

COUNCIL AGENDA

Monday, August 15, 2022



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To attend the city council meeting virtually register here:

https://us02web.zoom.us/webinar/register/WN_B5WH2L89St2Tje0g6f7KpA

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_B5WH2L89St2Tje0g6f7KpA. 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 15, 2022
7:00 PM - Regular Meeting**

Pledge of Allegiance

1. Call to Order and Roll Call

2. Proclamations

2.A International Overdose Awareness Day Proclamation [Public Comment Opportunity] 7
[International Overdose Awareness Day 2022](#)

2.B Constitution Day and Citizenship Day 2022 Proclamation [Public Comment Opportunity] 8
[Constitution Day and Citizenship Day 2022](#)

3. Awards and Recognitions

3.A Recognition of Councilmember Bruce Tabb [Public Comment Opportunity]

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 August 1, 2022 Regular Meeting 9
[8-1-22 Regular Meeting Minutes](#)

5.B Approve Minutes of August 1, 2022 Study Session 13
[8-1-22 Study Session minutes](#)

5.C Acknowledge Minutes of Boards and Commissions 14
[Lodging Tax Advisory Committee 6-1-22](#)

5.D [Amendment to Professional Services Agreement with Brookhouse Professional Services LLC](#) 15

A2161 - CIS Replacement Project - Brookhouse Prof. Svcs
Brookhouse Agreement Amendment No 2 (2022)

5.E	Energy Conservation Agreement (ECA) Contract No. 17ES-11475 between Bonneville Power Administration (BPA) and City of Ellensburg (Ellensburg) Amendment to Energy Conservation Agreement with BPA Signed Energy Conservation Agreement (2017) ECA Amendment Extending Term (October 2021)	40
5.F	Project Acceptance - Bid Call 2021-01 Main Street Corridor Intersection Enhancements	64
5.G	Facility use agreement between the City of Ellensburg and KITTCOM KITTCOM Facility Use Agreement for Backup Center	66
5.H	Accept resignation of Jim Nale from the Lodging Tax Advisory Committee Jim Nale Resignation	74
5.I	Award Bid Call 2022-13 15kV Medium Voltage Underground Distribution Cable to General Pacific, Inc.	75
5.J	Update of Right of Way Procedures LPA001 Ellensburg Right of Way Procedures	77
5.K	Award Bid Call 2022-11 for Middle Reach Reecer Creek Flood Hazard Reduction and Floodplain Restoration Project	85
5.L	Approve University Way Banner for League of Women Voters for October 24 - November 6, 2022 League of Women Voters Banner Request	89
5.M	Approve Voucher Listing for August 15, 2022 8-15-22 Voucher Listing	90

6. Petitions, Protests, and Communications

6.A	Resolution to provide enforcement of the Ellensburg Rodeo's Double Cross (XX) Resolution [Public Comment Opportunity] Double Cross Resolution 2022-30	91
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7. Citizen Comment on Non-agenda Issues

8. Business Requiring Public Hearings

8.A	Public Hearing to consider adoption of the 2022-2027 Transit Development Plan and acceptance of the 2021 Annual Report [Legislative Hearing – Public Comment Opportunity] 2022 - 2027 TDP & ANNUAL REPORT - DRAFT	95
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- 8.B [Resolution 2022-27 to Declare City Property known as Catherine Park, Parcel 694034, as Surplus for the Public Benefit of Affordable Housing](#) [Legislative Hearing – Public Comment Opportunity] 129
[Catherine Park Surplus Resolution 2022-27](#)
[Catherine Park](#)
- 8.C [Resolution 2022-28 to Declare Whitfield Triangle Surplus to City Needs and Amending Resolution 1963-17](#) [Legislative Hearing–Public Comment Opportunity]134
[Resolution 2022-28 - Surplus of the Whitfield Triangle](#)
[Resolution 1963-17 \(Whitfield Triangle\)](#)
- 8.D [Resolution 2022-29 - Outside Utility Agreement for Walter T. Coy II and Mary A. Coy at 400 W Helena Avenue](#) [Legislative Hearing – Public Comment Opportunity] 140
[Resolution 2022-29](#)

9. Introduction and Adoption of Ordinances and Resolutions

- 9.A [Ordinance 4895 \(First Reading\) Regulating Camping on City Property](#) [Public Comment Opportunity] 152
[4895 - Ordinance Regulating Camping on Public Property](#)

10. Unfinished Business

11. New Business

- 11.A [Memorandum of Understanding \(MOU\) with OPEIU Local 8, Amending Job Title, Wage, and Department for the GIS Coordinator Position](#) [Public Comment Opportunity] 163
[MOU - OPEIU City - Reclass GIS Supervisor](#)

12. Miscellaneous

- 12.A Manager's Report [No Public Comment] 167
[8-15-22 MANAGERS REPORT](#)

- 12.B Councilmembers' Reports [No Public Comment]

13. Executive Session

- 13.A Per RCW 42.30.110(1)(i), to discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

14. Adjournment

Next Ord. 4896
Next Res. 2022-31



City of Ellensburg

PROCLAMATION

International Overdose Awareness Day August 31, 2022

Whereas, the City of Ellensburg does affirm and acknowledge the harm and hardship caused by drug overdose; and

Whereas, we recognize the purpose of International Overdose Awareness Day as remembering loved ones lost to overdose and ending the stigma of drug-related deaths; and

Whereas, we resolve to play our part in reducing the toll of overdose in our community, which claimed the lives of more than 2000 Washington State residents in the year 2021 with countless more affected forever; and

Whereas, we recognize from September 2021 to June 2022 Kittitas County EMS have responded to 22 non-fatal overdoses from substance use and 1 fatality due to substance use; and

Whereas, we recognize that from January 1, 2021 to August 1, 2022 Kittitas County lost 10 individuals to overdose; and

Whereas, we affirm that the people affected by overdose are our sons and daughters, our mothers and fathers, our brothers and sisters and deserving of our love, compassion and support; and

Whereas, more people die from overdoses than from gun violence and vehicle accidents combined; and

Whereas, death from overdose is preventable; and

Whereas, there continue to be deaths from stimulant use; and

Whereas, overdoses continue to increase both medical and other economic costs greatly impacting our society; and

Whereas, Substance Use Disorder is a treatable disease and the stigma and shame often are a barrier to seeking help; and

THEREFORE, the City Council of the City of Ellensburg does hereby proclaim August 31, 2022, as International Overdose Awareness Day which will be honored with an event on August 30, 2022, at the Ellensburg United Methodist Church from 1:00 to 4:00 pm.

Dated this 15th day of August, 2022.

Mayor

Attest: _____
City Clerk



City of Ellensburg

PROCLAMATION

Constitution Day and Citizenship Day 2022

Whereas, the Constitution of the United States of America, which guarantees priceless freedoms to us as citizens of the United States and to our posterity and sets forth a concept of liberty that has been an inspiration to freedom-loving people everywhere, takes on still deeper meaning in these days of civil unrest; and

Whereas, by joint resolution approved December 8, 2004 (36 U.S.C. 106), the Congress of the United States has designated the 17th day of September of each year as Constitution Day and Citizenship Day in commemoration of the signing on September 17, 1787, of the Constitution of the United States and in recognition of all who, by coming of age or by naturalization, enjoy the privileges and assume the responsibilities of citizenship; and

Whereas, the aforesaid resolution urges the civil and educational authorities of states, counties, cities, and towns to make plans for the proper observance of Constitution Day and Citizenship Day and for the complete instruction of citizens in their responsibilities and opportunities as citizens of the United States and of the state and locality in which they reside; and

Whereas, every year thousands of candidates for citizenship commemorate Constitution Day and Citizenship Day by becoming American citizens. These men and women have respected our laws, learned our history, and some have served in our military; and

Whereas, we laud the desire of anyone to fulfill the dream of becoming a citizen of the United States of America, and we welcome all who naturalize into our community to join us in writing the next great chapter of the American story; and

Whereas, we remember the oath taken by all applicants who wish to become citizens: "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; and that I will well and faithfully discharge my duties and responsibilities as a citizen of the United States"; and

Whereas, a celebration of Constitution Day and Citizenship Day is planned and scheduled on Saturday, September 17, 2022, and all residents and visitors in Kittitas County are invited to attend;

Therefore, the City Council of the City of Ellensburg proclaims September 17, 2022 as Constitution Day and Citizenship Day in Ellensburg and encourages all residents of Kittitas County to join us in attending the Constitution Day and Citizenship Day celebration to reaffirm our commitment to a strong adherence to the foundational principles put forth in our Constitution and laws for naturalization citizenship.

Signed this 15th day of August, 2022.

Nancy Lillquist
Mayor

Attest: _____
City Clerk



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of City Council, Regular Meeting

August 1, 2022

7:00 PM

Council Chambers 501 North Anderson Street

Ellensburg, WA 98926

And virtually via Zoom

Pledge of Allegiance

The Pledge of Allegiance was led by Councilmember Monica Miller

1. Call to Order and Roll Call

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

Absent: Rich Elliott

Councilmember Tabb moved to Approve an excused absence for Councilmember Elliott.

Motion 6-0.

Also present in person: City Manager Behrends Cerniwey, City Attorney Weiner, City Clerk Leader, Parks & Recreation Director Case, Gas Engineer Yusi, Public Works & Utilities Director Lyyski, Community Development Director Ayling, Finance Director Pascoe and approximately three members of the public

Also present remotely: Two members of the public

2. Proclamations

3. Awards and Recognitions

4. Approval of Agenda

Councilmember Tabb moved to Approve the Agenda as presented. **Motion Approved 6-0.**

5. Consent Agenda

5.A. Approve Minutes of July 18, 2022 Regular Meeting

5.B. Acknowledge Minutes of Boards and Commissions

5.C. WWTF Roof and HVAC Replacement Project Acceptance

5.D. City Obligation for Kachess Dam Safety Modifications

5.E. Approve Voucher Listing for August 1, 2022

Councilmember Tabb moved to Approve the Consent Agenda as presented. **Motion Approved 6-0.**

6. Petitions, Protests, and Communications

6.A. Community Recreation Center and Field House Facility Discussion

Brad Case, Parks & Recreation Director, presented information to Council regarding available options.

Council asked questions of staff and discussed what action needed to be taken, such as an ad hoc committee. Council consensus was to create an ad hoc committee for evaluation of the two options and forward a list of potential representatives from interest groups to Council.

7. Citizen Comment on Non-agenda Issues

Zoey Majors, 1205 N Rainier St., spoke regarding availability of lockers at Memorial Pool and air conditioning availability to low income homes.

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

Darin Yusi, Gas Engineer, presented information in the staff report.

Councilmember Tabb moved to Approve second reading and adoption of Ordinance 4892. **Motion Approved 5-1** (Councilmember Winn against).

9.B. Second Reading of Ordinance 4893 Approving Rezone Request P22-012 submitted by DNR Jensen Rentals, LLC, property owner

Jamey Ayling, Community Development Director, presented information in the staff report.

Councilmember David Miller moved to Approve second reading and adoption of Ordinance 4893. **Motion Approved 6-0.**

9.C. Second Reading of Ordinance 4894 Approving Rezone Request P22-015

Submitted by Matt Stalder, Agent for D & D Investment Group, Property Owner
Jamey Ayling, Community Development Director, presented information in the staff report.

Councilmember Goodloe moved to Approve second reading and adoption of Ordinance 4894. **Motion Approved 6-0.**

10. Unfinished Business

11. New Business

11.A. 2022 Second Quarter Financial Status and Investment Reports
Jerica Pascoe, Finance Director, presented information in the staff report. A replacement page for page two of the Report was provided to Council.

Councilmember David Miller moved to Approve accepting the 2022 Second Quarter Financial Status and Investment Reports as amended. **Motion Approved 6-0.**

11.B. Affordable Housing Agreement Between City of Ellensburg and Stalder Interests, Inc. for 1st and Pine Street Properties
Jamey Ayling, Community Development Director, presented information in the staff report.

Councilmember Tabb moved to Approve authorizing 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. **Motion Approved 6-0.**

11.C. Employment Agreement with Jamey Ayling for Community Development Director Position
Heidi Behrends Cerniwey, City Manager, presented information in the staff report.

Councilmember Tabb moved to Approve authorizing the City Manager to sign the employment agreement with Jamey Ayling to serve as the City's Community Development Director. **Motion 6-0.**

12. Miscellaneous

12.A. Manager's Report
The City Manager reviewed the report.

Councilmember Tabb moved to Approve setting three public hearings for the August 15, 2022 meeting which include:

- A Legislative Hearing to consider declaring as surplus the City parcel commonly known as Catherine Park;
 - A Legislative Hearing to consider declaring as surplus the City parcel commonly known as the Whitfield Triangle and to remove restrictive deed covenants; and
 - A Public Hearing for Outside Utility Extension Agreement for 400 W. Helena Ave.
- Motion Approved 6-0.**

12.B. Councilmembers' Reports

- Councilmember David Miller attended the TIP Strategies Opportunity Workshop and Finance Committee meeting
- Councilmember Monica Miller reported on The Landmarks & Design Streateries subcommittee and Unity Park stakeholder meeting

-
- Councilmember Tabb attended the Public Transit Advisory Committee and Finance Committee meetings and the TIP Strategies Opportunity Workshop
 - Mayor Lillquist attended TIP Strategies Opportunity Workshop and the Utility Advisory Committee

13. Executive Session

14. Adjournment

Meeting adjourned at 8:34 pm

Mayor

ATTEST: _____
City Clerk



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of City Council, Study Session

August 1, 2022

6:00 PM

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

Study Session

Nancy Goodloe, Nancy Lillquist, David Miller, Monica Miller, Bruce Tabb
Adam Winn (present remotely via Zoom)

Others present in person: City Manager Behrends Cerniwey, City Attorney Weiner, City Clerk Leader, Kelle Vandenberg with the Ellensburg Downtown Association, Matt Anderson with Kittitas County Chamber of Commerce and approximately eight members of the public

Others present remotely: Brenda Devore with Ellensburg Downtown Association and Una McAlinden with Creative Strategy Solutions

Ellensburg Community Cultural Arts Plan (ECCAP) Update

Information on the process and creation of a document was presented to Council. There were questions from Council and discussion regarding a Creative Districts Program.

