditions to obtaining all Civil Permits to be obtained excepting for the payment of permit fees for all of the Site (the payment of which shall be made by Developer after Closing in conformity with City practices customarily applied to development within the corporate limits of City). Developer acknowledges and agrees that the plans prepared for the Improvements shall be subject to City's normal planning review process. If any parcel map

or lot line adjustment is required as to any of the Site, Developer shall bear the cost of preparing and procuring such parcel map or lot line adjustment.

(d) Land Use Approvals. Developer shall have obtained each of the land use approvals required for issuance of the Civil Permits.

(e) Environmental Risk and Documentation. City Manager shall supply documentation of completed environmental remediation through local and Department of Ecology records. The Developer acknowledges that in supplying such documentation and in conveying the Site, the City makes no warranties or representations regarding the compliance of the Site with any environmental laws or regulations.

(f) Insurance. City shall have received evidence, satisfactory to City Manager, that all of the insurance policies required by Section 4.5, below, are in full force and effect.

(g) Corporate Resolution. Developer shall deliver or shall have delivered to City a certified copy of a resolution of Developer's board of directors (or authorized executive committee) authorizing (or ratifying) the execution of the Project Documents (the "Developer's Resolution").

(h) Lease/Rental Agreement. Developer shall have submitted to City, and City shall have approved the standard form lease/rental agreement in conformance with the Regulatory Agreement for rental of the Housing Units to eligible tenants in accordance with the terms of this Agreement, which approval shall not be unreasonably withheld or delayed. Developer shall include certain terms in the standard form lease/rental agreement which clearly describe the requirements of qualification and rental to Low Income Households including without limitation: (i) the obligation to provide complete and timely income verifications, as and when reasonably requested by Developer and/or City, but not less frequently than prior to initial occupancy and then annually during the term of tenancy, (ii) the rules and regulations for use, occupancy, and quiet enjoyment of the Housing Units and the Site, (iii) tenant protections relating to notices, eviction, and (iv) such other terms as Developer and/or City deem reasonably necessary.

(i) Representations and Warranties. The representations and warranties of Developer contained in this Agreement shall be correct as of the close of Escrow as to the Site as though made on and as of that date, and City Manager shall have received a City Conveyance Developer Certificate to that effect signed by an officer of Developer.

(j) No Default under Agreement. No Event of Default by Developer shall have occurred under this Agreement, no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer under this Agreement, Developer shall be in compliance with the provisions of this Agreement, and City Manager shall have received a City Conveyance Developer Certificate to that effect signed by an officer of Developer.

(k) No Other Defaults. Developer shall not be in default of this Agreement or any agreement with a lender, or prospective lender, for the Site or portion thereof, and no event shall have occurred which with the passage of time would constitute a default.

All conditions set forth in this section, or to City's obligations hereunder, are for City's benefit only and City Manager may waive all or any part of such rights by written notice to Developer and Escrow Holder. Closing of the acquisition shall constitute Developer's certification, to the best of Developer's knowledge, to the City that the City Conveyance Conditions Precedent have been satisfied.

2.1.3 Developer's Conditions of City-Developer Closing. Developer's obligation to proceed with the acceptance of conveyance of the Site is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent (a) through (d), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) Review and Approval of Title. Developer shall have reviewed and approved the condition of title of the Site.

(b) Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, be irrevocably committed to issue the Owner's Title Policy for the Site upon close of Escrow, in accordance with Section 2.4 hereof.

(c) Property Condition. Developer shall have approved the condition of the Site.

(d) Permits. Developer is satisfied, in its sole discretion, that City is prepared to issue the Civil Permit and, after conveyance of the Site to Developer, all permits, subdivision approvals, and other entitlements to develop the Site on terms and conditions acceptable to Developer, in its sole satisfaction.

(e) City Conveyance Developer Certificate. Developer shall have delivered a City Conveyance Developer Certificate to the City Manager.

2.2 Escrow. The parties shall open Escrow with the Escrow Holder within fifteen (15) days after the Effective Date, for the recordation of the City Deed and Regulatory Agreement. City and Developer agree to execute such supplemental escrow instructions as may be reasonably required to implement this section. Developer shall be responsible to pay any premium, fees, costs and expenses for the Owner's Title Policy. Developer shall additionally pay, at its cost, all escrow fees, closing costs, and any amounts necessary to effect recording, escrow charges, and any costs necessary to cause the recording of the City Deed and Regulatory Agreement and closing of the transaction contemplated herein.

2.3 [Reserved]

2.4 Title Insurance, Disposition to Developer. Substantially concurrently with recordation of the City Deed, there shall be issued to Developer an ALTA owner's policy of title insurance ("Owner's Title Policy") in the amount of the Purchase Price, issued by the Title Company insuring fee simple title to the Site is vested in Developer in the condition required by this Agreement.

3. DEVELOPER ACTIVITIES FOLLOWING CONVEYANCE TO DEVELOPER

3.1 Property Taxes and Assessments. Ad valorem taxes and assessments levied, assessed or imposed on the Site for the period after the City Conveyance shall be borne by Developer.

3.2 Developer's Obligations after the City Conveyance. After the City Conveyance, Developer shall, at its sole cost and expense, promptly take: (i) all actions required by any federal, state or local governmental City or political subdivision or any Governmental Requirements with respect to the Site pursuant to this Agreement; (ii) all actions necessary to prepare the soil on the Site for the development required hereunder; and (iii) all actions necessary to make full use of the Site for the development and operation of affordable housing pursuant to this Agreement, which actions, requirements or necessity arise from the presence upon, about or beneath the Site of any Hazardous Materials regardless of when such Hazardous Materials were introduced to the Site and regardless of who is responsible for introducing such

Hazardous Materials to the Site. Developer shall take all actions necessary to promptly restore the Site to an environmentally sound condition for uses contemplated by this Agreement consistent with the standard of remediation required under applicable Governmental Requirements. The obligations under this section shall survive the issuance of the Certificate of Completion of Construction.

3.3 Duty to Prevent Hazardous Material Contamination. After the City Conveyance, Developer shall take all reasonably necessary precautions to prevent the release of any Hazardous Materials into the environment, in, on, under, or about the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, during construction of the Improvements, Developer shall take all reasonably necessary precautions to prevent the release of any Hazardous Materials into the environment or onto or under the Site in violation of Environmental Laws. Such precautions shall include compliance with all Environmental Laws with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with applicable Environmental Laws and then-prevailing industry standards as respects the disclosure, storage, use, abatement, removal and disposal of Hazardous Materials.

3.4 Release of City by Developer. Developer hereby waives, releases and discharges forever City and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with Developer's ownership, improvement and/or disposition of the Site, any Hazardous Materials on the Site, or the existence of Hazardous Materials Contamination in any state on the Site, however they came to be located there.

3.5 "As Is" Conveyance. Developer expressly understands and agrees that Developer purchased the Site from City in an "AS IS" condition on the closing date. As of the closing, City specifically disclaimed the making of any representations or warranties, express or implied, regarding the Site or matters affecting the Site, including without limitation, the presence of Hazardous Materials on the Site, or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder.

4. SCOPE OF DEVELOPMENT; INSURANCE AND INDEMNITY, FINANCING

4.1 Scope of Development. Within a reasonable period of time after the Effective Date, and in any event, prior to commencement of construction of the Improvements Developer shall submit to City a reasonably detailed overview of the scope of the development of the Improvements that Developer intends to construct ("Proposed Scope of Development") for review by the City. The City may approve, disapprove, or modify the Proposed Scope of Development in its reasonable discretion. In the event the City disapproved or requests modifications to the Proposed Scope of Development, Developer shall make such needed or requested modifications and resubmit to the City for its review. This process shall continue until the City has approved the Proposed Scope of Development, which shall thereafter be referred to as the "Scope of Development". Developer shall develop the Improvements in accordance with the approved Scope of Development and the approved Design Development Drawings for the Improvements. The Improvements shall generally consist of not fewer than fifty-seven (57) dwelling units, as more particularly set forth in the Scope of Development. In the event of any inconsistency between the Scope of Development and the Design Development Drawings for the Improvements which have been approved by City, the approved Design Development Drawings for the Improvements shall control. Developer shall complete all off-site improvements required by City as condition(s) of approval included in the land use entitlement for the Project at no cost to City.

4.2 Design Review.

4.2.1 Developer Submissions. Before commencement of construction of the Improvements or other works of improvement upon the Site, Developer shall submit to City any plans and drawings (collectively, the “Design Development Drawings”) which may be required by City with respect to any permits and entitlements which are required to be obtained to develop the Improvements. Developer, on or prior to the date set forth in the Schedule of Performance, shall submit to City such plans for the Improvements as required by City in order for Developer to obtain Building Permits for the Improvements. The Design Development Drawings shall be consistent with the Scope of Development. Within forty-five (45) days after City’s disapproval or conditional approval of such plans, Developer shall revise the portions of such plans identified by City as requiring revisions and resubmit the revised plans to City.

4.2.2 City Review and Approval. City shall have all rights to review and approve or disapprove all Design Development Drawings and other required submittals in accordance with the City Code, and nothing set forth in this Agreement shall be construed to constitute City’s approval of any or all of the Design Development Drawings or to limit or affect City’s review and right to approve, approve subject to conditions, or disapprove Design Development Drawings, plans, drawings, applications, or submittals.