Alex Eyre, Arts Commission Chair, commented regarding the Arts Commission role in the process

Matt Anderson commented regarding support by Council

Jennifer Lubanski commented regarding dedication of an individual for a program

Jinger Haberer, Ellensburg School District Superintendent, commented regarding arts in school

Don Solberg with Laughing Horse Foundation, spoke regarding availability of performing arts spaces

Adjournment

Meeting adjourned at 6:55 pm

Mayor

ATTEST:

City Clerk



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of Lodging Tax Advisory Committee, Regular Meeting

June 1, 2022

2:00 pm

**Council Conference Room, 501 N. Anderson Street
Ellensburg, WA 98926
And remotely via Zoom**

1. Call to Order and Roll Call.

Roll Call Present: Adam Winn, Lacie Dawson (remote), Jim Nale, Steve Townsend (remote), and Marie Smith.

Absent: Sarah Beauchamp

Others present: Laurie Gigstead, Executive Assistant, and Matt Anderson, Director of Tourism.

2. Minutes of the May 4, 2022 meeting.

Jim Nale moved to approve minutes as written. **Motion approved. 5-0**

3. Correspondence and Public Comment Period. None.

4. Unfinished Business.

A. Budget/Financials Review.

Reviewed and acknowledged.

B. Tourism Report.

Matt gave a brief overview of My Ellensburg analytics for May. He presented information regarding costs for advertising in a broader area with brochures. The 6-month quote was approximately \$4,500 plus the cost of printing the brochures. He advised that the Chamber is not recommending this type of advertising at this time due to some potential implementation costs of the Ellensburg Cultural Arts Plan that is currently underway and also because this type of advertising is geared toward leisure tourism which is currently robust in Ellensburg.

He advised that the Chamber is tentatively scheduled to report on the JayRay Tourism Strategic Plan at the August 1, 2022 Council Study Session.

5. New Business.

A. Confirm the City of Ellensburg's thirteen percent (13%) allocation for the consolidated process in the amount of \$67, 239.88 based on 2021 revenues of \$517,229.86.

Jim Nale moved to confirm the City's allocation of \$67,239.88 for the 2023 consolidated lodging tax process. **Motion approved 5-0.**

Other: Laurie advised she sent out the email invitation for training is scheduled for Tuesday, July 5, 2022 at 5:30 pm presented by Ann McFarlane of Jurassic Parliament for all Councilmembers and board and commission members regarding running effective meetings and parliamentary procedures.

The next meeting is scheduled for July 6, 2022 at 2:00 p.m. With no further business, the meeting was adjourned at 2:14 p.m.

Laurie Gigstead
Recording Secretary

Drafted: 06/02/2022

Approved: 08/03/2022



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Amendment to Professional Services Agreement with Brookhouse Professional Services LLC

Submitted by: Jerica Pascoe Finance Department

Recommended Action or Motion: Authorize the City Manager to sign Amendment No.2 to the Professional Services Agreement with Brookhouse Professional Services LLC (BPS) extending the time of performance to December 31, 2024, adding project management oversight to the scope of work, and updating the maximum compensation. Staff also requests Council approve necessary budget adjustments.

Background/Summary: The City entered into an agreement with Brookhouse Professional Services LLC (BPS) effective December 7, 2020, for services in the search for a new Customer Information Systems (CIS) software. The CIS software is used for utility billing and payment recording. The scope of work included a needs discovery, Request for Proposal (RFP) development, RFP management, proposal review and support, solution demonstrations, due diligence, site visits, decision support, and contract review.

Change orders were approved to include additional software vendor demos, Dynamics GP Value Added Reseller (VAR) selection, and additional due diligence. The City and BPS have completed the scope of work contained in the original agreement, change orders 1 and 2, and are nearing completion of the additional scope of work contained in Amendment 1.

Previous Council Action: The City Manager approved the original agreement on December 7, 2020. Change Orders #1 and #2 were approved on June 29, 2021, and August 24, 2021. Amendment No. 1 was approved February 7, 2022.

Analysis: Work on the CIS contract review and VAR search is nearing completion. The City has selected Origin as our utility billing software vendor and are currently in negotiations to finalize the

contract documents. Amendment No. 2 contains a new scope of work to allow BPS to continue to support the implementation of a new CIS software with project management oversight. BPS will provide relevant guidance and insight specific to implementation of the Oracle C2M solution based on prior experience and industry knowledge.

Financial Impact:

The 2021 and 2022 budgets contained funding for the CIS software and VAR replacement search. The original agreement was for \$39,680 with change orders and Amendment No. 1 totaling \$19,840, for a total not to exceed of \$59,520. Total spent to date is \$46,090. Amendment No. 2 adds an additional \$144,000 for a total maximum compensation of \$203,520, which will require an amendment to the 2022 budget with the remaining funding to be carried forward into the 2023 budget. These costs will be allocated between General Fund and the six different utilities' fund balances.

Attachments:

[A2161 - CIS Replacement Project - Brookhouse Prof. Svcs](#)
[Brookhouse Agreement Amendment No 2 \(2022\)](#)

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF ELLENSBURG
AND
BROOKHOUSE PROFESSIONAL SERVICES LLC. (BPS)**

RELATING TO: CUSTOMER INFORMATION SYSTEMS (CIS) Replacement Project

THIS COST PLUS FIXED FEE AGREEMENT is made and entered into this 7th day of December 2020 ("Effective Date"), by and between THE CITY OF ELLENSBURG, a non-charter code city of the State of Washington (hereinafter called the "CITY") and BROOKHOUSE PROFESSIONAL SERVICES, an LLC authorized to do business in the state of Washington (hereinafter called the "CONSULTANT").

1. RECITALS.

1.1. The CITY desires to obtain professional services for work related to the Customer Information Systems (CIS) replacement project.

1.2. The CITY has solicited for such professional services as required by law, including RCW Chapter 39.80 if applicable.

1.3. CONSULTANT represents that it is available and able to provide qualified personnel and facilities necessary for the work and services contemplated herein, and can accomplish the work and services within the required time period and in accordance with CITY's specifications, WSDOT Standard Specifications (as applicable), and professional standards.

1.4. CONSULTANT agrees to perform the work and services specified herein in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above representations and the terms, conditions, covenants, and agreements set forth below, the parties hereto agree as follows:

2. SCOPE OF WORK.

2.1. The scope of professional services to be performed and the results to be achieved by the CONSULTANT shall be as detailed in the attached Exhibit A and shall include all services and material necessary to accomplish the work ("Services").

2.2. The CITY may review the CONSULTANT'S work product, and if it is not satisfactory, the CONSULTANT shall make such changes as may be required by the CITY. Such changes shall not constitute "Extra Work" as related in Section 13 of this

Agreement.

2.3. The CONSULTANT agrees that all services performed under this Agreement shall be in accordance with the standards of the profession and in compliance with applicable federal, state, and local laws.

2.4. The Scope of Work may be amended upon written approval of both parties.

3. TIME OF PERFORMANCE. The CONSULTANT may begin work upon the Effective Date of this Agreement by both parties, or the CITY's issuance of a Notice to Proceed, whichever is applicable, and the duration of the Agreement shall extend through 12/31/2021. The work shall be completed in accordance with the schedule set forth in the attached Exhibit B.

4. PAYMENT. The CITY shall pay the CONSULTANT as set forth in this section of the Agreement. Such payment shall be full compensation for work performed, services rendered, and all labor, materials, supplies, equipment, and incidentals necessary to complete the work.

4.1. Payment shall be on the basis of the CONSULTANT'S standard billing rates multiplied by the actual hours worked, the cost for actual labor, overhead and profit plus CONSULTANT'S direct non-salary reimbursable costs for cost plus fixed fee agreements or based on the percentage of completed work for lump sum agreements, as set forth in the attached Exhibit A.

4.2. The CONSULTANT shall submit invoices to the CITY on a monthly basis. Invoices shall detail the work, hours, employee name, and hourly rate; shall itemize with receipts and invoices the non-salary direct costs; shall indicate the specific task or activity in the Scope of Work to which the costs are related; and shall indicate the cumulative total for each task.

4.3. The CITY shall review the invoices and make payment for the portion of the project or tasks that have been completed less the amounts previously paid.

4.4. The CONSULTANT invoices are due and payable within 30 days of receipt. In the event of a disputed billing, only the disputed portion will be withheld from payment.

4.5. Final payment for the balance due to the CONSULTANT will be made after the completion of the work and acceptance by the CITY.

4.6. Payment for "Extra Work" performed under Section 13 of this Agreement shall be as agreed to by the parties in writing.

5. MAXIMUM COMPENSATION.

5.1. The CONSULTANT's total compensation and reimbursement under this Agreement, including labor, direct non-salary reimbursable costs, and outside services, shall not exceed the maximum sum of \$39,680.00. This amount is the maximum amount to be paid under this Agreement and shall not be exceeded without prior written authorization from CITY in the form of a negotiated and executed amendment of this Agreement.

5.2. The budget for each task is as set forth in the attached Exhibit A. Budgets for the task(s) may be modified upon mutual agreement between the two parties, but in any event, the total payment to CONSULTANT shall not exceed the maximum amount per Section 5.1 above.

6. RELATIONSHIP OF PARTIES.

6.1. The relationship created by this Agreement is that of an owner-independent contractor. Neither the CONSULTANT nor CONSULTANT's employees are employees of the CITY and are not entitled to the benefits provided by the CITY to its employees. The CONSULTANT, as an independent contractor, has the authority to control and direct the performance of the details of the services to be provided. No employee, agent, representative, or sub-consultant of CONSULTANT shall be or shall be deemed to be the employee, agent representative, or sub-consultant of the CITY. The CONSULTANT shall assume full responsibility for all wages, along with any Federal, State, and local taxes or contributions imposed or required, including, but not limited to, unemployment insurance, Social Security, and income tax, payable as a result of work performed under this Agreement.

6.2. Employees of the CONSULTANT, while engaged in the performance of any work or services under this Agreement, shall be considered employees of the CONSULTANT only and not of the CITY, and claims that may arise under the Workman's Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any negligent act or omission on the part of the CONSULTANT'S employees while so engaged, on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT. On or before the Effective Date, CONSULTANT shall file, maintain and/or open all necessary records with the Internal Revenue Service and the State of Washington, and as may be required by RCW 51.08.195, to establish CONSULTANT's status as an independent contractor.

7. WORK PRODUCT AND DOCUMENTS.

7.1. The work product and all documents produced under this Agreement shall be furnished by the CONSULTANT to the CITY, and upon completion of the work shall

become the property of the CITY, for use without restriction and without representation as to suitability for reuse by any other party unless specifically verified or adapted by the CONSULTANT, except that the CONSULTANT may retain one copy of the work product and documents for its records. The CONSULTANT will be responsible for the accuracy of the work, even though the work has been accepted by the CITY.

7.2. In the event that the CONSULTANT shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the CONSULTANT, along with a summary of work as of the date of default or termination, shall become the property of the CITY. Upon request, the CONSULTANT shall tender the work product and summary to the CITY. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the CITY.

7.3. CONSULTANT will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of CONSULTANT.

8. RECORDS. As a public agency, the CITY is subject to the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that CONSULTANT keeps records that are deemed public records and are needed for the CITY to respond to a request under the Act, as determined by the CITY, CONSULTANT agrees to make them promptly available to the CITY. Pursuant to Chapter 40.14 RCW, CONSULTANT shall retain records associated with this Agreement in accordance with the applicable retention schedule. CONSULTANT also agrees to indemnify and hold the CITY harmless from any claims or losses caused by the CONSULTANT'S failure to make records available to the CITY as provided in this Agreement.

9. NONDISCRIMINATION. The CONSULTANT shall conduct its business in a manner, which assures fair, equal, and non-discriminatory treatment of all persons, in particular:

9.1. The CONSULTANT shall maintain open hiring and employment practices and will welcome applications for employment in all positions, from qualified individuals who are members of minorities protected by federal equal opportunity/affirmative action requirements; and,

9.2. The CONSULTANT shall comply with all requirements of applicable federal, state, or local laws or regulations issued pursuant thereto, relating to the establishment of non-discriminatory requirements in hiring and employment practices and assuring the service of all persons without discrimination as to any person's race, creed, color, religion, national origin, status as a military veteran, marital status, gender, sexual orientation, disability or other legally protected classification.

10. SUBCONTRACTING.

10.1. The CONSULTANT shall not sublet or assign any of the work covered by this Agreement without the written consent of the CITY.

10.2. In the event any subcontracting is approved, the subcontractor and its employees shall be required to execute the Non-Disclosure Agreement prior to being given access to any confidential information regarding the CITY's computer system.

10.3. In all solicitation either by competitive bidding or negotiation made by the CONSULTANT for work to be performed pursuant to a subcontractor, including procurement of materials and equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of CONSULTANT's obligations under this Agreement, including the nondiscrimination requirements.

10.4. In performing this Agreement, the CONSULTANT shall not subcontract with or employ any CITY employee without the CITY's written consent.

11. SUPERVISION, INSPECTION, AND PERFORMANCE.

11.1. Even though CONSULTANT is an independent contractor with the authority to control and direct the performance and details of the Services, the Services must meet the approval of CITY and shall be subject to CITY's general right of inspection and supervision to secure the satisfactory completion of this Agreement.

11.2. CONSULTANT represents that it has or will obtain all personnel necessary to perform the Services and that such personnel shall be qualified, experienced, and licensed as may be necessary or required by applicable laws and regulations to perform the Services. All Services shall be performed by CONSULTANT, its employees, or by sub-consultants whose selection has been authorized by CITY; provided that CITY's authorization shall not relieve CONSULTANT or its sub-consultants from any duties or obligations under this Agreement, or at law, to perform the Services in a satisfactory and competent manner. CONSULTANT shall ensure that all contractual duties, requirements, and obligations that CONSULTANT owes to CITY shall also be owed to CITY by CONSULTANT's sub-consultants retained to perform the Services.

11.3. CONSULTANT shall be responsible for the professional quality, technical adequacy, accuracy, timely completion, and coordination of the Services and all plans, designs, drawings, specifications, reports, and other work performed pursuant to this Agreement. CONSULTANT shall perform the Services in accordance with the standard of care of its profession in the same or similar localities at the time services are performed. CONSULTANT shall be responsible for the professional standards, performance, and actions of all persons and firms performing the Services under this Agreement. CONSULTANT shall, without additional compensation, correct any specific breach of a contractual obligation in the Services and revise any errors or omissions in

any plans, designs, drawings, specifications, reports, and other products prepared under this Agreement.

12. CHANGES IN WORK. Other than changes directed by the CITY as set forth in Section 1 above, either party may request changes in the scope of work. Such changes shall not become part of this Agreement unless and until mutually agreed upon and incorporated herein by written amendments to this Agreement executed by both parties.

13. EXTRA WORK. The CITY may desire to have the CONSULTANT perform work or render services in connection with this project, in addition to the Scope of Work set forth in Exhibit A and minor revisions to satisfactorily completed work. Such work shall be considered as "Extra Work" and shall be addressed in a written supplement to this Agreement. The CITY shall not be responsible for paying for such extra work unless and until the written supplement is executed by both parties.

14. TERMINATION.

14.1. The CITY may terminate this Agreement in whole or in part whenever the CITY determines, in its sole discretion that such termination is in the best interests of the CITY, upon not less than ten (10) days' written notice to the CONSULTANT. A written notice will be by certified mail sent to the consultant's designated representative at the address provided by the CONSULTANT. If this Agreement is terminated in its entirety by the CITY for its convenience, the CITY shall pay the CONSULTANT for satisfactory services performed through the date of termination, but no amount shall be allowed for anticipated profit on unperformed services or other work.

14.2. The CITY may terminate this Agreement, in whole or in part and at any time, in writing if CONSULTANT substantially fails to fulfill any or all of its material obligations through no fault of CITY. If CITY terminates all or part of this Agreement for default, CITY shall determine the amount of Services satisfactorily performed to the date of termination and the amount owing to CONSULTANT using the criteria set forth below; provided that (a) no amount shall be allowed for anticipated profit on unperformed services or other work, and (b) any payment due to CONSULTANT at the time of termination may be adjusted to the extent of any additional costs CITY incurs or will incur because of CONSULTANT's default. In such event, CITY shall consider the actual costs incurred by CONSULTANT in performing the Services to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services or deliverables were in a form or of a type which is usable and suitable to CITY at the date of termination, the cost to CITY of either completing the Services itself or employing another firm to complete the Services in addition to the inconvenience and time which may be required to do so and other factors which affect the value to CITY of the Services performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Schedule of Charges. This provision shall not preclude CITY from filing claims and/or commencing litigation to secure compensation for damages incurred

beyond that covered by withheld payments.

14.3. In the event this Agreement is terminated prior to the completion of the work, final payment shall be made to the CONSULTANT, which, when added to any payments previously made, shall compensate the CONSULTANT for the portion of work completed. Whenever the Agreement is terminated in accordance with this Section 14, the CONSULTANT shall be entitled to payment for actual work performed up to the termination date. Upon such termination, whether for convenience or default, an equitable adjustment in the contract price will be made by the CITY for partially completed items of work, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination under this Section 14 shall not constitute a breach of the Agreement by the CITY.

15. INDEMNIFICATION/HOLD HARMLESS.

15.1. CONSULTANT shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the CONSULTANT in performance of this Agreement, except for injuries and damages caused by the sole negligence of the CITY.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to the property caused by or resulting from the concurrent negligence of the CONSULTANT and the CITY, its officers, officials, employees, and volunteers, the CONSULTANT's liability, including the duty and cost to defend, hereunder shall be only to the extent of the CONSULTANT's negligence.

15.2. It is further specifically and expressly understood that the indemnification provided herein constitutes the CONSULTANT's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

15.3. The provisions of this section shall survive the expiration or termination of this Agreement. Further, the indemnity obligations shall extend to claims that are not reduced to a suit and to any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation. Inspection, acceptance, or payment by CITY of or for any Services performed by CONSULTANT shall not be grounds for avoidance of any Indemnity Obligations.

16. INSURANCE.

16.1. The CONSULTANT shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property

which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, employees or subcontractors.

16.2. CONSULTANT'S maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the CONSULTANT to the coverage provided by such insurance, or otherwise limit the CITY'S recourse to any remedy available at law or in equity.

16.3. Minimum Scope of Insurance. CONSULTANT shall obtain insurance of the types described below:

16.3.1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contract liability coverage; and,

16.3.2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, and personal injury and advertising injury. The CITY shall be named or added as an additional insured under the Consultant's Commercial General Liability insurance policy using ISO endorsement form CG 20 26, or coverage at least as broad; and,

16.3.3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington; and

16.3.4. Professional Liability insurance appropriate to the CONSULTANT's profession.

16.4. Minimum Amounts of Insurance. CONSULTANT shall maintain the following insurance limits:

16.4.1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

16.4.2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.

16.4.3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

16.5. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

16.5.1. The CONSULTANT's insurance coverage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be in excess of the CONSULTANT's insurance, and shall not contribute with it.

16.5.2. Any payment of a deductible or self-insured retention shall be the sole responsibility of the CONSULTANT.

16.5.3. The CONSULTANT'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

16.6. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

16.7. Verification of Coverage. CONSULTANT shall furnish the CITY with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the CONSULTANT before the commencement of the work.

16.8. Cancellation. CONSULTANT will provide notice to the CITY of any cancellation of coverage by no later than three (3) days after CONSULTANT is notified by its insurer that coverage will or has been canceled, whichever occurs earliest.

16.9. CITY Full Availability of CONSULTANT Limits. If the CONSULTANT maintains higher insurance limits than the minimum amounts shown above, the CITY shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the CONSULTANT, irrespective of whether such limits maintained by the CONSULTANT are greater than those required by this Agreement or whether any certificate of insurance furnished to the CITY evidences limits of liability lower than those maintained by the CONSULTANT.

17. APPLICABLE LAW/VENUE. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, and in the event of a dispute, the venue of any litigation brought hereunder shall be Kittitas County.

18. NOTICE. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, or at such other address as given pursuant to this Section, and shall be effective on the next business day if sent by registered or certified mail or deposited with an overnight delivery service.

City of Ellensburg
Department of Finance
Attention: Jerica Pascoe
501 N. Anderson

Ellensburg, WA 98926

Brookhouse Professional Services LLC.
1160 Blankenship Road
West Linn, OR 97068

19. ENTIRE AGREEMENT. The written terms and provisions of this Agreement, together with all referenced Exhibits, supersede all prior verbal statements of any officer or other representative of CITY, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the referenced Exhibits.

20. PRIORITY OF DOCUMENTS. In the event that the language and provisions of this Agreement are contrary to or conflict with any language or provisions set forth in any exhibit to this Agreement, the language and provisions of this Agreement shall control, and the contrary or conflicting language or provisions of the exhibit(s) shall be disregarded and shall be considered void.

21. MODIFICATION. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of CITY and CONSULTANT.

22. ASSIGNMENT. Any assignment of this Agreement by CONSULTANT without the prior written consent of CITY shall be void.

23. WAIVER. A waiver of any breach by either party shall not constitute a waiver of any subsequent breach.

24. THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries to this Agreement.

25. EXHIBITS AND SIGNATURES. This Agreement, including its exhibits, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. The following exhibits are hereby made a part of this Agreement:

Exhibit A – Scope of Work
Consultant Labor Costs and Non-salary Reimbursable Costs
Budget for Each Task

Exhibit B – Schedule for the Work

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CONSULTANT:

By: 

Printed
Name: JOSEPH BROOKHOUSE

Title: PRINCIPAL

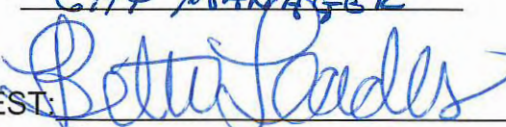
Tax ID#: 82-3920095

THE CITY OF ELLENSBURG:

By: 

Printed
Name: JOHN AKERS

Title: CITY MANAGER

ATTEST: 
Clerk

Approved as to Form:

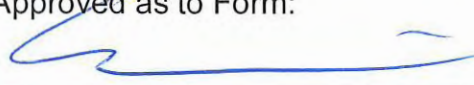

City Attorney

EXHIBIT A - SCOPE OF WORK - PROPOSAL

UNDERSTANDING

Brookhouse Professional Services LLC. ("BPS") is pleased to submit this proposal to The City of Ellensburg (the "City") for consulting services to support the evaluation of Customer Information Systems (CIS).

BPS understands the following regarding the current situation at the City:

- Current CIS is Cogsdale CSM from Cogsdale Corporation, a division of Harris Computer Systems. The City would like to replace Cogsdale CSM.
- Current Financial Management System (FMS) is Microsoft Dynamics GP which is supported by Cogsdale Corporation. The City would like to retain Dynamics GP but replace Cogsdale as the Microsoft Partner. Evaluation and selection of a replacement partner is out of scope for this project.
- Accent Business Services, Inc. ("Accent") facilitated a software evaluation project with the City in 2015. Though that effort did not result in the replacement of Cogsdale CSM, the materials produced remain valid and can be utilized to assist the current endeavor.
- The City is unique as a municipality due to the breadth of utility services provided relative to its population.

Functionality considered in scope for this selection project are the following.

- Customer Information
- Collections
- Service Orders
- Billing
- Payments
- Meter Management

1. NEEDS DISCOVERY

BPS will collaborate with the City's evaluation team to examine materials produced by Accent and to determine their value to the current software evaluation.

Activities

1. Review needs statements and questions from RFP 2015-15 with the evaluation team to confirm the validity or identify areas requiring further exploration.
2. Review RFP 2015-15 document with the City's evaluation team to identify elements that require revision to align with the scope of this evaluation, current City policy, and present circumstances.

Deliverables

1. Validated needs statements and questions
2. Identified areas for further assessment

Assumptions

1. Review sessions will be conducted remotely via Microsoft Teams.
2. The City evaluation team will represent the contemporary needs of stakeholder groups. Interviews with stakeholder groups are not required.

2. RFP DEVELOPMENT

BPS will conduct necessary interviews and produce the CIS Request for Proposal and supporting materials.

Activities

1. Collaborate with the City's evaluation team to establish weighting for scoring elements.
2. Prepare RFP document and ancillary materials to support evaluation of CIS and implementation services
- in collaboration with City and according to established City purchasing practices.

Deliverables

1. Final needs statements and questions
2. Final CIS RFP document and ancillary materials

Assumptions

1. Interviews with stakeholder groups are not required.

3. RFP MANAGEMENT

Activities

1. Support the City's responses to proposer questions, requests for clarification, etc.
2. Produce addenda as required and Q&A document.
3. Facilitate the pre-proposal conference.

Deliverables

1. Addenda, as required
2. Q&A document

Assumptions

1. A pre-proposal conference will be conducted remotely via phone or web conferencing – platform to be determined.
2. Up to three versions of the Q&A document will be produced.

4. PROPOSAL REVIEW SUPPORT AND SCORING

Activities

1. Prepare instruments for evaluation team scoring.
2. Provide scoring guidance to the evaluation team as needed.
3. Produce needs statement scores for each valid proposal submitted.
4. Tabulate City evaluation team scoring.
5. Calculate the total external cost of ownership for each valid proposal submitted.
6. Engage with proposers to clarify responses as needed.
7. Prepare aggregated scores for each valid proposal submitted.

Deliverables

1. Evaluation team scoring instruments
2. Aggregated scores
3. The total external cost of ownership

Assumptions

1. City procurement representative will identify any proposals considered non-responsive
2. BPS does not perform any subjective scoring of proposals

5. DECISION SUPPORT, COMPETITIVE RANGE

Activities

1. Produce decision support packets (electronic format) for the evaluation team.
2. Facilitate decision meetings to identify a competitive range of participating vendors.
3. Support communication of competitive range result to participating vendors.

Deliverables

1. Decision support packets

Assumptions

1. The competitive range is comprised of no more than three (3) participating vendors.
2. Decision session is conducted remotely.

6. SOLUTION DEMONSTRATIONS

Activities

1. Collaborate with the City evaluation team to develop a demonstration script.
2. Coordinate demonstration logistics between participating vendors and City resources.
3. Facilitate pre-demo meetings to assist with participating in vendor demo preparation.
4. Facilitate solution demonstrations.

Deliverables

1. Demonstration script

Assumptions

1. No more than three (3) solution demonstrations of one-day duration each
2. Solution demonstrations are conducted remotely.

7. ADDED DUE DILIGENCE & SITE VISITS

Activities:

1. Support resolution of any questions, follow-up demonstrations (remote), and other due diligence as needed to enhance understands of proposals.
2. Assist with the questions and planning of any site visits to be conducted by City personnel.

Deliverables:

1. No specific deliverables

Assumptions:

1. BPS will not attend site visits

8. DECISION SUPPORT, FINAL DECISION

Activities:

1. Produce decision support packets (electronic format) for the evaluation team.
2. Facilitate decision session.
3. Support decision communication to participating vendors.

Deliverables:

1. Decision support packets

Assumptions:

1. Decision session is conducted remotely

9. CONTRACT REVIEW

Activities:

1. Review vendor contract documents and provided red-lined recommended changes to the contract to include license and maintenance agreements, Statement of Work, and ancillary contract documents.
2. Advise City throughout the negotiation process as requested.

Deliverables:

1. Red-lined contract documents
2. Draft, interims, and final SOWs

Assumptions:

1. City staff will lead contract negotiations
2. Contract documents will be developed by the selected vendor or City staff
3. BPS will not provide legal assistance

10.MISCELLANEOUS MEETINGS & CONSULTATION

Activities:

1. Support City and vendor personnel (as directed by City point of contact/project manager) in any all questions regarding process, documentation, etc., as needed to complete the project successfully.