4.2.3 Revisions. Any and all change orders or revisions required by City and its inspectors which are required under the City Code and under other applicable laws and regulations shall be included by Developer in its Design Development Drawings and other required submittals and shall be completed during the construction of the Improvements.

4.2.4 Defects in Plans. City shall not be responsible either to Developer or to third parties in any way for any defects in the Design Development Drawings, nor for any structural or other defects in any work done according to the approved Design Development Drawings, nor for any delays reasonably caused by the review and approval processes established by this section.

4.2.5 Land Use Approvals. Before commencement of construction of the Improvements or other works of improvement upon the Site, Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits, and approvals which may be required for the Improvements by City or any other governmental agency affected by or having jurisdiction over such construction or work, except for those which are the responsibility of City as set forth herein. Developer shall, without limitation, apply for and secure, and pay all costs, charges and fees associated therewith, all permits and fees required by City, the County, and other governmental agencies with jurisdiction over the Improvements.

4.3 Time of Performance; Progress Reports. Developer shall submit all Design Development Drawings, commence and complete all Construction of the Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefor in this Agreement. Construction of the Improvements shall be commenced after the recording of the City Deed. Following the Effective Date, once Construction is commenced, it shall continuously and diligently be pursued to completion and without cessation for more than fifteen (15) days subject to Section 8.2. During the course of Construction and prior to issuance of the Certificate of Completion of Construction, Developer shall provide timely reports of the progress of Construction when requested by the City Manager. Developer shall complete construction of all of the Improvements on the Site by the time established therefor in the Schedule of Performance subject to Section 8.2.

Developer shall submit the Financing Plan by the time established therefor in the Schedule of Performance. In addition, Developer shall regularly (at least monthly) provide a progress report to the City Manager concerning the financing for and ongoing viability of the proposed development of the Improvements and leasing of the Housing Units to Low-Income Households in conformity with this

Agreement. Developer shall also meet monthly with the City Manager or the City Manager's designee to review progress; Developer shall also participate in such additional meetings, if any, as may be deemed appropriate by the City Manager. If requested by either party, such meetings shall be conducted as Zoom meetings, telephonic meetings, or other modes not involving in-person meetings. The meetings and reports shall continue until the completion of the Improvements.

4.4 Construction Costs. All costs of planning, designing, developing, obtaining permits for (including permit fees), and constructing the Improvements shall be borne solely by Developer.

4.5 Insurance Requirements. Until the Certificate of Completion of Construction has been issued upon completion of all of the Improvements, the following policies of insurance in form and substance reasonably satisfactory to City:

(a) workers' compensation insurance as required by the Industrial Insurance laws of the State of Washington in connection with the Improvements;

(b) upon commencement of the earlier to occur of clearing, demolition, or construction of the Improvements by Developer and at all times prior to completion of the Improvements, builder's risk-all risk insurance covering interests of the City, the Developer, Subcontractors, and Sub-subcontractors participating in the Construction. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse, covering 100% of the replacement cost of all Improvements (including offsite materials) during the course of construction and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood)), and shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site;

(c) following completion of the Improvements, fire and hazard "all risk" insurance covering 100% of the replacement cost of the Improvements in the event of fire, lightning, windstorm, vandalism, earthquake (if available at commercially reasonable rates), malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(d) public liability insurance in amounts reasonably required by the City Manager from time to time, and in no event less than \$2,000,000 for "single occurrence;" and

(e) property damage insurance in amounts reasonably required by the City Manager from time to time, and in no event less than \$2,000,000.

All such insurance shall provide that it may not be canceled or materially modified without 30 days prior written notice to City. City shall be an additional insured in the policies required under subparagraphs (d) and (e). No such insurance shall include deductible amounts to which City has not previously consented in writing. Certificates of insurance for the above policies (and/or original policies, if required by City) shall be delivered to City from time to time within 10 days after demand therefor. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than 30 days prior to the expiration of each policy, Developer shall deliver to City evidence of renewal or replacement of such policy reasonably satisfactory to the City Manager. The insurance requirements as set forth in this section may be modified from time to time upon mutual written agreement of the City Manager (for City) and Developer. It is contemplated that the construction lender may direct the use of insurance proceeds related to damage which occurs during construction so long as Developer demonstrates that completion of the Improvements is assured.

Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City. None of the above-described policies shall require Developer to meet a deductible or self-insured retention amount of more than Five Thousand Dollars (\$5,000.00) unless approved in writing by the City Manager. All policies shall be written by good and solvent insurers qualified to do business in Washington and shall have a policyholder's rating of A or better in the most recent edition of "Best's Key Rating Guide -- Site and Casualty." The required certificate shall be furnished by Developer at the time set forth herein.

Developer acknowledges and agrees that the insurance requirements contained herein are the minimum requirements of the City and that if HUD or any other lender requires that Developer maintain higher amounts and/or additional insurance coverage, Developer shall comply with such insurance requirements.

4.5.1 Public Entity Full Availability of Contractor Limits. If the Developer maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of such insurance maintained by the Developer, irrespective of whether such limits maintained by the Developer are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Developer.

4.5.2 Other Insurance Provision. The Developer's insurance policies are to contain or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Developer's insurance and shall not contribute with it.

4.5.3 Subcontractors. The Developer shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Developer-provided insurance as set forth herein, except the Developer shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Developer shall ensure that the City is an additional insured on each and every Subcontractor's insurance policy complying with this section.

4.6 Waiver of Subrogation. Developer hereby waives all rights to recover against City (or any officer, employee, agent or representative of City) for any loss incurred by Developer from any cause insured against or required by any Project Document to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Developer shall use its best efforts to obtain only policies which permit the foregoing waiver of subrogation.

4.7 Obligation to Repair and Restore Damage Due to Casualty. If the Improvements shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Developer shall complete the same as soon as possible thereafter so that the Improvements can be occupied as an affordable housing project in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed 12 months from the date Developer obtains insurance proceeds unless the City Manager, in his sole and absolute discretion, approves a longer period of time. City shall cooperate with Developer, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies

with jurisdiction over the Site do not permit the repair, replacement, or restoration or the cost of such repair, replacement or restoration exceeds such insurance proceeds, Developer may elect not to repair, replace, or restore the Improvements by giving notice to City (in which event Developer will be entitled to all insurance proceeds) or Developer may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by City and the other governmental City or agencies with jurisdiction, and City may pursue remedies of its choosing under this Agreement, including without limitation termination.

4.8 Indemnity. Developer shall defend (by counsel satisfactory to City), indemnify and save and hold harmless City and its officers, contractors, agents and employees (collectively, the “Indemnitees”) from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys’ fees and court costs) arising from the acts or omissions of the Developer, or those acting on its behalf, relating to: (i) a claim, demand or cause of action that any person has or asserts against Developer; (ii) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person acting by or on behalf of Developer with respect to the Site; or (iii) the ownership, occupancy or use of the Site. Notwithstanding the foregoing portion of this section, Developer shall not be obligated to indemnify City with respect to the consequences of any act of gross negligence or willful misconduct of City. Developer’s obligations under this section shall survive the issuance of the Certificate of Completion of Construction (except that the issuance of such Certificate shall constitute conclusive evidence that construction of the Improvements has been completed), and termination of this Agreement. City will not unreasonably withhold approval of counsel proposed by an insurer under a policy provided under this Agreement.

In the event of a default or breach under this Agreement by Developer, Developer shall reimburse City immediately upon written demand for all costs reasonably incurred by City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the Project Documents and all related matters including the following: (a) City’s commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Document, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under the Project Documents. If such default remains uncured after any applicable cure period, such reimbursement obligations shall bear interest from the date occurring 10 days after City gives written demand to Developer at a rate equal to the lesser of 12% or the highest rate permitted by applicable law.

Subject to Section 8.19, Developer shall indemnify City from any real estate commissions or brokerage fees which may arise from this Agreement or the Site, including without limitation the acquisition of the Site by Developer, or marketing of Housing Units. Developer represents that it has engaged no broker, agent, or finder in connection with this transaction, and Developer agrees to hold City harmless from any claim by any broker, agent or finder in connection with this Agreement, the activities by Developer, or the Site.

4.9 Rights of Access. Prior to the issuance of the Certificate of Completion of Construction, for purposes of assuring compliance with this Agreement, representatives of City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as City representatives comply with all reasonable safety rules. City representatives shall, except in emergency situations, notify Developer prior to exercising its rights pursuant to this section. Developer acknowledges that City is under no obligation to supervise, inspect, or inform Developer of the progress of construction, and Developer shall not rely upon City therefor. Any inspection by City is entirely for its purposes in determining whether Developer is in compliance with this

Agreement and is not for the purpose of determining or informing Developer of the quality or suitability of construction or any other work at the Site. Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. The rights of City under this section are in addition to and do not limit City's police power or exercise thereof.

4.10 Compliance with Laws. Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable state labor standards and federal prevailing wage laws, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and the Fair Housing Act, 42 U.S.C. Section 3601 et seq. (and 24 C.F.R. Part 100), and the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., and the Fair Housing Act of 1968 as amended from time to time (42 U.S. Code Sections 3601-3619 and 3631), and State laws pertaining to housing including without limitation the Washington Law Against Discrimination, Chapter 49.60 RCW. The parties agree that the Conveyance of the Site by the City does not trigger the payment of prevailing wages by the Developer for the construction of the Improvements.