Deliverables:

1. As agreed upon

Assumptions:

1. Hours for this activity will be furnished upon request of the City

11.COST PROPOSAL

Fees

Item	Hours	Rate	Subtotal
Project Initiation	2	\$160	\$320.00
Needs Discovery	12	\$160	\$1920.00
RFP Development	16	\$160	\$2560.00
RFP Management	24	\$160	\$3840.00
Proposal Review Support and Scoring	30	\$160	\$4800.00
Decision Support, Competitive Range	16	\$160	\$2560.00
Solution Demonstrations	64	\$160	\$10240.00
Added Due Diligence	24	\$160	\$3840.00
Decision Support, Final Decision	20	\$160	\$3200.00
Contract Review	20	\$160	\$3200.00
Misc. Meetings	20	\$160	\$3200.00
Total Labor			\$39,680.00
Travel Hours	0	\$80	\$ 0.00
Estimated Expenses			\$0.00
Total Fees and Expenses			\$39,680.00

Cost Assumptions

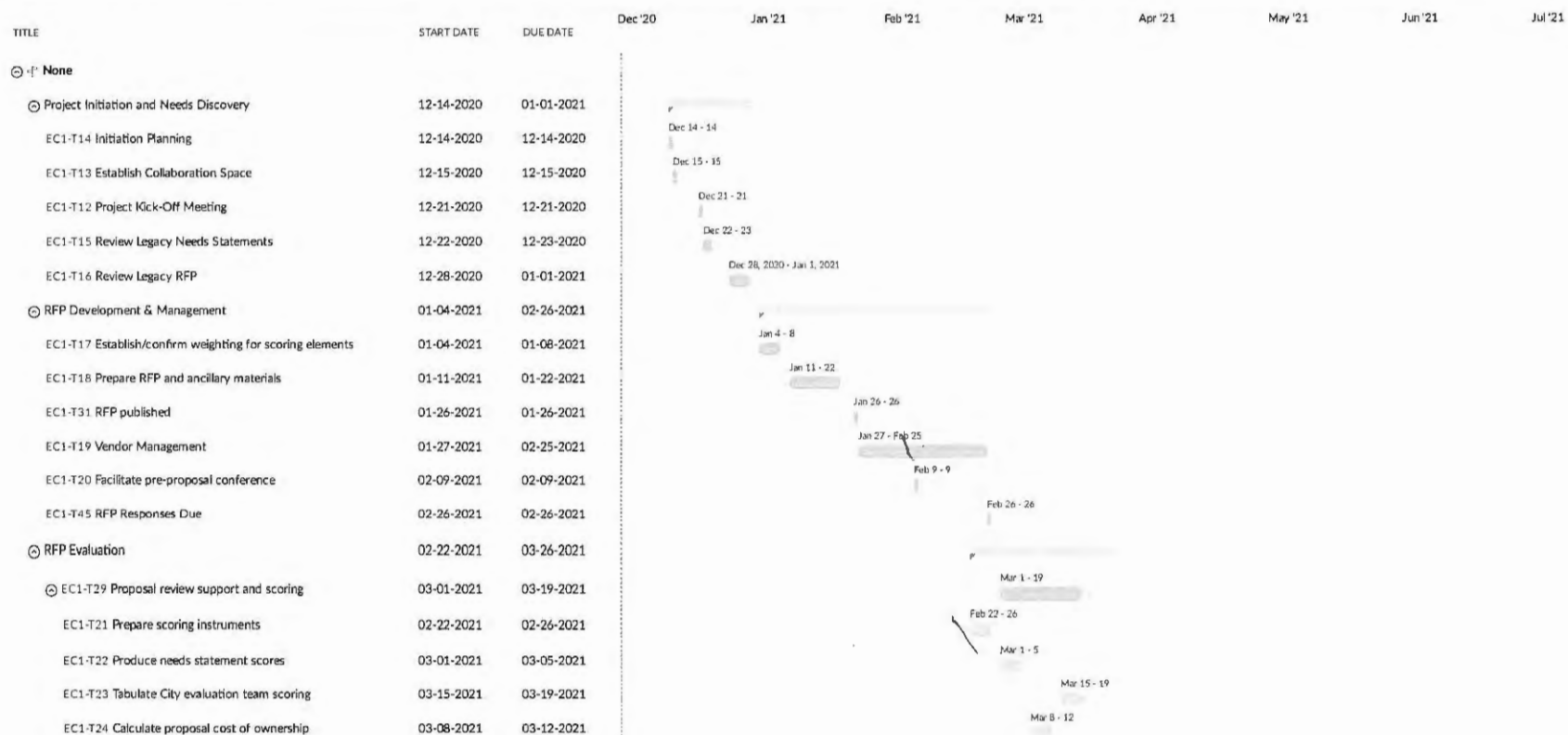
- Hours are not-to-exceed according to the proposed scope for all activities with the exception of Contract Review.
- Hours proposed for Needs Discovery and RFP Development assume the ability to leverage existing materials with limited modification. If upon completion of Needs Discovery it is determined that existing materials do not accurately reflect current needs or are inadequate, parties will adjust the scope accordingly via a change order.
- Contract Review is proposed as a pool of hours to be utilized at the direction of the City. The City will be notified in advance as hours consumed approach the limit of the pool.
- BP5 will bill travel expenses as incurred. No travel has been proposed for this project.
- If expenses are incurred, they will be passed directly to the City with no administrative add-ons.
- Travel time to the City facilities will be billed at 1/2 the labor rate.
- The hourly labor rate for this project is \$160.

Exhibit B

Project Name Ellensburg CIS Replacement

Report Name Milestone Gantt

View All Open



EC1-T25 Prepare aggregated proposal scores	03-15-2021	03-19-2021
EC1-T30 Decision Support	03-22-2021	03-26-2021
EC1-T26 Prepare decision support packets	03-22-2021	03-22-2021
EC1-T27 Facilitate decision meeting	03-25-2021	03-25-2021
EC1-T28 Prepare vendor notification letters	03-26-2021	03-26-2021
Secondary Evaluation	03-29-2021	05-28-2021
EC1-T32 Solution Demonstrations	03-29-2021	05-07-2021
EC1-T33 Develop demonstration script	03-29-2021	04-02-2021
EC1-T34 Coordinate demo logistics	04-05-2021	04-09-2021
EC1-T35 Facilitate pre-demo meetings with vendors	04-12-2021	04-16-2021
EC1-T36 Facilitate solution demonstrations	04-19-2021	05-07-2021
EC1-T37 Added Due Diligence	05-10-2021	05-21-2021
EC1-T38 Support additional due diligence activities	05-10-2021	05-21-2021
EC1-T39 Coordinate site visits / reference calls	05-10-2021	05-21-2021
EC1-T40 Final Decision	05-17-2021	05-28-2021
EC1-T41 Prepare decision support packets	05-17-2021	05-21-2021
EC1-T42 Facilitate decision meeting	05-25-2021	05-25-2021
EC1-T43 Prepare vendor notification letters	05-26-2021	05-26-2021
Software Contract Review	05-31-2021	07-30-2021
EC1-T44 Contract review	05-31-2021	07-30-2021

Milestones % Incomplete % Complete

Open Subtasks % Incomplete % Complete

Baseline Baseline Slippage

Tasklists % Incomplete % Complete

Roll-up Tasks % Incomplete % Complete

Critical path % Incomplete % Complete Slack



Open tasks % Incomplete % Complete

Roll-up Subtasks % Incomplete % Complete

Recurring task Recurring task

**AMENDMENT 2 TO THE
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ELLENSBURG
AND
BROOKHOUSE PROFESSIONAL SERVICES LLC. (BPS)**

THIS AGREEMENT is made and entered into this _____ day of _____, 2022, by and between THE CITY OF ELLENSBURG (hereinafter called the "CITY") and Brookhouse Professional Services (hereinafter called the "BPS").

WHEREAS, the CITY entered into an AGREEMENT with BPS effective December 7, 2020 (the AGREEMENT); and

WHEREAS, the CITY desires to amend the AGREEMENT to amend the Contract Period; and

WHEREAS, the CITY desires to amend the AGREEMENT to amend the Scope of Work; and

WHEREAS the City entered into CHANGE ORDER 1 with BPS effective June 29, 2021; and

WHEREAS the City entered into CHANGE ORDER 2 with BPS effective August 24, 2021; and

WHEREAS the City entered into AMENDMENT 1 with BPS effective February 7, 2022; and

WHEREAS the City and BPS are nearing completion of the previous scope of work; and

WHEREAS the City has selected Oracle C2M solution through Origin as our utility billing software; and

WHEREAS BPS can provide relevant guidance and insight specific to implementation of Oracle C2M solution based on prior experience and industry knowledge; and

WHEREAS the City and BPS would like to add to the scope of work to allow BPS to continue to support the implementation of a new CIS with project management oversight;

NOW, THEREFORE, in consideration of the above representations and the terms, conditions, covenants, and agreements set forth below, the parties hereto agree as follows:

I. SCOPE OF WORK

Section 2 of the original AGREEMENT is amended for additional scope of work as detailed in Exhibit A.

II. TIME OF PERFORMANCE

Section 3 of the original AGREEMENT is amended to read as follows:

The CONSULTANT may begin work upon the Effective Date of this Agreement by both parties, or the CITY's issuance of a Notice to Proceed, whichever is applicable, and the duration of the Agreement shall extend through 12/31/24. The work shall be completed in accordance with the schedule set forth in the attached Exhibit A.

III. MAXIMUM COMPENSATION

Section 5.1 of the original AGREEMENT is amended to read as follows:

The CONSULTANT's total compensation and reimbursement under this Agreement, including labor, direct non-salary reimbursable costs, and outside services, shall not exceed the maximum sum of \$203,520. This amount is the maximum amount to be paid under this Agreement and shall not be exceeded without prior written authorization from CITY in the form of a negotiated and executed amendment of this Agreement.

Except as modified herein, the original AGREEMENT shall remain in effect.

In WITNESS WHEREOF, the parties hereto have executed Amendment 2 to the AGREEMENT as of the date and year first written above.

BROOKHOUSE PROFESSIONAL SERVICES

CITY OF ELLENSBURG

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Terry Weiner, City Attorney

EXHIBIT A: PROPOSAL FOR SERVICES

UNDERSTANDING

Brookhouse Professional Services, Inc. ("BPS") is pleased to submit this proposal to City of Ellensburg ("the City") for consulting services to support the implementation of a Customer Information System (CIS).

- The City requests additional support directly from BPS to provide project management oversight for the Origin implementation of Oracle C2M.
- The City anticipates initiating the project Q4 of 2022 with go-live for Oracle C2m tentatively scheduled for Q4 of 2023.

PROJECT MANAGEMENT OVERSIGHT

BPS will provide relevant guidance and insight specific to implementation of Oracle C2M solution based on prior experience and industry knowledge. Associated activities and deliverables are described in this section. The list is not comprehensive.

Project Preparation Activities

As directed by the City, BPS will assist with the coordination of activities to prepare the City for implementation of the solution.

Coordination of City Project Resources

BPS will assist with alignment of the City resources (staff, budget, space, etc.) including:

1. Development and management of an internal project schedule
2. Development and management of RAID (risk, action items, issues, and decisions) log

Quality Assurance Oversight

1. Monitor plans and budgets
2. Monitor project status and provide independent report to City leadership
3. Recommend intervention when deviation occurs

Independent Verification & Validation

1. Verify deliverables meet associated contractual requirements
2. Mediate between the City and the vendor during disputes

Personnel

BPS will assign two consultants to the project.

Role	Consultant	Allocation (approx.)
Project Oversight Lead	Dan Thomson, CAPM	20% (40-50 hrs)
Implementation Advisor	Cherish Cruz, MBA	10% (15-20 hrs)

Project Oversight Lead: The City's primary oversight consultant for BPS and will lead most activities listed above.

Project Implementation Advisor: Supervises BPS activities and provides counsel as required. Serves as point of escalation for key issues and implementation events.

Deliverables

1. Periodic status reports
2. Status meeting facilitation (on site or remote as needed)
3. Internal project schedule
4. RAID (risk, action item, issue, decision) log

COST PROPOSAL

Fees

Item	Est. Hours	Rate	Subtotal
Project Management Oversight	900	\$160	\$144,000
Travel Hours	0	\$80	\$ 0
Total Fees			\$144,000
Estimated Expenses			\$ 0
Total Fees and Expenses			\$144,000

Cost Assumptions

- Hours are estimates only. Actual hours may be fewer or greater.
 - Estimated hours for Project Management Oversight assume 60 hours monthly for 15 months.
 - No travel hours have been estimated due to pandemic-related travel restrictions.
 - The hours each month may be greater or less than the estimate. In all cases, the actual hours accrued will be invoiced.
- BPS will bill travel expenses as incurred. Travel expenses will be comprised of travel (mileage, airfare, car rental), parking/tolls, hotel, and meals and sundry expenses).
- No estimate for expenses has been provided. If any expenses are incurred, they will be passed directly through to the City with no administrative add-on.
- If required, travel time to the City facilities will be billed at 1/2 the labor rate.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Energy Conservation Agreement (ECA) Contract No. 17ES-11475 between Bonneville Power Administration (BPA) and City of Ellensburg (Ellensburg)

Submitted by: Buddy Stanavich Public Works & Utilities

Recommended Action or Motion: Staff recommends authorizing the Mayor to sign Amendment No. 02 to the Energy Conservation Agreement (ECA) Contract No. 17ES-11475 between Bonneville Power Administration (BPA) and City of Ellensburg (Ellensburg)

Background/Summary: The present agreement dates back to 2009 and has been amended many times to reflect updated BPA budgets, operating policies, and terms. The ECA is scheduled to expire on September 30, 2022. This Amendment changes the expiration date to extend the term of the ECA through September 30, 2028. This Amendment also updates the contact information in Exhibit A, and updates language regarding the tracking system and uncontrollable forces definition.

The City Attorney has reviewed and approved the draft amendment in early July, and there are no additional changes to the final version (attached).

Previous Council Action: The ECA was approved on August 8, 2017. In November 2021, the Mayor signed Amendment No. 01 extending the Agreement to September 2022.