Without limitation as to other provisions of this Agreement providing for indemnification, Developer shall indemnify, protect, defend and hold harmless City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and/or federal prevailing wages); (2) the implementation of Prevailing Wage Laws; and/or (3) failure by Developer to provide any required disclosure or identification as required by Prevailing Wage Laws, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under Washington law. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Improvements by Developer.

4.11 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its Affiliates, subsidiaries, or holding companies are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability.

4.12 Property Taxes and Assessments. Ad valorem taxes and assessments, if any, on the Site, levied, assessed or imposed for any period prior to the City Conveyance shall be borne by City; ad valorem taxes and assessments levied, assessed or imposed on the Site for the period after the City Conveyance shall not be the responsibility of City.

Developer shall pay, prior to delinquency all applicable ad valorem real estate taxes and assessments on the Site. Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof which is owned or leased by Developer during its period of ownership, or assure the satisfaction thereof within a reasonable time, but in no event to exceed 60 days. Developer shall additionally defend, indemnify, and hold harmless City from and against any taxes, assessments,

mechanic's liens, claims of materialmen and suppliers, or other claims by private parties in connection with activities undertaken by Developer on the Site.

4.13 Liens and Stop Notices. Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice related to its construction of Improvements. If a claim of a lien or stop notice is given or recorded affecting the Improvements Developer shall within 30 days of such recording or service or within five days of City's demand whichever last occurs:

- (a) pay and discharge the same; or
- (b) affect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or otherwise; or
- (c) provide City with indemnification from the Title Company against such lien or other assurance which City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

4.14 Certificate of Completion of Construction. Promptly after receipt of written request therefor from Developer after completion of the Improvements in conformity with this Agreement, City shall furnish Developer with a Certificate of Completion of Construction. The Certificate of Completion of Construction shall be a conclusive determination of satisfactory completion of the Improvements and the Certificate of Completion of Construction shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site or such applicable portion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in documents recorded against the Site prior to the recordation of the Certificate of Completion of Construction for that phase. If City refuses or fails to furnish a Certificate of Completion of Construction after written request from Developer, City shall, within 30 days of written request therefor, provide Developer with a written statement of the reasons City refused or failed to furnish the Certificate of Completion of Construction. The statement shall also contain City's opinion of the actions Developer must take to obtain the Certificate of Completion of Construction.

4.15 Further Assurances. Developer shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to City all documents, and take all actions, reasonably required by City from time to time to confirm the rights created or now or hereafter intended to be created under the Project Documents, to protect and further the validity, priority and enforceability of the Project Documents or otherwise to carry out the purposes of the Project Documents.

4.16 Property Standards. Developer agrees to ensure that Construction of the Project will comply with all applicable State and local codes, ordinances, and zoning requirements, including all applicable requirements set forth in the Governmental Requirements. The Project and all Housing Units and common areas at the Site must meet all such applicable requirements upon Project completion.

4.16.1 Construction Progress Inspections. Developer shall permit and facilitate progress and final inspections of Construction by the City to ensure that work is done in accordance with the applicable codes, the Construction Contract(s), and Design Development Drawings.

4.16.2 Ongoing Property Condition Standards. Developer shall maintain the Site and Improvements thereon in conformity with the Regulatory Agreement.

4.16.3 [Reserved]

4.16.4 Handicapped Accessibility. Developer shall comply with (a) Section 504 of the Rehabilitation Act of 1973, and implementing regulations at 24 CFR 8C governing accessibility of projects assisted with federal funds, if applicable; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR 35–36 in order to provide handicapped accessibility to the extent readily achievable; and (c) the Uniform Federal Accessibility Standards (UFAS) pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157, as amended.

4.16.5 Nondiscrimination, Equal Opportunity and Fair Housing. Developer shall carry out the Project and perform its obligations under this Agreement in compliance with all of the Governmental Requirements.

4.16.6 [Reserved]

4.16.7 Records and Reports. Developer shall maintain and submit to City annually such records, reports and information as City Manager may reasonably require in order to permit City to ensure Developer's compliance with the affordability requirements under this Agreement and the Regulatory Agreement and to permit the City to meet the recordkeeping and reporting requirements required of them pursuant to Governmental Requirements. Without limiting the following, Developer shall maintain records and submit annual reports as required by this Agreement.

4.17 Relocation. City represents and warrants to Developer that no individual or entity has possessory rights in the Site as of the Effective Date. Developer shall have no duties or responsibilities in relation to any relocation of persons from the Site or any portion thereof occurring prior to commencement of Construction of the Improvements.

4.18 HUD Loan Provisions. City hereby acknowledges that a HUD Loan may be utilized by Developer for the Construction of the Improvements, provided, that such acknowledgment shall not be deemed a requirement by the City that the Developer utilize a HUD Loan. For purposes of a HUD Loan, the conveyance of the Site to Developer by the City shall be considered contributed equity by the City.

5. DEVELOPER'S GENERAL REPRESENTATIONS AND WARRANTIES

As a material inducement to City to enter into this Agreement, Developer represents and warrants to City that:

5.1 Formation, Qualification and Compliance. Developer (a) is a Washington limited liability company, validly existing and in good standing under the laws of the State of Washington; (b) has all requisite authority to conduct its business and own, purchase, improve and lease its properties. Developer is in compliance in all material respects with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with any governmental City that are necessary for the transaction of its business; (c) Developer has and will in the future duly authorize, execute and deliver this Agreement and any and all other agreements and documents required to be executed and delivered by Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement; (d) Developer does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of Developer to carry out its obligations hereunder; (e) There are no material pending or, so far as is known to Developer, threatened, legal proceedings to which Developer is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed by Developer to City in this Agreement which could materially adversely affect the ability of Developer to carry out its obligations hereunder; and (f) There is no action or proceeding pending or, to Developer's best knowledge, threatened, looking toward the dissolution or liquidation of

Developer and there is no action or proceeding pending or, to Developer's best knowledge, threatened by or against Developer which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of Developer to carry out its obligations hereunder. Each of the foregoing items (a) to (f), inclusive, shall be deemed to be an ongoing representation and warranty. Developer shall advise City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (f), inclusive.

5.2 Execution and Performance of Project Documents. Developer has all requisite authority to execute and perform its obligations under the Project Documents. The execution and delivery by Developer of, and the performance by Developer of its obligations under, each Project Document has been authorized by all necessary action and do not and will not violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Developer.

5.3 Covenant Not to Transfer Except in Conformity. Developer shall not sell or otherwise transfer or convey all or any part of the Site, or any interest therein (including Developer's interests in this Agreement), unless Developer has first obtained the prior written consent of the City Manager, which consent may be withheld in the City Manager's sole and absolute discretion. Developer's right to sell two years after Certificate of Occupancy shall not be unreasonably withheld. Any sale, lease, transfer or conveyance without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Developer acknowledges that City relied upon Developer's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion of all of the Improvements, and the marketing and renting of the Housing Units to Low-Income Households to afford the community a substantial long-term, quality affordable housing resource. The City Manager's approval of a transfer or conveyance of all or a portion of the Site shall thus be based on a transferee's ability to ensure the long-term affordability and quality of the Housing Units. Notwithstanding the foregoing, consent from the City Manager shall not be required for the leasing of Housing Units to Low-Income Households in compliance with this Agreement.

6. AFFORDABLE HOUSING COVENANTS; MAINTENANCE, PROPERTY MANAGEMENT, AND OPERATION OF THE PROJECT.

The operation of the Project, including without limitation, repair and maintenance, income qualifications of tenants, rent, maintenance, monitoring, and reporting, shall be accomplished by Developer in conformity with the Regulatory Agreement, as more particularly set forth therein. The provisions of the Regulatory Agreement shall constitute portions of this Agreement as effectively as if set out at length herein.

6.1 Nondiscrimination. Developer by and for itself and any successors in interest covenants that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

Developer hereby covenants, by and for itself, its successors and assigns, and shall require all contractors and subcontractors providing work or services related to the Site to covenant, to comply with the following laws relating to nondiscrimination and equal opportunity: The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by

Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

Developer further covenants, by and for itself, its successors and assigns, and shall require all contractors and subcontractors providing work or services related to the Site to covenant, not to inquire about the sexual orientation or gender identity of an applicant for, or occupant of, the Project or any Housing Unit at the Site, for the purpose of determining eligibility for occupancy of such Housing Units or otherwise making such Housing Units available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. Further, determinations of eligibility for occupancy of Housing Units at the Project shall be made in accordance with the eligibility requirements provided for such program by HUD, and such Housing Units shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

The covenants established in this section shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and shall remain in effect in perpetuity.

6.2 Effect of Violation of this Agreement after Completion of Construction. The covenants established in this Agreement, the City Deed, and the Regulatory Agreement, without regard to technical classification and designation, be binding for the benefit and in favor of City, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Agreement shall remain in effect for the periods of time specified therein. The covenants against discrimination shall remain in effect in perpetuity.