Analysis: None

Financial Impact: None

Attachments:

[Amendment to Energy Conservation Agreement with BPA](#)
[Signed Energy Conservation Agreement \(2017\)](#)
[ECA Amendment Extending Term \(October 2021\)](#)

AMENDMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
CITY OF ELLENSBURG

This AMENDMENT to the Energy Conservation Agreement Contract 17ES-11475 (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and CITY OF ELLENSBURG (Ellensburg), hereinafter individually referred to as “Party” and collectively referred to as the “Parties”.

This Amendment No. 02 (Amendment) replaces section 1 of the Agreement to extend the term of the Agreement through September 30, 2028; adds terms and conditions for the new Energy Efficiency Tracking System; updates section 6, Payment of Approved Invoice Payment Amounts; updates the Uncontrollable Forces clause in section 11(b); and updates the contact information in Exhibit A.

BPA and Ellensburg agree:

1. TERM

This Amendment shall take effect on the date signed by both Parties.

2. AMENDMENTS TO BODY OF THE AGREEMENT

(a) Section 1, Term shall be deleted and replaced with the following:

“This Agreement takes effect on the date signed by the Parties. This Agreement expires on September 30, 2028, unless terminated earlier as provided in section 13, Termination. Performance by BPA and Ellensburg shall commence on October 1, 2017, with the exception of those actions required prior to that date included in section 3(a) and section 3(b). All obligations under this Agreement shall be preserved until discharged or satisfied.”

(b) Section 2(b) shall be deleted and replaced with the following:

“(b) “Available Implementation Budget” means the amount available for BPA to purchase Energy Savings from a specific Program Participant at a given point in time equal to the Program Participant’s Initial Implementation Budget, plus any applicable Carryover Amount, plus

or minus any applicable Implementation Budget Transfers, minus any applicable Approved Invoice Payment Amounts.”

- (c) A new section 2(c) shall be added as follows and all subsequent definitions in section 2 shall be renumbered accordingly:
 - “(c) “Bonneville Energy Efficiency Tracking System” or “BEETS” means the reporting system established by BPA and intended to supersede BPA’s IS2.0 reporting system.”
- (d) The definition of “Rollover Amount” in section 2(l) shall be revised and moved to a new section 2(d) as follows. All subsequent definitions in section 2 shall again be renumbered accordingly:
 - “(d) “Carryover Amount” means an amount of a Program Participant’s budget remaining at the end of a given Rate Period that may carry forward to increase the amount of that Program Participant’s Available Implementation Budget for the following Rate Period.”
- (e) Section 3(c) shall be deleted and replaced with the following:
 - “(c) **Carryover Amount**
As applicable and in accordance with the terms and conditions in the Implementation Manual, BPA shall calculate Ellensburg’s Carryover Amount and incorporate a Carryover Amount into Ellensburg’s Available Implementation Budget for each Rate Period. By November 15, 2017, and no later than November 15 every two years thereafter, BPA shall notify Ellensburg of its applicable Carryover Amount for the remainder of the Rate Period.”
- (f) Section 5 shall be deleted and replaced with the following:
 - “**5. INVOICING PROCESS**
BPA will notify Ellensburg when Ellensburg shall stop submitting invoice packages to BPA through IS2.0 and start submitting invoice packages and invoices to BPA through BEETS or its successor.
 - (a) **Documentation and Submittal of Invoice Packages**
Ellensburg shall comply with the documentation requirements in the Implementation Manual.

As applicable, Ellensburg shall execute and maintain a BPA Customer Portal Access and Use Agreement in order to submit invoice packages to BPA while still reporting through IS2.0.

Whether seeking Self-Funded Energy Savings or for BPA payment for Energy Savings, Ellensburg shall submit its invoice packages, including any required reports and documentation, in accordance with the reporting requirements

in the Implementation Manual. If there is a disagreement regarding the completeness or accuracy of any submitted invoice packages, as applicable, then BPA shall work with Ellensburg to resolve such issues.

If BPA determines that any Program Participant's third-party contractor falsified information reported to BPA, then BPA shall have the right to prohibit all Program Participants from reporting, for payment, Measures implemented with the assistance of that contractor. If such action is taken, BPA will notify all Program Participants in accordance with Exhibit A.

(b) **Performance Payments**

For purposes of this Agreement, Performance Payment shall have the meaning as defined in the Implementation Manual.

When BPA notifies Ellensburg of its Initial Implementation Budget for the upcoming Rate Period pursuant to section 3(b) above, BPA shall also notify Ellensburg of its Performance Payment classification category and rate for the upcoming Rate Period. BPA's Performance Payment classification categories, rates, caps, and certain terms and conditions of Ellensburg's receipt of such, shall be as stated in the Implementation Manual.

If Ellensburg is seeking BPA payment for Energy Savings, then City of Ellensburg may receive, elect to receive, or opt out of a Performance Payment. Instructions for Ellensburg to receive, elect to receive, or opt out of Performance Payments, and the applicable time frame(s) that Ellensburg has to claim Performance Payments will be included in the Implementation Manual. If Ellensburg opts out of a Performance Payment for a given invoice package submitted using IS2.0, then Ellensburg may not claim Performance Payments for that invoice package at a later date. Using BEETS, Ellensburg must claim any applicable Performance Payments for any invoice approved by BPA within a given Rate Period by the end of that Rate Period.

BPA shall not apply Performance Payments for any Self-Funded Energy Savings.

BPA will deduct any applicable Performance Payments from Ellensburg's Available Implementation Budget.

(c) **BPA Review of Invoice Packages, Creation of Invoice Reports, and Determination of Approved Invoice Payment Amounts**

After BPA receives an invoice package from Ellensburg, BPA shall conduct a timely review process to determine

whether: the Measures submitted conform to the requirements of this Agreement and the Implementation Manual, Ellensburg has otherwise followed the terms and conditions of this Agreement and the Implementation Manual and Ellensburg has adequate Available Implementation Budget.

After BPA has conducted its review process above, which may include an oversight review pursuant to section 7 below, BPA will notify Ellensburg of any accepted Measures and, as applicable, BPA will notify Ellensburg that it may submit an invoice for accepted Measures. BPA will not accept Measures that are not in compliance with the requirements of this Agreement.

BPA shall create and make available to Ellensburg an itemized invoice report that states the accepted Energy Savings and the Approved Invoice Payment Amount.

In no event shall the Approved Invoice Payment Amount exceed Ellensburg's Available Implementation Budget."

- (g) The first paragraph of section 6 shall be deleted and replaced by the following:

"BPA agrees to purchase and Ellensburg agrees to sell Energy Savings in accordance with this Agreement. BPA shall pay Ellensburg any Approved Invoice Payment Amounts, as determined under sections 5(b), 5(c) and 8 of this Agreement and in accordance with sections 10 and 13 of this Agreement. Such payment shall be due no later than 30 days after BPA accepts the invoiced Energy Savings and makes available the itemized invoice report to Ellensburg pursuant to section 5(c) above. All payments to Ellensburg will be made electronically."

- (h) The second paragraph of section 7 shall be deleted and replaced with the following:

"During the invoice package review process outlined in section 5(c) above (or where BPA otherwise deems necessary), BPA may select Ellensburg's invoice package for oversight review. If BPA selects an invoice submitted by Ellensburg to conduct oversight review BPA shall notify Ellensburg and the Parties shall coordinate accordingly."

- (i) Section 11(b) shall be deleted and replaced with the following:

"(b) floods, earthquakes, fire, or other natural disasters; terrorist acts; and epidemics, pandemics; and"

- (j) The last sentence of the first paragraph of section 13(a) shall be deleted and replaced with the following:

“Ellensburg may not submit invoice packages for implemented Measures after Ellensburg has submitted a notice of termination.”

- (k) The last sentence of the second to last paragraph of section 13(b) shall be deleted and replaced with the following:

“Further, Ellensburg shall have 30 days after the termination date to provide a refund to BPA of any progress payments BPA made to Ellensburg for Measures for which Ellensburg had not yet submitted an invoice package.”

- (l) The second to last sentence of section 13(c) shall be deleted and replaced with the following:

“Further, Ellensburg shall have 30 days after the termination date to provide a refund to BPA of any progress payments BPA made to Ellensburg for Measures for which Ellensburg had not yet submitted an invoice package.”

3. EXHIBIT REVISION

Exhibit A shall be deleted and replaced by the attached Revision No. 03 to Exhibit A.

4. SIGNATURES

This Amendment may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Amendment as of the last date indicated below.

CITY OF ELLENSBURG

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name Nancy Lillquist
(Print/Type)

Name Jamae Hilliard Creecy
(Print/Type)

Title Mayor

Title Vice President Energy Efficiency

Date _____

Date _____

Revision No. 03, Exhibit A
NOTICES AND CONTACT INFORMATION
Effective on the Date Executed by the Parties

This revision updates the BPA contact information in section 1(b) of Exhibit A.

1. NOTICES AND CONTACT INFORMATION

(a) Notices

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have the means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change consistent with this section. Parties shall deliver notices to the following person and address:

(b) Contact Information

If to Ellensburg:

City of Ellensburg
501 N Anderson Street
Ellensburg, WA 98926-3147

Attn: Nancy Lillquist
Mayor

Phone: 509-962-7221

E-Mail: lillquistn@ci.ellensburg.wa.us

If to BPA:

Bonneville Power Administration
Eastern Customer Service Center
1620 E Hawthorne Rd, PO Box 789
Mead, WA 99021

Attn: Lindsey Hobbs -PEM-MEAD-GOB
Energy Efficiency Representative

Phone: 509-822-4588

E-Mail: lkobbs@bpa.gov

2. REVISIONS

When a Party to this Agreement requests a change to their contact information included in section 1(b) of this exhibit, then the requesting Party must send notice of such requested change to the other Party. BPA may unilaterally revise this exhibit to implement such requested changes to section 1(b). All other revisions to this exhibit shall be by mutual agreement of all the Parties.

Approved
by Council
8/8/17

Contract No. 17ES-11475

ENERGY CONSERVATION AGREEMENT

executed by

BONNEVILLE POWER ADMINISTRATION

and

CITY OF ELLENSBURG

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Exhibit A Notices and Contact Information

This ENERGY CONSERVATION AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through BONNEVILLE POWER ADMINISTRATION (BPA); and CITY OF ELLENSBURG (Ellensburg), a municipal corporation organized under the laws of the State of Washington, hereinafter individually referred to as "Party" or collectively referred to as the "Parties."

RECITALS

BPA is required by the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (Northwest Power Act), to meet the net firm power load requirements of its customers in the Pacific Northwest.

Per the Northwest Power Act and consistent with the Pacific Northwest Electric Power and Conservation Planning Council's regional power plan, BPA pursues Conservation as a resource.

BPA is authorized to acquire cost-effective Conservation to reduce the firm power load requirements of its customers in the Pacific Northwest, and intends to do so by purchasing Energy Savings from Program Participants in accordance with the Energy Conservation Agreement.

Ellensburg intends to implement Measures in accordance with the Implementation Manual and to report and sell the resulting Energy Savings to BPA.

This Agreement, including BPA's Energy Efficiency Implementation Manual as may be revised, provides the implementation, reporting, and payment requirements for BPA's portfolio of Energy Efficiency Measures.

The Parties agree as follows:

16. TERM

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2021, unless terminated earlier as provided in section 13, Termination. Performance by BPA and Ellensburg shall commence on October 1, 2017, with the exception of those actions required prior to that date included in section 3(a) and section 3(b). All obligations under this Agreement shall be preserved until discharged or satisfied.

17. DEFINITIONS

Capitalized terms used in this Agreement shall have the meaning stated.

- (a) "Approved Invoice Payment Amount" means the sum of amounts in an invoice package that BPA determines has met the criteria in section 5(b) and section 5(c) and that BPA authorizes payment of per section 6.
- (b) "Available Implementation Budget" means the amount available for BPA to purchase Energy Savings from a specific Program Participant at a given point in time equal to the Program Participant's Initial Implementation Budget plus any applicable Rollover Amount plus or minus any applicable Implementation Budget Transfers minus any applicable Approved Invoice Payment Amounts.
- (c) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production or distribution, as defined in section 3(3) of the Northwest Power Act, and includes actual and planned Conservation.
- (d) "Energy Efficiency Incentive" or "EEI" means the aggregate program cost established by BPA for purchasing Energy Savings from all Program Participants within a Rate Period.
- (e) "Energy Savings" means amounts of Conservation that BPA has determined to be attributable to Measures implemented in a manner consistent with this Agreement.

- (f) “Implementation Budget Transfer” means an increase or decrease in a Program Participant’s Available Implementation Budget as a result of a method of transferring funds as defined and allowed under this Agreement.
- (g) “Implementation Manual” means the publicly accessible BPA guidance document, as may be revised, that specifies: (1) the Measures that may be implemented by Program Participants, (2) the requirements and specifications for implementation of Measures, and (3) the obligations on BPA and the Program Participants related to the implementation, reporting, payment amounts, oversight, and evaluation of Energy Savings, including Self-Funded Energy Savings.
- (h) “Initial Implementation Budget” means the portion of an EEI established by BPA and effective at the beginning of a Rate Period to purchase Energy Savings from a specific Program Participant during that Rate Period.
- (i) “Measure” means any material, equipment, or activity identified in the Implementation Manual that a Program Participant may install or implement within its service area to achieve Conservation.
- (j) “Program Participant” means a BPA customer that has an Energy Conservation Agreement in effect.
- (k) “Rate Period” shall have the meaning as defined in BPA’s Tiered Rate Methodology, as amended.
- (l) “Rollover Amount” means an amount of a Program Participant’s budget remaining at the end of a given Rate Period that may carry forward to increase the amount of that Program Participant’s Available Implementation Budget for the following Rate Period.
- (m) “Self-Funded Energy Savings” means Energy Savings for which a Program Participant chooses to not seek payment from BPA.

18. IMPLEMENTATION BUDGET

- (a) **Determination of EEI**
By September 30, 2017, and no later than September 30 prior to the start of each Rate Period thereafter, BPA shall determine the EEI for the upcoming Rate Period.
- (b) **Notification of Ellensburg’s Initial Implementation Budget**
By September 30, 2017, and no later than September 30 prior to the start of each Rate Period thereafter, BPA shall notify Ellensburg of its Initial Implementation Budget for the upcoming Rate Period.

Each Rate Period, BPA shall establish Ellensburg’s Initial Implementation Budget based on Ellensburg’s Tier One Cost Allocator. For purposes of this

Agreement, the term Tier One Cost Allocator has the meaning as defined in BPA's Tiered Rate Methodology, as may be revised.

(c) **Rollover Amount**

As applicable and in accordance with the terms and conditions in the Implementation Manual, BPA shall calculate Ellensburg's Rollover Amount and incorporate a Rollover Amount into Ellensburg's Available Implementation Budget for each Rate Period. By November 15, 2017, and no later than November 15 every two years thereafter, BPA shall notify Ellensburg of its applicable Rollover Amount for the remainder of the Rate Period.

(d) **Implementation Budget Transfers**

Ellensburg may request an increase or decrease to its Available Implementation Budget through an Implementation Budget Transfer in accordance with the Implementation Manual.

If BPA, or the Parties together, establish a new project or program that allows Implementation Budget Transfers to Ellensburg's Available Implementation Budget, then the terms and conditions of such project or program will be included in the Implementation Manual or as a new exhibit to this Agreement.

BPA shall provide notice to Ellensburg stating the changes to Ellensburg's Available Implementation Budget due to any Implementation Budget Transfers.

(e) **Notices and Notifications**

Notices sent under this section 3 shall be sent in accordance with Exhibit A, Notices and Contact Information.

In addition to the notices sent by BPA pursuant to sections 3(b), 3(c) and 3(d) above, Ellensburg may request notification of its Available Implementation Budget at any time during the term of this Agreement.

19. THE IMPLEMENTATION MANUAL

The Implementation Manual is incorporated by reference and is made a part of this Agreement. BPA may unilaterally modify the Implementation Manual within the general scope of this Agreement and in accordance with the process stated in the Implementation Manual. BPA will provide notice of all modifications to Ellensburg in accordance with the process stated in the Implementation Manual.

Ellensburg may implement Measures to produce Energy Savings consistent with the Implementation Manual. Unless otherwise agreed, BPA shall use the Implementation Manual in effect on the Measure completion date when conducting its reviews pursuant to section 5(c) below.

20. INVOICING PROCESS

(a) **Documentation and Submittal of Invoice Packages**

Ellensburg shall comply with the documentation requirements in the Implementation Manual.

Unless the Parties agree otherwise, Ellensburg shall execute and maintain a BPA Customer Portal Access and Use Agreement in order to submit invoice packages to BPA.

Whether seeking Self-Funded Energy Savings or for BPA payment for Energy Savings, Ellensburg shall submit its invoice packages, including any required reports and documentation, in accordance with the reporting requirements in the Implementation Manual. If there is a disagreement regarding the completeness or accuracy of any submitted documentation, reports, or invoices, as applicable, then BPA shall work with Ellensburg to resolve such issues.

If BPA determines that any Program Participant's third-party contractor falsified information reported to BPA, then BPA shall have the right to prohibit all Program Participants from reporting Measures implemented with the assistance of that contractor. If such action is taken, then BPA will notify all Program Participants in accordance with Exhibit A.

(b) **Performance Payments**

For purposes of this Agreement, Performance Payment shall have the meaning as defined in the Implementation Manual.

When BPA notifies Ellensburg of its Initial Implementation Budget for the upcoming Rate Period pursuant to section 3(b) above, BPA shall also notify Ellensburg of its Performance Payment classification category and rate for the upcoming Rate Period. BPA's Performance Payment classification categories, rates, caps, and certain terms and conditions of Ellensburg's receipt of such, shall be as stated in the Implementation Manual.

If Ellensburg is seeking BPA payment for Energy Savings, then BPA shall automatically apply a Performance Payment unless Ellensburg requests otherwise. Instructions for Ellensburg to reduce or opt out of Performance Payments, as applicable, will be included in the Implementation Manual. If Ellensburg opts out of a Performance Payment for a given invoice package, then Ellensburg may not claim Performance Payments for that invoice package at a later date.

BPA shall not apply Performance Payments for any invoice package or the portion of an invoice package that Ellensburg submits for Self-Funded Energy Savings.

BPA will deduct any applicable Performance Payments from Ellensburg's Available Implementation Budget.

(c) **BPA Review of Invoice Packages, Creation of Invoice Reports, and Determination of Approved Invoice Payment Amounts**

After BPA receives an invoice package from Ellensburg, BPA shall conduct a timely review process to determine whether: (1) the Measures submitted conform to the requirements of the Implementation Manual and this Agreement, (2) Ellensburg has otherwise followed the terms and conditions of the Implementation Manual and this Agreement, (3) Ellensburg has adequate Available Implementation Budget, and (4) the form of the invoice is proper.

After BPA has conducted its review process above, which may include an oversight review pursuant to section 7 below, then BPA will determine whether it accepts the invoiced Energy Savings. BPA will not accept Measures that are not in compliance with the requirements of this Agreement. BPA shall create and provide to Ellensburg an itemized invoice report that states the accepted Energy Savings and the Approved Invoice Payment Amount.

In no event shall the Approved Invoice Payment Amount on an invoice report exceed Ellensburg's Available Implementation Budget.

21. PAYMENT OF APPROVED INVOICE PAYMENT AMOUNTS

BPA agrees to purchase and Ellensburg agrees to sell Energy Savings in accordance with this Agreement. BPA shall pay Ellensburg any Approved Invoice Payment Amounts, as determined under sections 5(b), 5(c) and 8 of this Agreement and in accordance with sections 10 and 13 of this Agreement. Such payment shall be due no later than 30 days after BPA accepts the invoiced Energy Savings and provides the itemized invoice report to Ellensburg pursuant to section 5(c) above. All payments to Ellensburg will be made electronically.

This contract is subject to the provisions of the Prompt Payment Act (31 U.S.C. 3901 *et seq.*) and regulations at 5 C.F.R. Part 1315. If interest penalty payments are determined due under the provisions of the Prompt Payment Act, payment shall be made at the rates determined by the U.S. Treasury under Section 611 of the Contract Disputes Act of 1978 (41 U.S.C. 7109) that is in effect on the day after the due date.

22. OVERSIGHT REVIEW AND EVALUATION PROCESSES

In accordance with the oversight review and evaluation processes in the Implementation Manual, BPA shall have the right to conduct: (1) oversight review including, but not limited to, site and record reviews, and (2) impact and process evaluations.

During the invoice package review process in section 5(c) above or otherwise, BPA may select at random any Program Participant invoice to conduct oversight review. If BPA selects an invoice submitted by Ellensburg to conduct oversight review, then BPA shall notify Ellensburg of such selection and the Parties shall coordinate accordingly.

Oversight review and evaluation processes will be conducted at BPA's discretion.

23. NETTING OF AMOUNTS OWED

BPA will net amounts owed under this Agreement by Ellensburg to BPA against any equal or greater amount owed under a pending Approved Invoice Payment Amount by BPA to Ellensburg. However, if there is no pending Approved Invoice Payment Amount of equal or greater value, then BPA shall send Ellensburg a bill for the amount owed to BPA.

24. INFORMATION EXCHANGE, PRIVACY ACT COMPLIANCE, AND FOIA

Upon request and as allowed by law, the Parties shall provide each other with any information that is reasonable and necessary to verify the achievement of Energy Savings and otherwise administer and implement this Agreement. The Parties shall make best efforts to provide such requested information in a timely manner.

BPA represents that personally identifiable information (PII), including end-user information provided to BPA under this Agreement, is protected by federal law and BPA policy. This protection includes compliance with the requirements of the Privacy Act of 1974 (5 U.S.C. §552a) and DOE Order 206.1.

If BPA subsequently enters into a contract with a third party under which end-user PII provided to BPA by Ellensburg will be provided to the third party, then BPA shall include terms contractually obligating such third parties to protect such end-user PII and to only use such PII for purposes of administering and implementing that contract.

BPA may release information provided by Ellensburg when required by the Freedom of Information Act (5 U.S.C. § 552) (FOIA), court order, or federal law. Proprietary information of Ellensburg, as designated in writing by Ellensburg, will only be shared within BPA with individuals who need the information to fulfill a job function.

10. GOVERNING LAW, LIABILITY, AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Ellensburg and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers.

BPA and Ellensburg assert that neither is the agent or principal for the other; nor are they partners or joint venturers, and BPA and Ellensburg agree that they shall not represent to any other party that they act in the capacity of agent or principal for the other.

In no event will either BPA or Ellensburg be liable to each other for any special, punitive, exemplary, consequential, incidental or indirect losses/damages from any failure of performance howsoever caused, whether or not arising from a party's sole, joint or concurrent negligence.

The reference to specific products or manufacturers does not represent a BPA endorsement or warranty, and BPA is not liable for any damages that may result from the installation or use of such products.

Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

(a) **Judicial Resolution**

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Ellensburg or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section, then Ellensburg may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to non-binding arbitration under this section.

(b) **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 10(a) above, shall be subject to arbitration, as set forth below.

- (1) Ellensburg may request that BPA engage in binding arbitration to resolve any dispute. If Ellensburg requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 10 are met. BPA may request that Ellensburg engage in binding arbitration to resolve any dispute. In response to BPA's request, Ellensburg may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 10 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

- (2) Non-binding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 10(a) above and is not resolved via binding arbitration, unless Ellensburg notifies BPA that it does not wish to proceed with non-binding arbitration.

(c) **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

(d) **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

(e) **Finality**

- (1) In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.
- (2) In non-binding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to non-binding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

(f) **Arbitration Costs**

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

11. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable

Force” means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party’s reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (a) strikes or work stoppage;
- (b) floods, earthquakes, or other natural disasters; terrorist acts; and
- (c) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with Exhibit A, Notices and Contact Information.

12. STANDARD PROVISIONS

(a) **Amendments**

Except where this Agreement explicitly allows one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision to this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

(b) **Interpretations**

BPA may issue interpretations, determinations, and findings related to this Agreement that are binding on the Parties. Such decisions shall be provided to Ellensburg in writing. In administering this Agreement, only the written statements of BPA officials acting within the scope of their authority shall be considered to be official BPA statements.

- (c) **Assignment**
This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld. BPA shall consider any request for assignment, consistent with applicable BPA statutes.
- (d) **Entire Agreement**
This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.
- (e) **Order of Precedence**
In the event of conflict, the body of this Agreement shall prevail over the exhibits of this Agreement. If the terms and conditions of the Implementation Manual conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement will take precedence.
- (f) **No Third Party Beneficiaries**
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.
- (g) **Severability**
If any term of this Agreement is found to be invalid by a court of competent jurisdiction, then such term shall remain in force to the maximum extent permitted by law. All other terms shall remain in force unless that term is determined not to be severable from all other provisions of this Agreement by such court.
- (h) **Waivers**
No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

13. **TERMINATION**

All notices sent under this section 13 shall be sent in accordance with Exhibit A, Notices and Contact Information.

- (a) **Customer's Right to Terminate**
If Ellensburg has no Measures in the process of being implemented and all outstanding invoice packages have been submitted to BPA, then Ellensburg may terminate this Agreement upon thirty days' prior written notice to BPA. However, if Ellensburg does have Measures in the process of being

implemented, then Ellensburg must submit any associated invoice packages prior to submitting a notice of termination. Any such termination will take effect upon BPA's payment of the final Approved Invoice Payment Amount. Ellensburg may not submit invoices for implemented Measures after Ellensburg has submitted a notice of termination.

If BPA has made any progress payments to Ellensburg pursuant to the Implementation Manual and the relevant Measure(s) are yet to be fully implemented, or if Ellensburg otherwise owes money to BPA under this Agreement, and Ellensburg provides BPA written notice to terminate this Agreement, then the Parties shall work together to develop a mutually agreeable completion and repayment schedule. Ellensburg will be required to have Measures under this Agreement completed by September 30 of the Rate Period in which the termination notice is provided to BPA. Termination of this Agreement will not be effective prior to BPA being reimbursed amounts owed or until BPA determines sufficient Measure completion.

(b) **BPA's Right to Terminate**

BPA may terminate this Agreement upon thirty days' prior written notice to Ellensburg if BPA determines that Ellensburg:

- (1) has failed to comply with the record-keeping requirements included in the Implementation Manual;
- (2) has failed to use any portion of the Implementation Budget in a manner consistent with this Agreement;
- (3) has posed a significant environmental, health or safety threat;
- (4) has reported falsified information to BPA; or
- (5) has made any other material breach of this Agreement.

Any notice of termination sent by BPA shall include an effective date of such termination.

If BPA terminates this Agreement, then Ellensburg's Available Implementation Budget will be zero as of the date of termination. Ellensburg will not be allowed a completion period for any Measures Ellensburg has in progress beyond the termination date. Further, Ellensburg shall have 30 days after the termination date to provide a refund to BPA of any progress payments BPA made to Ellensburg for Measures for which Ellensburg had not yet submitted an invoice.

Termination by BPA under this section 13(b) is without prejudice to any other remedies available to BPA under law.

(c) **Termination Upon Termination of Power Sales Agreement**

If Ellensburg's Power Sales Agreement Contract No. 09PB-13037 is terminated, then this Agreement shall terminate on the same date. If such actions occur, Ellensburg's Available Implementation Budget will be zero as of the date of termination. Ellensburg will not be allowed a completion period for any Measures Ellensburg has in progress beyond the termination date. Further, Ellensburg shall have 30 days after the termination date to provide a refund to BPA of any progress payments BPA made to Ellensburg for Measures for which Ellensburg had not yet submitted an invoice. BPA shall also determine if Ellensburg is required to provide a refund to BPA, in addition to any refund of progress payments.

14. **SIGNATURES**

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement, and the Agreement may be executed and delivered electronically. The Parties have executed this Agreement as of the last date indicated below.