City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of City, without regard to whether City has been, remains or is an owner of any land or interest therein in the Site or in the Project Area. City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

7. DEFAULTS AND REMEDIES

7.1 Events of Default by Developer. The occurrence of any of the following, whatever the reason therefor, shall constitute an event of default by Developer (an “Event of Default”):

7.1.1 Developer fails to perform any obligation for the payment of money (other than payments of principal or interest) under any Project Document, and such failure is not cured within 10 days after Developer’s receipt of written notice that such obligation was not performed when due;

7.1.2 Developer fails to perform any obligation (other than obligations described in subparagraph 7.1.1. above) under any Project Document, and such failure is not cured within 30 days after Developer’s receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such 30-day period, such failure shall not be an Event of Default so long as Developer (in any event, within 10 days after receipt of such notice) commences cure, and thereafter diligently (in any event within 90 days after receipt of such notice) prosecutes such cure to completion;

7.1.3 Any representation or warranty in any Project Document proves to have been incorrect in any material respect when made;

7.1.4 Construction on the Improvements ceases for 30 consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God, strikes or other causes beyond Developer’s control, including those described in Section 8.2);

7.1.5 Developer is enjoined or otherwise prohibited by any governmental entity from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for 30 days or more for any reason, subject to extensions permitted under Section 8.2;

7.1.6 Developer transfers or conveys the Site (or attempts to transfer or convey the Site) in any manner that is not in conformity with this Agreement; or

7.1.7 Developer provides any certification to City Manager that contains any information that Developer knows, or should have discovered using reasonable diligence, to be false or misleading when made; or

7.1.8 Prior to the end of the Affordability Period, Developer is dissolved, liquidated or terminated, or all or substantially all of the assets of Developer are sold or otherwise transferred without the City Manager’s prior written consent.

7.1.9 (i) Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (ii) Developer applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; (iii) any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Developer and the appointment continues undischarged or unstayed for 90 days; (iv) Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Developer and continues undismissed or unstayed for 90 days; or (v) any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Developer is not released, vacated or fully bonded within 90 days after its issue or levy.

7.2 Remedies upon Default. In addition to the rights of the City pursuant to Section 7.4.2 below, upon the occurrence of any Event of Default, City may, at its option and in its sole and absolute discretion, do any or all of the following:

7.2.1 In its own right or by a court-appointed receiver, take possession of the Site, enter into contracts for and otherwise proceed with the completion of the Improvements on the Site (or portions thereof) by expenditure of its own funds;

7.2.2 Exercise any of its rights under the Project Documents and any rights provided by law, including the right to foreclose on any security and exercise any other rights with respect to any security, all in such order and manner as City elects in its sole and absolute discretion; and

7.2.3 Seek and obtain an order for specific performance.

7.3 Cumulative Remedies; No Waiver. City's rights and remedies under the Project Documents are cumulative and in addition to all rights and remedies provided by law from time to time. The exercise by City of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice City in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Project Document shall be construed as a waiver of any subsequent breach of the same provision. City's consent to or approval of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act. City's acceptance of the late performance of any obligation shall not constitute a waiver by City of the right to require prompt performance of all further obligations; City's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of City's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's acceptance of any partial performance shall not constitute a waiver by City of any rights relating to the unfulfilled portion of the applicable obligation.

7.4 Termination.

7.4.1 Termination by Developer. This Agreement may, at the option of Developer, be terminated by notice given to City upon the occurrence of the following events, as of the time described below (and if no time is described below, the time established therefor in the Schedule of Performance):

(a) On or before twelve (12) months after the Effective Date, Developer has provided City with written notice that Developer has not obtained Building Permits and all required land use approvals with conditions acceptable to Developer, in its sole and absolute discretion, and desires to terminate this Agreement; or

(b) one or more of the Developer Conditions Precedent is not satisfied; or

(c) Developer elects to terminate on the basis that the development of the Improvements in accordance with this Agreement has become impracticable under the terms and conditions of this Agreement; or

(d) in the event of any default of City prior to the conveyance of the Site which has not been cured.

From the date of the notice of termination of this Agreement by Developer to City, this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties, excepting that Developer shall immediately quitclaim to City all right, title and interest of Developer in the Site (including without limitation fee title and any beneficial interests under deeds of trust, promissory notes, and agreements in respect to the Site).

7.4.2 Termination by City. This Agreement may be terminated, at the option of City, 30 days after written notice thereof is delivered to Developer by the City, under the following circumstances:

(a) Developer (or any successor in interest) assigns or attempts to assign, encumber, transfer, or convey the Agreement or any rights therein or in the Site (or any portion thereof) in violation of this Agreement; or

(b) On or before six (6) months after the Effective Date, Developer has provided City with written notice in accordance with Section 7.4.1(a) of its desire to terminate this Agreement; or

(c) by the time set forth therefor in the Schedule of Performance for the conveyance of the Site, Developer is in default under this Agreement and City does not execute a deed to convey the Site to Developer in the manner and condition and by the date provided in this Agreement; or

(d) one or more of the City Conditions Precedent is not satisfied; or

(e) Developer elects to terminate on the basis that the development of the Improvements in accordance with this Agreement has become impracticable under the terms and conditions of this Agreement; or

(f) in the event of any default of Developer prior to the conveyance of the Site which has not been cured; or

(g) Developer fails to perform any other obligation for the payment of money (other than payments of principal or interest) under any Project Document, and such failure is not cured within 10 days after Developer's receipt of written notice that such obligation was not performed when due; or

(h) Developer fails to perform any obligation (other than obligations described in Section 7.1.1 above) under any Project Document, and such failure is not cured within 30 days after Developer's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such 30 day period, such failure shall not be an Event of Default so long as Developer (in any event, within 10 days after receipt of such notice) commences cure, and thereafter diligently (in any event within 90 days after receipt of such notice) prosecutes such cure to completion; or

(i) Any representation or warranty by Developer in any Project Document proves to have been incorrect in any material respect when made; or

(j) Work on the Improvements ceases for 30 consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God, strikes or other causes beyond Developer's control as described in Section 8.2); or

(k) Developer is enjoined or otherwise prohibited by any governmental entity from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for 30 days or more for any reason, subject to extensions allowed under Section 8.2; or

(l) Developer transfers or conveys the Site (or attempts to transfer or convey the Site) in any manner that is not in conformity with this Agreement; or

(m) Developer provides any certification to City Manager that Developer knows to be false or misleading when made; or

(n) Developer is dissolved, liquidated or terminated, or all or substantially all of the assets of Developer are sold or otherwise transferred without the City Manager's prior written consent; or

(o) Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Developer applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Developer and the appointment continues undischarged or unstayed for 90 days; or Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Developer and continues undismissed or unstayed for 90 days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Developer is not released, vacated or fully bonded within 90 days after its issue or levy; or

(p) There is a change in the ownership of Developer or the Site contrary to the provisions of Section 5.3 hereof; or

(q) Developer does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor and such default or failure shall not be cured within 30 days after the date of written demand therefor by City; or

(r) Developer does not satisfy the Conditions Precedent by the time established therefor in the Schedule of Performance, subject to Section 8.2 extensions; or

(s) The completion of one or more of the Housing Units is not accomplished by the respective time(s) established therefor in the Schedule of Performance, subject to Section 8.2 extensions; or

(t) Developer is otherwise in default under this Agreement and has not cured or commenced to cure such default within the time period set forth in Section 7.1 herein (or has not diligently prosecuted such cure to completion).

From the date of the Notice of termination of this Agreement by City to Developer, this Agreement shall be deemed terminated and neither party shall have any further rights against the other under this Agreement, excepting that Developer shall immediately quitclaim to City all right, title and interest of Developer in the Site (including without limitation fee title and any beneficial interests under deeds of trust, promissory notes, and agreements in respect to the Site). The setting forth of events as grounds for termination shall not limit the ability of City to seek remedies in the event this Agreement has not been terminated. The termination of this Agreement shall not limit the rights of City to enforce the Regulatory Agreement or the City Deed.

8. MISCELLANEOUS.

8.1 Intentionally Deleted.

8.2 Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; litigation; unusually severe weather; acts or omissions of the other party; acts or failures to act of a public or governmental City or entity (other than City acting as required pursuant to this Agreement); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other parties within 30 days of the commencement of the cause. Any requests for extension shall be in writing. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer.

Notwithstanding the foregoing portion of this section, with the prior written consent of the City Manager, Developer may obtain an extension of time to perform because of past, present, or future difficulty in obtaining suitable temporary, construction, or permanent financing for the acquisition, development or lease of Housing Units on the Site.

8.3 Nonliability of Officials and Employees of City. No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

8.4 Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of City to Developer, or any other claim by Developer against City, in connection with the Site or otherwise, Developer hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Developer's obligations under this Agreement (including without limitation the attachments hereto), or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Developer of any of its obligations under the Project Documents.

8.5 Notices. Any notice to or demand upon the following parties shall be given by registered or certified mail, return receipt requested, or by express delivery service, as follows, or to such other address as is specified in writing by any of the following to the others:

If to Developer: Matthew Stadler
 Stadler Interests, Inc.
 501 W. 12th Avenue
 Ellensburg, WA 98926

If to City: City of Ellensburg
 501 North Anderson Street
 Ellensburg, Washington 92552
 Attention: City Manager

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

8.6 Survival of Representations and Warranties. All representations and warranties in the Project Documents shall survive the conveyance of the Site and have been or will be relied on by City notwithstanding any investigation made by City.

8.7 No Third Parties Benefited. This Agreement is made for the purpose of setting forth rights and obligations of Developer and City, and no other person shall have any rights hereunder or by reason hereof. There shall be no third-party beneficiaries of this Agreement.

8.8 Use of Consultants by City. City, at its sole cost, may engage consultants to assist City in connection with matters to be undertaken or reviewed under this Agreement, such as in connection with the calculation of allowable housing costs. Developer shall cooperate fully with any such consultants.

8.9 Binding Effect; Assignment of Obligations. This Agreement shall bind, and shall inure to the benefit of, Developer and City and their respective successors and assigns. Assignments or transfers of the Site and this Agreement shall be governed by Section 5.3 hereof. In connection with any assignment or transfer, Developer acknowledges that City relied upon Developer's particular expertise in entering this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the Improvements and the qualification of eligible occupants of each Housing Unit in conformity with this Agreement.

8.10 Superiority of City Agreement. Developer agrees and acknowledges that any agreements between Developer and third parties, shall be subject and subordinate in all cases to this Agreement (including, without limitation, the Attachments hereto) and that in the event of conflict, this Agreement (including, without limitation, the Attachments hereto) shall control.

8.11 Prior Agreements; Amendments; Consents. This Agreement (together with the other Project Documents) contains the entire agreement between City and Developer with respect to the Site, and all prior negotiations, understandings and agreements with respect to such matters, including without limitation this Agreement, are superseded by this Agreement and such other Project Documents. No modification of any Project Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 26 and Attachments 1 through 8 (which attachments are incorporated herein by reference), which constitutes the entire understanding and agreement of the parties.

This Agreement integrates all terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of City and Developer, and all amendments hereto must be in writing by the appropriate authorities of City and Developer; provided that after conveyance of the Site to Developer, only the consent of City shall be required.

8.12 Governing Law. All of the Project Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of Washington for the County of Kittitas or the United States District Court of the Central District of Washington, as City may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement or the other Project Documents. Assuming proper service of process, Developer also waives any objection regarding personal or *in rem* jurisdiction or venue.

8.13 Attorney Fees. If either party places the enforcement of this Agreement, or any part thereof, in the hands of an attorney, or files suit upon the same, or seeks a judicial declaration of rights hereunder, the prevailing party shall recover its reasonable attorneys' fees, court costs, and collection agency charges. As used herein, "prevailing party" shall mean the party who substantially prevails in the matter at issue, including without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

8.14 Severability of Provisions. No provision of any Project Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Project Documents are hereby declared to be severable.

8.15 Headings. Article and section headings are included in the Project Documents for convenience of reference only and shall not be used in construing the Project Documents.

8.16 Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Project Document, this Agreement shall prevail; provided however that, with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

8.17 Time of the Essence. Time is of the essence of all of the Project Documents.

8.18 Conflict of Interest. No member, official or employee of City shall have any direct or indirect financial interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

8.19 Warranty against Payment of Consideration. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

8.20 Real Estate Commissions. Each of City and Developer represents to the other party that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the acquisition of all or part of the Site, and agrees to hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

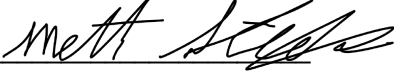
8.21 Counterparts. Any Project Document (including this Agreement) may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

[Remainder of page blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

DEVELOPER:

STADLER INTERESTS, INC.,
a Washington corporation

By: 

Name: Matt Stalder

Title: Partner

Date: 7/20/22

CITY:

CITY OF ELLENSBURG,
a Washington municipal corporation

By: _____
City Manager

Date: _____

ATTACHMENT NO. 1

MAP



ATTACHMENT NO. 2

LEGAL DESCRIPTION

Lots 3 And 4 (Parcel 3A), Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County.

AND

Lot 5, Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County;

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

For the purposes of this Schedule of Performance, the “Date of the Affordable Housing Agreement” is _____, 2022. The City Manager may extend by not more than ninety (90) days (as all such extensions are aggregated) the time under this Schedule of Performance by which any obligation of Developer shall be performed.

1. Submittal of Agreement. Developer shall execute and submit the Agreement to the City Manager for City Council approval and execution. On or before August 1, 2022.
2. Submission of Evidence of Financing. Developer shall submit to City evidence of a Financing Plan financing for the Project and pro forma budget as set forth in Section 2.1.2(a) of the Agreement. As a Condition Precedent to the close of Escrow.
3. Satisfaction of Conditions Precedent. Developer shall satisfy the Conditions Precedent. Not later than ninety (90) days after the Date of the Affordable Housing Agreement.
4. Deposit of Documents into Escrow. City and Developer shall cause to be fully executed the final form of the City Deed, the Regulatory Agreement, and such other Project Documents necessary for the closing of Escrow. Not fewer than two (2) calendar days prior to close of Escrow.
5. Close of Escrow. Escrow shall close when all Conditions Precedent thereof have been waived or satisfied. Within five (5) calendar days of notification by City to Escrow Holder that all Conditions Precedent are satisfied and/or waived.
6. Commencement of Construction. The Developer shall commence construction of the Improvements which consists of 57 Units and related Improvements. Within one hundred and twenty (120) days after the Closing Date.
7. Completion of Construction. Developer shall complete construction of the Improvements. Within eighteen (18) months after the Closing Date.

ATTACHEMENT NO. 4

RESERVED

ATTACHMENT NO. 5

CERTIFICATE OF COMPLETION OF CONSTRUCTION

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

(Space Above for Recorder's Use Only)

9. CERTIFICATE OF COMPLETION OF CONSTRUCTION

This CERTIFICATE OF COMPLETION OF CONSTRUCTION (the "Certificate") is made by the CITY OF ELLENSBURG, a public body, corporate and politic (the "City"), in favor of Stadler Interests, Inc., a Washington corporation (the "Developer"), as of the date set forth below.

RECITALS

A. City, the City of Ellensburg (the "City") and the Developer have entered into that certain Affordable Housing Agreement (the "Agreement") concerning the redevelopment of certain real property situated in the City of Ellensburg, Washington, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. As referenced in Section 4.14 of the Agreement, City is required to furnish the Developer or its successors with a Certificate of Completion of Construction upon completion of construction of the "Improvements" (as defined in Section 1.1 of the Agreement), which Certificate is

Attachment No. 5

required to be in such form as to permit it to be recorded in the Recorder's Office of Kittitas County. This Certificate is conclusive determination of satisfactory completion of the construction and development required by the Agreement.

C. City has conclusively determined that the construction of the Improvements has been satisfactorily completed.

NOW, THEREFORE, City hereby certifies as follows:

1. City does hereby certify that the construction of the Improvements required to be made to that portion of the Property described hereunder as the "Site", which Site constitutes a portion of the Property, have been fully and satisfactorily completed in conformance with the Agreement.

2. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Site, or any part thereof.

3. This Certificate shall not constitute evidence of Developer's compliance with those covenants in the Agreement that survive the issuance of this Certificate or Developer's compliance to construct Improvements other than those situated on the Site.

4. Nothing contained in this instrument shall modify in any other way any other provisions of the Agreement or documents recorded in connection therewith concerning the use of the Site.

IN WITNESS WHEREOF, City has executed this Certificate of Completion this _____ day of _____, 202_.

CITY OF ELLENSBURG,
a municipal corporation

By: _____

Name: _____

Its: City Manager

ACKNOWLEDGEMENTS

STATE OF WASHINGTON)
 :ss.
COUNTY OF KITTITAS)

I hereby certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of the City of Ellensburg, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2022.

Notary Public in and for the State of Washington
Printed Name: _____
Residing at: _____
My appointment expires: _____

Exhibit A

Legal Description

Lots 3 And 4 (Parcel 3A), Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County.

AND

Lot 5, Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County;

ATTACHMENT NO. 6

CITY DEED

After recording, return to:

City of Ellensburg
501 North Anderson Street
Ellensburg, Washington 92552
Attention: City Manager

STATUTORY WARRANTY DEED

Grantor: CITY OF ELLENSBURG,
a municipal corporation

Grantee: STADLER INTERESTS, INC.,
a Washington corporation

**Abbreviated Legal
Description:** _____
Complete legal description on Exhibit A.

Assessor's Tax Parcel ID#: 937033; 617033

CITY OF ELLENSBURG, a municipal corporation ("**Grantor**"), for the consideration of Ten and no/100 Dollars, and other valuable consideration, receipt of which is hereby acknowledged, conveys and warrants to **STADLER INTERESTS, INC.**, a Washington corporation ("**Grantee**"), the following described real estate, situate in Kittitas County, Washington:

See Exhibit A, attached hereto and incorporated herein by this reference;

SUBJECT TO the matters set forth in the public records.

[Remainder of page left intentionally blank; Signature and acknowledgment follows.]

Signature page to Statutory Warranty Deed

DATED this _____ day of _____, 2022.

GRANTOR:

CITY OF ELLENSBURG,
a Washington municipal corporation

By: _____
City Manager

Attachment No. 6

ACKNOWLEDGEMENTS

STATE OF WASHINGTON)
 :ss.
COUNTY OF KITITAS)

I hereby certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of the City of Ellensburg, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2022.

Notary Public in and for the State of Washington
Printed Name: _____
Residing at: _____
My appointment expires: _____

Exhibit A

Legal Description

Lots 3 And 4 (Parcel 3A), Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County.