CITY OF ELLENSBURG

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By



Title

Mayor

8/8/2017

By

Digitally signed by DANIEL VILLALOBOS
DN: c=US, o=U.S. Government, ou=Department of
Energy, cn=DANIEL VILLALOBOS,
09.2342.19200300.100.1.1=89001002279091
Date: 2017.08.08 12:40:46 -07'00'

Title

Energy Efficiency Representative

Exhibit A
NOTICES AND CONTACT INFORMATION

1. NOTICES AND CONTACT INFORMATION

(a) Notices

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have the means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change consistent with this section. Parties shall deliver notices to the following person and address:

(b) Contact Information

If to Ellensburg:

City of Ellensburg
501 N Anderson Street
Ellensburg, WA 98926
Attn: Larry Dunbar
Energy Services Director
Phone: 509-962-7251
E-Mail: dunbarl@ci.ellensburg.wa.us

If to BPA:

Bonneville Power Administration
909 First Avenue, Suite 380
Seattle, WA 98104
Attn: Dena Hilde – PEK/Seattle
Utility COTR
Phone: 206-220-6792
E-Mail: DLHilde@bpa.gov

2. REVISIONS

When a Party to this Agreement requests a change to their contact information included in section 1(b) of this exhibit, then the requesting Party must send notice of such requested change to the other Party. BPA may unilaterally revise this exhibit to implement such requested changes to section 1(b). All other revisions to this exhibit shall be by mutual agreement of all the Parties.

AMENDMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
And
CITY OF ELLENSBURG

This AMENDMENT to the Energy Conservation Agreement Contract No. 17ES-11475 (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and CITY OF ELLENSBURG (Ellensburg), hereinafter individually referred to as "Party" and collectively referred to as the "Parties".

This Amendment No. 1 (Amendment) replaces section 1 of the Agreement to extend the term of the Agreement through September 30, 2022 and updates the contact information in the Notices section of Exhibit A.

BPA and Ellensburg agree:

1. TERM

This Amendment shall take effect on October 1, 2021.

2. AMENDMENTS TO BODY OF THE AGREEMENT

Section 1, Term shall be deleted and replaced with the following:

"This Agreement takes effect on the date signed by the Parties. This Agreement expires on the earlier of September 30, 2022 or the date BPA deems that the Bonneville Energy Efficiency Tracking System (BEETS) is fully operational, unless terminated earlier as provided in section 13, Termination. Performance by BPA and Ellensburg shall commence on October 1, 2017, with the exception of those actions required prior to that date included in section 3(a) and section 3(b). All obligations under this Agreement shall be preserved until discharged or satisfied."

3. EXHIBIT REVISIONS

Exhibit A shall be deleted and replaced by the attached Revision No. 2 to Exhibit A.

Revision No. 2, Exhibit A
NOTICES AND CONTACT INFORMATION
Effective October 1, 2021

This revision updates the BPA and Ellensburg contact information in section 1(b) of Exhibit A.

1. NOTICES AND CONTACT INFORMATION

(a) Notices

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have the means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change consistent with this section. Parties shall deliver notices to the following person and address:

(b) Contact Information

If to Ellensburg:

City of Ellensburg
501 N. Anderson Street
Ellensburg, WA 98296-3147
Attn: Ryan Lyyski
Public Works Director
Phone: 509-962-7230
E-Mail: lyyskir@ci.ellensburg.wa.us

If to BPA:

Bonneville Power Administration
Eastern Customer Service Center
1620 E. Hawthorne Road, POB 789
Mead, WA 99021
Attn: Daniel P. Villalobos - PEJB
Energy Efficiency Representative
Phone: 509-822-4585
E-Mail: dpvillalobos@bpa.gov

2. REVISIONS

When a Party to this Agreement requests a change to their contact information included in section 1(b) of this exhibit, then the requesting Party must send notice of such requested change to the other Party. BPA may unilaterally revise this exhibit to implement such requested changes to section 1(b). All other revisions to this exhibit shall be by mutual agreement of all the Parties.

4. **SIGNATURES**

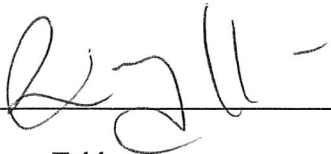
This Amendment may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Amendment as of the last date indicated below.

CITY OF ELLENSBURG

UNITED STATES OF AMERICA

Department of Energy

Bonneville Power Administration

By 

Name Bruce Tabb
(Print/Type)

Title Mayor

Date 11-03-2021

By DANIEL
VILLALOBOS Digitally signed by DANIEL
VILLALOBOS
Date: 2021.11.03 14:15:46 -07'00'

Name Daniel P. Villalobos
(Print/Type)

Title Energy Efficiency Representative

Date _____



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Project Acceptance - Bid Call 2021-01 Main Street Corridor Intersection Enhancements

Submitted by: Hunter Slyfield Public Works & Utilities

Recommended Action or Motion: Accept Bid Call 2021-01 as complete.

Background/Summary: The construction of the Main Street Corridor Intersection Enhancements project was completed in April 2022, which consisted of improvements to the existing traffic signals along Main Street at Manitoba Avenue, 3rd Avenue, 5th Avenue and University Way. These Improvements included installation of protected left turn signals, flashing yellow arrows, pedestrian push buttons and heads, six new signal poles, new signal heads, upgraded vehicle detection, ADA improvements, and new signal cabinets. Staff has recently received the necessary project closeout paperwork from the contractor and Council is now being requested to accept the project as complete.

Previous Council Action: At its May 3, 2021 Regular Meeting, Council awarded the above-mentioned project to Neppel Electric & Controls, LLC.

Analysis: The original contract amount bid for the project was \$1,208,500.00 with a final contract amount of \$1,211,500.00. The final project cost was \$1,121,337.90 which included the following four bid schedules and change orders:

Schedule "A": Main Street and Manitoba Avenue. This schedule included all work needed to upgrade the traffic signal system at the intersection of Main Street and Manitoba Avenue. Bid - \$287,275.00, Final Contract - \$280,792.00.

Schedule "B": Main Street and 3rd. This schedule included all work needed to upgrade the traffic signal system at the intersection of Main Street and 3rd Avenue. Bid - \$431,715.00, Final Contract - \$383,665.00.

Schedule “C”: Main Street and 5th. This schedule included all work needed to upgrade the traffic signal system at the intersection of Main Street and 5th Avenue. Bid - \$300,510.00, Final Contract - \$269,680.90.

Schedule “D”: Main Street and University Way. This schedule included all work needed to upgrade the traffic signal system at the intersection of Main Street and University Way. Bid - \$189,000.00, Final Contract - \$184,200.00.

Changer Orders for Fiber Splicing. Final Contract - \$3,000.00.

Financial Impact:

This project was primarily funded through a Federal City Safety Program Grant at 100% of eligible construction contract costs up to \$995,638.00. The remaining \$125,699.90 of construction costs was funded through the Arterial Street Fund for a total project cost of \$1,121,337.90. This project is included in the 2021/2022 Biennial budget.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Facility use agreement between the City of Ellensburg and KITTCOM

Submitted by: Ben Faubion Information Technology

Recommended Action or Motion: Authorize the City Manager to sign the Facility use agreement between the City of Ellensburg and KITTCOM for a backup emergency operations location at the Ellensburg Police Department.

Background/Summary: The City of Ellensburg (City) and KITTCOM have worked together with mutual interest to establish a backup location for KITTCOM's operations in the event of an emergency or another condition that renders their primary location unusable. After evaluation, the Ellensburg Police Department (Public Safety Building) was chosen as the best option. The Public Safety Building provides redundant power and redundant fiber for network and internet services. The Public Safety Building is also the redundant data center for City IT, and by nature is in operation 24/7.

Historically the City and KITTCOM have collaborated on technology and services for the community. One significant reason for using this as an emergency location for KITTCOM, among numerous others, is that the City IT also uses the second floor as a disaster recovery location. If there were an emergency event requiring KITTCOM to move their operation to an alternate facility City IT would be able to closely work with KITTCOM to support their technology needs. In past events City IT has responded to help support Emergency Operation Centers and KITTCOM. By co-locating at the Public Safety Building the ability to collaborate in service to the community would be enhanced.

Previous Council Action: N/A

Analysis: The facility use agreement would allow KITTCOM nonexclusive use of certain portions of the Public Safety Building upstairs

conference room and former fire department sleeping quarters depicted in Exhibit A. KITTCOM is responsible for any costs incurred in making changes to the space used by them.

It should be noted that City IT and the Ellensburg Police Department have made great investments and improvements to the Public Safety building. Adding KITTCOM to this collaboration will help continue the improvements of technology and operational use of the Public Safety Building in support of the City of Ellensburg and Emergency Services to Kittitas County.

Financial Impact:

KITTCOM will be responsible for any costs associated with any needed space modifications, and there is no fiscal Impact to the City from the Agreement.

Attachments:

[KITTCOM Facility Use Agreement for Backup Center](#)

FACILITY USE AGREEMENT BETWEEN THE CITY OF ELLENSBURG AND KITTCOM

This agreement for the use of certain facilities owned (“Agreement”) is entered into as of this ____ day of _____, 2022 (“Effective Date”) between KITTCOM, a consolidated communications agency for Kittitas County (“KITTCOM”), and the City of Ellensburg, a Washington municipal corporation (“the City”), collectively referred to as “the Parties.”

RECITALS

WHEREAS, the City and KITTCOM share a mutual interest in establishing a backup location for use by KITTCOM in the event of an emergency or other conditions that renders its primary location unusable in whole or in part; and

WHEREAS, the City owns a Public Safety Building (“PSB”) located at 100 N Pearl Street, Ellensburg, Washington and determined that a portion of the station identified as certain unused portions of the PSB would be suitable for KITTCOM’s use as an emergency backup location; and

WHEREAS, KITTCOM provides services that benefit the City and KITTCOM has a long-term need for an emergency backup location;

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Facility use by KITTCOM.

1.1. The City agrees to allow KITTCOM the nonexclusive use of certain portions of the PSB generally identified as the upstairs conference room and former fire department sleeping quarters. The configuration of the space is shown in Exhibit A, attached hereto and incorporated herein, and referred to as “KITTCOM backup location.”

1.2. Use of KITTCOM’s backup location shall include the installation and operation of network, telephone, radio, status monitoring, backup power, and information technology equipment, as well as associated hardware to establish a backup center for KITTCOM. Installation of such equipment may include installation of supporting cabling, AC power, and the use of certain available existing exterior antenna attachment space. Physical installations and changes to the physical installations shall be coordinated with and approved by the City.

1.3. All costs for changes to the space used by KITTCOM other than the KITTCOM backup location for installation, equipment and maintenance shall be the sole responsibility of KITTCOM.

2. No shared property or shared use. The parties agree that KITTCOM’s rights are limited to the uses specified in Section 1 of this Agreement and that KITTCOM has no right to use other portions of the PSB or the right to use any of the City’s property or equipment located in the PSB.

3. Security and Building Access. Authorized personnel of KITTCOM who meet the background and security requirements established by the Ellensburg Police Department shall have access to the PSB on a twenty-four hour per day, seven day per week basis.

4. Term. This Agreement shall be in force from the Effective Date and shall continue until terminated in accordance with paragraph 5.

5. Termination. This Agreement may be terminated upon: 1) mutual written agreement of the Parties; 2) one year's written notice of termination provided by either party; or 3) if the other party fails to timely cure an Event of Default under Section 6.

6. Events of Default, Notice and Opportunity to Cure. If either party fails to comply with a covenant made by such party in this Agreement or fails to abide by a condition binding on such party contained in this Agreement, then the other party shall deliver notice of such Event of Default to the defaulting party, who shall be permitted to cure the same within fifteen (15) days of delivery of such notice. If such Event of Default cannot reasonably be cured within such fifteen-day period, then the defaulting party shall be deemed to have cured the same if it takes all reasonable steps to do so within such fifteen-day period and thereafter diligently proceeds to effect such cure; provided, that, such cure is actually and fully effected within ninety (90) days of delivery of the notice delivered pursuant hereto.

7. Consideration. The consideration for this Agreement is the benefit to the City for providing a location for KITTCOM's backup operations, public safety call answering, public safety dispatching and alerting, and KITTCOM's interest in supporting the public safety operations of the City. Notwithstanding the foregoing, the City may request payment of utility and other appropriate expenses from KITTCOM should its use of the PSB as an active emergency backup location exceed sixty (60) consecutive days.

8. Indemnification/Hold Harmless.

8.1. Indemnification by KITTCOM. Except as provided in Section 9.7 below, KITTCOM agrees to hold harmless, indemnify, and defend the City, its elected officials, officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of KITTCOM, or damage to property arising out of any willful misconduct or negligent act, error or omission of KITTCOM, its officers, agents, subcontractors or employees, in connection with the provisions of this Agreement.

8.2. Indemnification by City. Except as provided in Section 9.7 below, the City agrees to hold harmless, indemnify, and defend KITTCOM, its elected officials, officers, agents, and employees, from and against any and all claims, losses, or liability for injuries, sickness or death of persons, including employees of the City, or damage to property, arising out of any willful misconduct or negligent act, error or omission of the City, its officers, agents, subcontractors or employees, in connection with provisions of this Agreement.

9. Insurance. KITTCOM shall procure and maintain for the duration of this Agreement insurance, self-insurance, or self-insured pool coverage (referred to herein collectively as

“insurance”) against claims for injuries to persons or damage to property which may arise from or in connection with the KITTCOM’s operations and use of the PSB, as follows:

9.1. No Limitation

KITTCOM’s maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the City to the coverage provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or in equity.

9.2. Minimum Scope of Insurance

KITTCOM shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The Public Entity shall be named as additional an insured on Lessee’s Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.
2. Property insurance shall be written on an all risk basis.

9.3. Minimum Amounts of Insurance. The Lessee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
2. Property insurance shall be written covering the full value of KITTCOM’s property and improvements with no coinsurance provisions.

9.4. Other Insurance Provisions. KITTCOM’s Commercial General Liability insurance policy or 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 KITTCOM’s insurance and shall not contribute with it.

9.5. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

9.6. Verification of Coverage. KITTCOM shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of KITTCOM.

9.7. Waiver of Subrogation. KITTCOM and the City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by

property insurance on or in connection with the PSB. This release shall apply only to the extent that such claim, loss or liability is covered by such property insurance.

9.8. City's Property Insurance. The City shall maintain during the term of this Agreement all-risk property insurance covering the PSB for its full replacement value without any coinsurance provisions.