AND

Lot 5, Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County;

ATTACHMENT NO. 7

AFFORDABLE HOUSING COVENANT

When Recorded Return To:

City of Ellensburg
501 North Anderson Street
Ellensburg, Washington 98926
Attention: City Manager

**AFFORDABLE HOUSING COVENANT
STADLER PROJECT**

GRANTOR: STADLER INTERESTS, INC.

GRANTEE: CITY OF ELLENSBURG, WASHINGTON

ABBREV. LEGAL DESCRIPTION: _____
Official legal description on Exhibit A attached

ASSESSOR'S TAX PARCEL NOS. 937033; 617033

REFERENCE NUMBERS: N/A

AFFORDABLE HOUSING COVENANT STADLER PROJECT

This Affordable Housing Covenant (“Covenant”) is made as of the ____ day of ____, 2022, by **STADLER INTERESTS, INC.**, a Washington corporation (“Grantor”) in favor of the **CITY OF ELLENSBURG**, a Washington municipal corporation (“City” or “Grantee”), and is part of the consideration for the surplus property transferred to Grantor by the City pursuant to RCW 39.33.015 and an Affordable Housing Agreement dated on or about the date hereof (the “Agreement”), for the construction of a multifamily development, on real property legally described on Exhibit A hereto (the “Property”).

WHEREAS, this Covenant will be filed and recorded in the official public land records of Kittitas County, Washington and shall constitute a restriction upon the use of the Property, subject to, and in accordance with, the terms of this Covenant for at least **fifty-one (51) years of affordability** ending on the later to occur of (i) the fifty-first (51st) anniversary of the Effective Date, as defined in the Agreement, or (ii) the fiftieth (50th) anniversary of the date the Certificate of Completion of Construction is issued to Grantor (the “Affordability Period”).

WHEREAS, the covenants contained herein are to be taken and construed as covenants running with the land and shall pass to and be binding upon the Grantor, its respective successors and assigns, heirs, or grantees and lessees of the Property, beginning on the date of initial residential occupancy after the construction of the improvements on the Property contemplated by the Agreement. Each and every contract, deed, mortgage or other instrument covering or conveying the Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed, mortgage or other instruments. Capitalized terms not defined herein shall have the meaning given in the Agreement.

NOW THEREFORE, it is hereby covenanted during the Affordability Period as follows:

Section 1. Set-Asides; Reporting. The Grantor hereby represents, covenants and agrees as follows:

(a) **Fifty-seven (57)** of the residential units in the Property shall be rented to tenants who meet the eligibility criteria consistent with RCW 39.33.015. Consistent with Washington State law, surplus property transferred for affordable housing is required to serve households with gross annual household incomes at the time of initial occupancy no higher than **eighty (80) percent of median income** in Kittitas County, Washington adjusted for family size (“AMI”) as published annually, effective July 1, by the U.S. Department of Housing and Urban Development (“HUD”), as HOME Income Limits. If HUD ceases to provide such determinations of median income, then median income shall mean such comparable figure for Kittitas County, Washington published or reported by a federal, state, or local agency as the City shall select.

(b) Rents payable by tenants may not exceed **Thirty (30) percent** of the maximum **eighty (80) percent AMI** tenant income for the unit, assuming occupancy of 1.5 persons per bedroom including a utility allowance (“Affordable Rent”). The amount of the utility allowance shall be as calculated annually by Grantor or at another level acceptable to the City. The foregoing provisions shall be subject to the provisions of the Agreement.

(c) Within 90 days after the end of each calendar year after the commencement of the Affordability Period, Grantor shall prepare and submit a certificate to the City, in a form acceptable to the City, certifying that it has complied in all respects with the requirements of this Covenant.

(d) Grantor shall keep any records and make any reports relating to compliance with this Covenant that the City may reasonably require. Grantor shall permit any duly authorized representative of the City to inspect, during regular business hours and upon reasonable notice, the Property, the residential units, and the books and records of Grantor pertaining to the incomes of the tenants who are residing or have resided in the Property.

Section 2. Covenants. The Grantor hereby represents, covenants and agrees as follows:

(a) Grantor shall use the Property to provide safe and sanitary housing, and shall comply with all Federal, State, and local housing codes, licensing requirements, and other requirements regarding the condition and the operation of the Property.

(b) Except as otherwise required or contemplated by this Covenant or allowed by applicable law for the purpose of providing low-income housing, Grantor will not discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, age, disability, the receipt of public assistance or housing assistance or any other characteristic protected from discrimination by applicable law.

Section 3. Covenants Run With the Land. Grantor hereby declares its express intent that the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land throughout the Affordability Period, and shall pass to and be binding upon the Grantor's successors in title including any purchaser, grantee or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee (other than a resident) of any portion of the Property and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument (other than residential resident leases) hereafter executed conveying the Property or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

Section 4. Survival. This Covenant shall have priority over any deed of trust or mortgage recorded on the Property. The covenants herein are independent of and in addition to the covenants in the Affordable Housing Agreement between the Grantor and the City, any other covenants made for the benefit of the City. This Section shall not prohibit any mortgages, deeds of trust, regulatory agreements and covenants for the purposes of the future financing, nor prohibit any transfer upon foreclosure of a deed of trust or mortgage approved by the City, or in lieu of foreclosure thereof, or any subsequent transfer, but any transfer shall be subject to the terms of this Covenant.

Section 5. Default. If a violation of any of the foregoing covenants occurs, the City may, after thirty days' notice to Grantor, and if applicable, its successors and assigns, heirs, grantees, or

lessees of the Property, institute and prosecute any proceeding at law or in equity to abate, , prevent, or enjoin any such violation or to compel specific performance by Grantor of its obligations hereunder; provided that Grantor shall not be required by any provision herein to evict a residential tenant. No delay in enforcing the provisions hereof as to any breach or violation, shall impair, damage or waive the right of the City to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

[Signatures on following page.]

IN WITNESS HEREOF, this Affordable Housing Covenant was executed as of the date set forth above.

STADLER INTEREST, INC.
a Washington corporation

By: _____
Name: _____
Title: _____

THE CITY OF ELLENSBURG, a Washington public corporation

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF KITTITAS)

On this _____ day of _____, 2022, before me personally appeared _____, to me known to be the _____ of STADLER INTEREST, INC., that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary public in and for the State of Washington, residing
at _____

STATE OF WASHINGTON)
)ss.
COUNTY OF KITTITAS)

On this _____ day of _____, 2022, before me personally appeared _____, to me known to be the _____ of the City of Ellensburg, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary public in and for the State of Washington, residing
at _____

EXHIBIT A

LEGAL DESCRIPTION

Lots 3 And 4 (Parcel 3A), Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County.

AND

Lot 5, Block 21, Ellensburg, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, Page 1, Records of said County;

ATTACHEMENT NO. 8

AWARD LETTER



**501 North Anderson Street
Ellensburg, Washington 98926**
Telephone: (509) 962-7221 | Fax: (509) 962-7143

September 7, 2021

Matthew Stalder
Stalder Interests, Inc.
2000 Quartz Mountain Dr.
Ellensburg, WA 98926

RE: Stalder Interests, Inc. Award Letter for City of Ellensburg Affordable Housing Property Contribution

Dear Mr. Stalder:

Congratulations! Your application for the City owned surplus property located at the corner of 1st and Pine for development of Affordable Housing has been conditionally approved by Ellensburg City Council.

This award is conditional and is not a guarantee of property. This letter provides an overview of City conditions and some details you can expect in the contractual agreement. Upon issuance of this letter, the City will initiate contract negotiations to initiate transfer of ownership of the "Community Garden" property.

This letter does not cover all local requirements or all the terms that will be included in contract documents including legal rights and obligations.

Please read this letter carefully and return a signed copy of the Acknowledgement of Conditions at the bottom to the City of Ellensburg Community Development Department.

The City's reservation of property is based upon representations made in your applications. Changes to those representations must be reported as specified in the Conditions and approved by Community Development in writing. Unreported changes may result in a delay and/or a loss of City-owned property contribution. These requirements are designed to ensure productive communication between the applicant and the City regarding project status prior to property transfer.

CONDITIONS

The City of Ellensburg will initiate contract negotiations after receipt of the signed Acknowledgement of Conditions. The City requires that the contract stipulate:

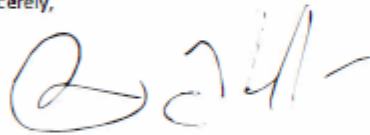
1. The contract term will be consistent with the development timeline in your application. Any extension of the timeline is subject to City approval.
2. The scope of work will be based on the applications submitted. However, in addition, and as was discussed by City Council with you at their June 7, 2021 meeting and your subsequent meetings with city staff, the design will incorporate a minimum of 6 fully accessible Type A ADA units and at least 6 additional ground floor units will be built to universal design standards Type B ADA units.

3. The proposal and contract must meet the requirements of the City of Ellensburg Affordable Housing Fund and RCW 39.33.015.
4. Applicant shall submit a written status report when changes to the project cause the proposal to differ from the application or previous status reports. Reports must explain any problems, or needed modifications, and propose a plan for addressing them.
5. The transfer of the City's property to Stalder Interests, Inc. for this project is subject to approval of your financing by the Department of Housing and Urban Development as well as approval of all contract documents by the Ellensburg City Council.

Please notify the Community Development Department as you reach each funding and other milestones or encounter challenges. The City anticipates reserving this award for the time period specified in your application. If you do not demonstrate the progress you proposed within two years of the date of this letter, or fail to meet any of the conditions herein, the City of Ellensburg reserves the right to withdraw this award.

Thank you for your commitment to make the City of Ellensburg more affordable for everyone in our community!

Sincerely,



Bruce Tabb, City of Ellensburg Mayor

Acknowledgement of Conditions

I acknowledge that I have read, understand and agree to the above conditions.

ORIGINAL SIGNATURE OF AUTHORIZED OFFICIAL

Signature:  Title: Partner

Name: Matt Stalder Date: 9/14/21

Organization: Stalder Interests Inc



CITY COUNCIL AGENDA REPORT

City Council Meeting Date:	August 1, 2022
Item Title/Agenda Subject:	Employment Agreement with Jamey Ayling for Community Development Director Position
Submitted by:	Heidi Behrends Cerniwey
Recommended Action or Motion:	Authorize the City Manager to sign the employment agreement with Jamey Ayling to serve as the City's Community Development Director.
Background/Summary:	The City has a current opening for Community Development Director. Staff updated the job description and amended the pay plan to adjust for market conditions. Jamey Ayling was interviewed by external and internal customers and colleagues and was given unanimous recommendations for this appointment. Jamey Ayling has served as the Planning Manager for the City of Ellensburg since early 2020, and as the Interim Community Development Director since May 2022. With over 21 years of experience in both building and planning in Washington and Idaho, with the bulk of his experience coming from jurisdictions in Eastern Washington. Jamey has been in several leadership positions, including the director for the City of Sunnyside for five years. He has a Bachelor's Degree in Geography and a minor in Environmental Studies from Central Washington University. Jamey is intimately familiar with important projects facing the community and the department.
Previous Council Action:	The City Manager has hiring authority for staff. Agreements that exceed purchasing authority must be approved by Council.
Analysis:	N/A
Financial Impact:	The compensation proposed in the agreement is aligned with the pay plan for the position and the department has sufficient budget authority.

Attachments:

[Employment Agreement Ayling 8-01-2022](#)

CITY OF ELLENSBURG EMPLOYMENT AGREEMENT
Jamey Ayling – Community Development Director

THIS AGREEMENT is entered into by and between the CITY OF ELLENSBURG, a municipal corporation, hereinafter referred to as “City”, and Jamey Ayling, hereinafter referred to as “Employee”, and is effective this ____ day of August, 2022.

WHEREAS, the City desires to employ the services of the Employee as the Community Development Director for the City of Ellensburg to perform the duties provided by Ellensburg City Code, the Revised Code of Washington, and such other duties as may be directed by the City Manager; and

WHEREAS, it is the desire of the City to secure and retain the services of the Employee and provide inducement for Employee to remain in such employment and ensure Employee’s peace of mind consistent with City policies and the terms of this Agreement, while promoting high standards for ethical behavior; and

WHEREAS, the Employee desires to accept employment as the Community Development Director for the City of Ellensburg, Washington;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and Employee agree as follows:

Section 1. Commencement of Employment. The City hereby agrees to employ Employee as the Community Development Director, and Employee hereby agrees to accept employment in accordance with the terms and provisions of this Agreement hereinafter set forth. Employee agrees to commence employment with the City as Community Development Director on August 1, 2022.

Section 2. Duties. Employee shall perform in good faith all duties and responsibilities of the Community Development Director as set forth in the job description (attachment “A”), as may be amended from time to time, the City’s Personnel Policies Manual as currently enacted or hereafter amended, and other duties as may be assigned from time to time by the City Manager. Employee shall devote their full time, energies, interests, and abilities to the performance of the duties and responsibilities of their position and shall not engage in any activities that conflict with or interfere with the performance of this Agreement.

Section 3. Term.

A. Employee shall be employed for an indefinite term and shall serve at the pleasure of the City Manager. Employee shall be considered an “at-will” employee of the City.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the City’s right to terminate this Agreement, with or without cause, at any time, subject only to the severance provisions set forth in Section 7(D) of this Agreement, applicable federal, state and local laws, and the City’s Personnel Policies Manual. To the extent there is any conflict between the language of this Agreement and the Manual, the language of this Agreement shall control.

Section 4. Salary – Performance Review. The starting salary for Employee shall be a monthly salary, based on Step 6 of the Employer’s Salary Schedule for non-represented employees, of Nine Thousand Seven Hundred and Eighty-Four Dollars and no cents (\$9,784.00),

which salary shall be paid in accordance with the normal and usual procedure for payment of wages to employees. Employee shall be entitled to receive a step increase after successful completion of the six-month trial period which begins August 1, 2022.

Employee shall be entitled to annual cost-of-living increases, if any, based on the City's annual Pay Plan resolution.

Section 5. Hours of Work. The Employee is a confidential exempt employee for purposes of the Federal Fair Labor Standards Act and Washington State Minimum Wage Act, and as such shall not work a fixed forty hour per week schedule. Employee's schedule of work each day and week shall vary in accordance with the work required to be performed including such time as may be necessary outside normal business hours. The Employee shall generally work at the Ellensburg City Hall during regular business hours of the Employer. The Employee may be required to attend meetings of the Ellensburg City Council and such other City Boards and Commissions, and staff meetings as requested by the City Manager, or as required by the duties of the position.

Section 6. Benefits. The following benefits shall be provided to Employee:

A. Leave Benefits. Employee shall continue to earn and accrue personal time off (PTO), Exempt Leave, Employee Choice Leave and Holidays as provided for employees of the City in accordance with the Personnel Policies Manual.

B. Insurance Benefits. The Employee will receive medical and dental insurance benefits as provided for employees of the City in accordance with the Personnel Policies Manual.

C. Retirement and Deferred Compensation. Employee is eligible for PERS Retirement or Deferred Compensation pursuant to City policy.

D. Work related expenses. Employee shall be reimbursed for work-related expenses the same as other employees as provided by the City's Personnel Policies Manual. City shall provide and pay for a cell phone (or cell phone allowance) and a laptop computer for business use only.

E. Training and Professional Certification. City shall pay the costs of Employee's membership in the American Planning Association (APA) and Planning Association of Washington (PAW). City shall provide funding for Employee to attend PAW conference annually and the APA conference at least biennially. Other costs of professional or required training shall be paid by the City as approved by the City Manager.

Section 7. Termination, Resignation and Severance Pay.

A. By City. It is recognized by Employee that this Agreement is a contract for personal services, and Employee acknowledges and agrees that the City may terminate Employee for any reason at any time, with or without cause. Nothing in this Agreement shall be construed other than an at-will employment relationship between the City and the Employee, and the Employee expressly acknowledges that no contrary representations have been made by the Employer.

B. By Employee. In the event Employee shall resign employment with the City, Employee agrees that they shall provide the City not less than thirty (30) days' prior written notice of the effective date of such resignation in order to afford the City a reasonable opportunity to find a

replacement for Employee. The City Manager may in their sole discretion waive or reduce this notice requirement.

C. The following reasons shall constitute grounds to terminate this Agreement with Cause and without payment of the severance provided in subparagraph D of this section:

1. A breach of this Agreement;
2. The commission of any willful or negligent act that results in financial or reputational harm to the City;
3. Failure to follow any lawful directive of the City Manager or failure to perform Employee's duties under this Agreement provided that Employee has been given notice and an opportunity to cure an alleged failure to perform any duties that are not emergency-related within a 30-day cure period;
4. Misconduct, which includes but is not limited to criminal misbehavior, abuse of public office, or other gross misconduct, deceit, embezzlement, theft of funds or property, assault, any form of racial, sexual or other harassment prohibited by state or federal law, and any other form of misconduct set forth in the Personnel Policies Manual;

D. In the event Employee is terminated by the City without Cause, the City shall pay Employee a lump sum cash payment equal to two (2) months' pay of the Employee's base salary as severance provided that payment of severance is conditioned on Employee signing and not revoking a separation agreement and comprehensive release of claims in a form and substance acceptable to the City. All payments made to Employee under this subsection are subject to the customary and usual payroll deductions.

E. The City agrees to pay Employee any unused PTO leave consistent with the City's Personnel Policies Manual upon any voluntary or involuntary separation. Employee agrees to immediately return to City all City property of any kind which may be in Employee's possession.

Section 8. General Provisions.

A. This Agreement constitutes the entire agreement between the parties, and both parties acknowledge that there are no other agreements, oral or otherwise.

B. The parties hereby further agree that this Agreement cannot be amended or modified without the written agreement of both parties; provided, however, that nothing herein shall be interpreted to limit or prohibit the City from amending personnel or adopting other policies and ordinances otherwise establishing standards for the Employee's performance. In the event of conflict between such rules and this Agreement, this Agreement shall control.

C. If any provision of this Agreement is held to be unconstitutional or otherwise invalid for any reason or should any portion of this Agreement be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of the Agreement or its application.

D. Notice. Any written notices required to be given by the City to Employee, or by Employee to the City, shall be delivered to the following parties at the following addresses:

1. City of Ellensburg
City Manager's Office
501 N Anderson Street
Ellensburg, WA 98501
2. Jamey Ayling
107 N Chinook Street
Moxee, WA 98936

Any notices may be either delivered personally to the addressee of the notice or may Be deposited in the United States mail, postage prepaid, to the address set forth above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

E. Each of the provisions of this Agreement has been reviewed and negotiated by the Employee and Employer and represents the combined work product of the parties. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed as of this _____ day of August 2022.

CITY OF ELLENSBURG

EMPLOYEE

Heidi Behrends Cerniwey, City Manager

Jamey Ayling

Attest:

Beth Leader, City Clerk

Approved as to form:

Terry Weiner, City Attorney



CITY OF ELLENSBURG
COMMUNITY DEVELOPMENT DEPARTMENT
DIRECTOR OF COMMUNITY DEVELOPMENT
REPORTS TO: CITY MANAGER

Exhibit A

MISSION:

Provide administrative oversight, technical guidance, professional leadership, positive community relations, and accountability for ensuring all Community Development projects and program requirements are accomplished to the highest possible standard of quality.

SUMMARY:

Perform various administrative, supervisory, and professional tasks. Ensure municipal interests and responsibilities in the area of land use, residential and commercial development, building inspection, affordable housing, and economic development are planned, protected, and fulfilled. Ensure compliance with local, state and federal regulations and goals through updated long-range planning efforts and oversight of code enforcement. Administer expenditures from the Affordable Housing Fund. Provide supervision of Community Development staff to achieve department goals.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

All of the following are to be performed while adhering to City of Ellensburg operational policies, safety rules, and procedures. This position requires regular and consistent attendance to accomplish the following essential functions:

Perform analysis and take appropriate action to implement policies by collecting and analyzing department data and information; identify and quantify problems, formulate potential solutions and prepare cost analysis of options.

Provide professional advice and support to City Manager and City Council; develop and deliver presentations, agenda reports, ordinances, and resolutions.

Manage financial resources by developing and appropriately administering long range and annual department budget; monitor revenues and expenditures; take appropriate action with unexpected project adjustments; ensure integrity of systems which collect or expend funds; prepare and implement long range capital plans, 6-year and annual capital budgets relative to plans; ensure appropriate maintenance and legal use of city property and equipment.

Manage staff resources; achieve department goals in an efficient and collaborative manner; develop department work program with assistance of staff; facilitate cooperative integration of department program into city-wide work program; assign staff to work within resources and ensure timely work completion; develop and maintain accurate department job descriptions; supervise performance, provide adequate training, coaching, and informative performance evaluations; administer discipline as necessary; assist in labor negotiations.

Represent the City in a positive manner when working with outside agencies, groups, and citizens; meet with colleagues from the community, including businesses and other government entities, to encourage cooperative problem solving and creative approaches to problems; ensure quality customer service and work with citizens and citizen groups to resolve problems; deliver speeches and/or presentations representing the City as assigned; provide information to the media when appropriate. Provide direction to employees assigned to staffing City boards and commissions, including: preparation of agendas, materials, research, or options as requested by boards/commissions; operating

within the responsibilities set by Council, ensure open public meetings that are professional and compliant with the Open Public Meetings Act; assist in problem solving by helping frame issues and by providing optional solutions and strengths/weaknesses of potential solutions; ensure appropriate, timely minutes and recommendations to Council.

Oversee staff in facilitating pre-development reviews and respond to applicants; interpret and enforce zoning and subdivision ordinances; provide land use analysis as requested by City Departments; direct City's Growth Management Act activities; supervise the building inspection function; serve as SEPA responsible official for the City.

Prepare grant applications and administer successful grants; develop RFP's, hire consultants and direct consultant activities; track and analyze state and federal legislation, regulations, etc., evaluate impact and make recommendations to the City Manager; provide direction and advice to plan review and inspection staff in the department on questions or disputes involving building and construction issues; coordinate with City Attorney in creation of ordinances, processing of citations and related legal matters associated with enforcement of the building and related construction codes; provide administrative oversight and general support to the City's Hearing Examiner.

Other duties may be assigned.

This is a representative sample--not to imply a complete listing of responsibilities and tasks.

SUPERVISORY RESPONSIBILITIES:

Directly supervise employees in the Community Development department in accordance with the organization's policies and applicable laws. Responsibilities include hiring, onboarding, and training employees; planning, assigning, and directing work; coaching and evaluating performance; providing commendations and working with HR to administer discipline when needed; addressing complaints and resolving problems; and ensuring cross-departmental cooperation for excellent internal and external customer service.

QUALIFICATION REQUIREMENTS:

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION and/or EXPERIENCE:

- Bachelor's degree in Planning, Geography, Construction Management, Business Administration, Public Administration, or other related field
- Five (5) years of progressively responsible experience performing related duties in planning, community development, housing and/or redevelopment
- Three (3) years of management responsibility.
- Equivalent combination of education and experience may be considered

LANGUAGE SKILLS:

Ability to read, analyze, and interpret complex documents and financial reports. Ability to respond effectively to sensitive inquiries or complaints. Ability to write reports and articles using original or innovative techniques or style. Ability to deliver clear and concise explanations and/or presentations on controversial or complex topics to City Council, management, employees, outside agencies, community groups, developers/contractors, and individuals in a manner appropriate for the intended audience.

MATHEMATICAL SKILLS:

Ability to understand and utilize basic math skills and apply basic to advanced mathematical concepts of algebra, geometry, and statistics; must be able to accurately manage a department budget.

NECESSARY KNOWLEDGE, SKILLS AND ABILITIES:

(A) Thorough knowledge of zoning laws and comprehensive plans including their formation, process of adoption, and enforcement; extensive knowledge of planning programs and processes; proficient knowledge of modern technology used in community development, including GIS applications.

(B) Skill in the operation of the listed tools and equipment; routinely deals with confidential matters of high sensitivity. Dissemination of confidential information requires judgment and extensive knowledge of city policies and procedures and state/federal laws. Must be fiscally responsible.

(C) Ability to communicate in a clear, concise manner orally and in writing; ability to establish courteous and cooperative working relationships with City Council and staff, architects, contractors, developers, outside agencies, and the general public; ability to prepare and analyze comprehensive and technical reports and data.

TOOLS AND EQUIPMENT USED:

Computer, tablet, smartphone, printer/copier/scanner, Microsoft Office 365 Suite, various software programs and applications; motor vehicle; calculator; multi-line phone system.

CERTIFICATIONS, LICENSES, AND REGISTRATIONS:

Valid Washington State Driver's License with insurable driving record
First Aid/CPR/AED

PREFERRED QUALIFICATIONS:

- Previous experience in City or County community development department
- Master's Degree in a related field
- Bilingual English/Spanish
- ICC Certifications

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to be in a stationary position when performing office work and position self at different levels to access office equipment and supplies. On occasion, the employee may be required to work outside and move about uneven terrain and under adverse weather conditions. The employee is frequently required to communicate accurate information with members of the public, co-workers, and outside agencies. The employee is frequently required to use tools and equipment previously listed.

The employee must frequently move and/or transport up to 25 pounds and occasionally move and/or transport more than 50 pounds.

WORK ENVIRONMENT:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The majority of duties are performed in an indoor office; however, the employee will occasionally perform work outdoors with potential exposure to temperatures extremes, wet and/or humid conditions, as well as gusty wind. The employee occasionally works near moving mechanical parts and in high, precarious places and is occasionally exposed to fumes or airborne particles, toxic or caustic chemicals, risk of electrical shock, and vibration.

The noise level in the work environment is usually moderate but could be occasionally loud in the field.

KEY RELATIONSHIPS:

The key relationships described here are representative of those an employee encounters while performing the essential functions of this job.

While performing the duties of this job the employee will communicate, solve problems, and negotiate solutions within policy guidelines with the City Manager, City Council, land use applicants, various Boards, Commissions, and special interest groups, staff from federal, state, and local agencies, school district and CWU staff, and the general public. Contact will be made in writing, by telephone, and/or in person.

Date of Action: 10/1998	Effective Date: 10/1998	APPROVAL SIGNATURES	DATE
Department: Comm. Dev	Date(s) amended: 11/2014; 04/2022		
Division: Administrative			
FLSA Class: Exempt			
Union: Non-Union			
		Department Director:	
		Human Resources Director:	
		City Manager:	

NOTICE: The above job profile does not include all essential and nonessential duties of this job. All employees with disabilities are encouraged to contact the Human Resources Department to review and discuss the essential and nonessential functions of the job. An employee with a disability can evaluate the job in greater detail to determine if she/he can safely perform the essential function of this job with or without reasonable accommodation.

DISCLAIMER: Job profiles are not intended, nor should they be construed to be, an exhaustive list of all responsibilities, tasks, skills, efforts, working conditions or similar behaviors, attributes or requirements associated with a job. A job profile is not a comprehensive job description. It is intended for the sole purpose of acquainting a person who is unfamiliar with such position with a brief overview of the position's general direction and scope.



MANAGER'S REPORT

DATE: August 6, 2022
To: Ellensburg City Council
FROM: Heidi Behrends Cerniwey, City Manager

1. Request to Set Public Hearings.

Staff requests Council set the following public hearings for the August 15, 2022 Council meeting:

- Legislative Hearing to consider declaring as surplus the City parcel commonly known as Catherine Park
- Legislative Hearing to consider declaring as surplus the City parcel commonly known as the Whitfield Triangle and to remove restrictive deed covenants
- Public Hearing for Outside Utility Extension Agreement 400 W. Helena Ave