9.9. Notice of Cancellation. KITTCOM shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

9.10. Failure to Maintain Insurance. Failure on the part of KITTCOM to maintain the insurance as required shall constitute a material breach of lease, upon which the City may, after giving five business days' notice to KITTCOM to correct the breach, terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

9.11. City Full Availability of KITTCOM's Limits. If KITTCOM maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by KITTCOM, irrespective of whether such limits maintained by KITTCOM are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by KITTCOM.

10. Miscellaneous.

10.1. Assignment. KITTCOM shall not assign its rights under this Agreement without the prior written consent of the City.

10.2. Governing Law. This Agreement is made under and shall be governed by the laws of the State of Washington.

10.3. Jurisdiction and Venue. Kittitas County Superior Court shall have jurisdiction over any litigation arising under this Agreement, and the exclusive venue for any such litigation shall be the Kittitas County Superior Court, Washington.

10.4. Notices. All communications regarding this Agreement shall be sent to the parties at the parties regular business address unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by first class or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing. Notices shall be sent to the following:

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The City's representative is:

Heidi Behrends Cerniwey
City Manager
501 N. Anderson St.
Ellensburg, WA 98926
(509) 962-7221

KITTCOM's representative is:

George Long
Director
700 Elmview RD
Ellensburg, WA 98926
(509) 925-8530

10.5. Entire Agreement/Modification. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations or discussions with respect thereto. This Agreement may be amended or modified by written instrument signed by the Parties.

Dated this ____ day of _____, 2022

THE CITY OF ELLENSBURG

KITTCOM

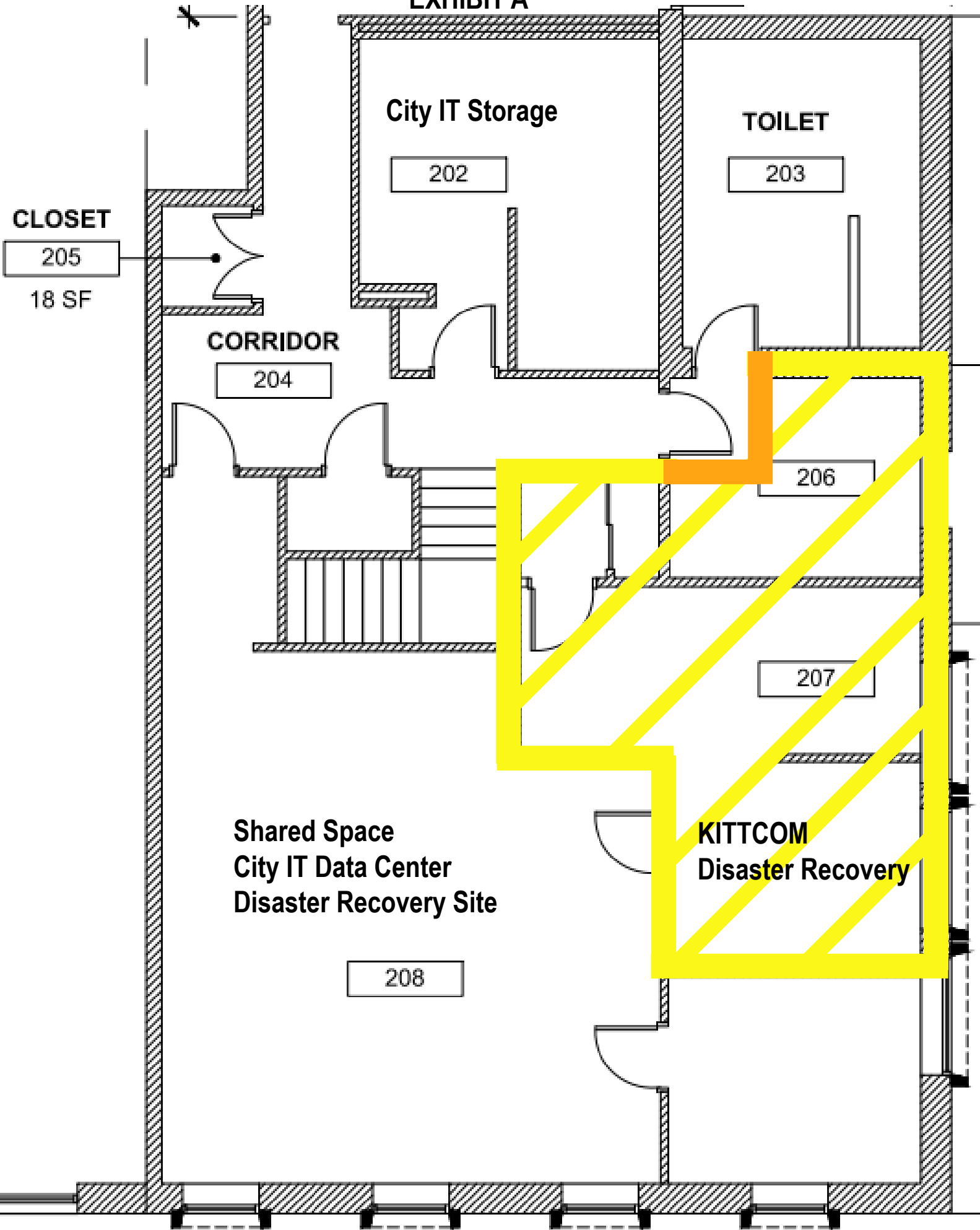
By:_____

By:_____

Print Name:_____

Print Name:_____

EXHIBIT A



Laurie Gigstead

From: Jim Nale <jcee@fairpoint.net>
Sent: Wednesday, August 3, 2022 4:12 PM
To: Laurie Gigstead
Subject: [Ext] LTAC / Jim Nale

CAUTION - EXTERNAL EMAIL: The email below is from an external source. Please exercise caution before opening attachments, clicking links, fulfilling requests, or following guidance.

Hi Laurie, today (August 3, 2022) was my last LTAC meeting. I am resigning from the LTAC as of today. I do this with a happy heart. LTAC is a really good community process and I have nothing but kudos for everyone involved. Strongwork. Other Community volunteer groups that I am involved in have recently ramped up. That is the primary reason for resigning.

All The Best
Jim Nale
509-859-2243



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Award Bid Call 2022-13 15kV Medium Voltage Underground Distribution Cable to General Pacific, Inc.

Submitted by: Paul Meyer Public Works & Utilities

Recommended Action or Motion: Staff recommends City Council award Bid Call 2022-13 to General Pacific, Inc., the lowest responsive and responsible bidder, for the bid price of \$617,928.78 including tax.

Background/Summary: The Public Works and Utilities Light Division annually budgets and publishes a bid for Medium Voltage Underground Residential Distribution (URD) Cable. The cable is used for capital construction projects and to replenish inventory. Staff recommends City Council award the bid to General Pacific, Inc., the lowest bidder, for the 750 kcmil cable. The bid was advertised and placed on the City website with staff receiving three bids. Due to timing, this item was brought directly to City Council, but staff will provide an update to the UAC at their August 18 meeting.

Previous Council Action: Award of previous bids for Underground Residential Distribution (URD) Cable:
Bid 2021-12 awarded 11/15/2021
Bid 2020-29 awarded 9/21/2020
Bid 2019-20 awarded 6/17/2019

Analysis: Staff received 3 bids with General Pacific being the lowest responsive and responsible bidder.

A summary of the bids is shown below. General Pacific Inc. was the lowest evaluated bid for the 53,400 lineal feet of 750 kcmil.

Representative (Manufacturer) & Extended Cost (incl. tax):	
General Pacific, Inc. (CME)	\$617,928.78
MVA Power, Inc. (MVA)	\$777,982.46
Anixter Inc. (Okonite)	\$793,611.58

The bid submitted by General Pacific, Inc is below the Engineers Estimate of \$699,258.05, by approximately 13%.

Financial Impact:

Funds are available within the 2022 Light Division budget for purchase of the Medium Voltage Underground Residential Distribution (URD) Cable.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Update of Right of Way Procedures

Submitted by: Josh Mattson Public Works & Utilities

Recommended Action or Motion: Authorize the Mayor to execute the City's updated ROW Procedures and the Public Works Director to execute the Administrative Settlement Policy and Waiver of Appraisal Procedure.

Background/Summary: The City of Ellensburg's current Right of Way (ROW) Procedures for acquiring Real Property have been in place since 2010, were updated in 2017 and are due to be updated again in order to reflect recent right of way procedure changes by the Washington State Department of Transportation (WSDOT).

The City's ROW Procedures, Administrative Settlement Policy and Waiver of Appraisal Procedure are utilized for acquiring Real Property in any phase of a federally funded project that is administered by WSDOT. The City must assure that the approved procedures are current prior to initiating ROW activities if the project is federally funded. The current procedures from 2017 are outdated.

Previous Council Action: December 5, 2016 Regular Council Meeting – Council authorized the Mayor to execute the City's ROW Procedures and the Public Works Director to execute the Waiver of Appraisal Procedure.

January 3, 2017 Regular Council Meeting - Council authorized the Mayor to execute the City's updated ROW Procedures.

Analysis: The City's ROW Procedures, Administrative Settlement Policy, and Waiver of Appraisal Procedure need to be updated in order to acquire Real Property on a project utilizing federal funding. The updated and current procedures are attached.

Financial Impact: None

Attachments:

LPA001 Ellensburg Right of Way Procedures

Right of Way Procedures

The City of Ellensburg (Agency), needing to acquire real property (obtain an interest in and/or possession of) in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and applicable federal regulations (49 CFR Part 24) and state law (Ch. 8.26 RCW), and state regulations (Ch. 468-100 WAC) hereby adopts the following procedures to adhere to all applicable laws, statutes, and regulations. The Agency is responsible for the real property acquisition and relocation activities on projects administered by the Agency and must acquire right of way (ROW) in accordance with the policies set forth in the Washington State Department of Transportation Right of Way Manual M 26-01 and Local Agency Guidelines (LAG).

Below is a list of Agency staff, by names and position titles, that are qualified to perform specific ROW functions. Attached to these procedures are resumes for everyone listed within these procedures, which provides a summary of their qualifications. The procedures shall be updated whenever staffing changes occur.

1. The Agency has the staff with the knowledge and experience to accomplish the following ROW Disciplines:

- i. **PROGRAM ADMINISTRATION:**

Oversee delivery of the ROW Program on federal aid projects for the Agency. Ensures ROW functions are carried out in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Ensures Agency's approved ROW Procedures are current, including staff qualifications, and provides copies to consultants and Agency staff;
- Oversight of ROW consultants;
 - use of consultant contract approved by WSDOT
 - management of ROW contracts
 - management of ROW files
 - reviews and approves actions and decisions recommended by staff & consultants
 - Overall responsibility for decisions that are outside the purview of consultant functions
- Sets Just Compensation prior to offers being made;
- Oversight and approval of Administrative Offer Summaries (AOS) per policy;
- Oversight and approval of Administrative Settlements per policy;
- Ensure Agency has a relocation appeal process in place prior to starting relocation activities;
- Obligation authority for their Agency;
- Obtain permits (Non-Uniform Relocation Act (URA));
- Ensures there is a separation of functions to avoid conflicts of interest.
- Verifies whether ROW is needed, and that the property rights and/or interests needed are sufficient to construct, operate and maintain the proposed projects (see LAG Appendix 25.174, 25.175, & 25.176).

Derek K Mayo, PE, City Engineer/City Engineering Services Manager

Note: Staff included under Program Administration must have completed the eLearning Administrative Settlement and No ROW Verification training available at <http://www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm>

ii. **APPRAISAL**

Prepare and deliver appraisals on federal aid projects for the Agency. Ensures that appraisals are consistent and in compliance with state and federal laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Use only qualified agency staff approved by WSDOT to perform appraisal work;
- Use Appraiser from WSDOT's Approved Consultant List if Agency does not have qualified staff;
- Prepare ROW Funding Estimate (not required to be completed by an appraiser & only when there are federal funds in the ROW Phase);
- Prepare AOS;
- Obtain specialist reports;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

Contract with a qualified Consultant

iii. **APPRAISAL REVIEW:**

Review appraisals on federal aid projects for the Agency to make sure they are adequate, reliable, have reasonable supporting data, and approve appraisal reports. Ensures appraisals are adequately supported and represent fair market value and applicable costs to cure and are completed in compliance with state and federal laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Use only qualified agency staff approved by WSDOT to perform appraisal review work;
- Use review appraiser from WSDOT's Approved Consultant List if agency does not have qualified staff;
- Ensures project wide consistency in approaches to value, use of market data, and costs to cure;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

Contract with a qualified Consultant

iv. **ACQUISITION:**

Acquire, through negotiation with property owners, real property, or real property interests (rights) on federal aid projects for the Agency. Ensures acquisitions are completed in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Use only qualified staff to perform acquisition activities for real property or real property interests, including donations;
- To avoid a conflict of interest, when the acquisition function prepares an AOS, only acquires property valued at \$10,000 or less;

- Provide and maintain a comprehensive written account of acquisition activities for each parcel;
- Prepare AOS justification and obtain approval;
- Prepare Administrative Settlement and obtain approval;
- Prepare Right of Way Funding Estimate (when there are federal funds in the ROW Phase);
- Review title, and recommend and obtain approval for acceptance of encumbrances;
- Ensure acquisition documents are consistent with ROW plans, valuation, and title reports;
- Provide a negotiator disclaimer;
- Maintain a complete, well organized parcel file for each acquisition;
- Coordinate with engineering, program administration, appraisal, relocation, and/or property management as necessary.

Derek K Mayo, PE, City Engineer/City Engineering Services Manager or Contract with a qualified Consultant

Note: Staff included under Acquisition must have completed the eLearning Administrative Settlement training available at <http://www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm>

v. **RELOCATION:**

Provide relocation assistance to occupants of property considered displaced by a federally funded projects for the Agency. Ensures relocations are completed in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Prepare and obtain approval of relocation plan prior to starting relocation activities;
- Confirm relocation appeal procedure is in place;
- Provide required notices and advisory services;
- Make calculations and provide recommendations for Agency approving authority prior to making payment;
- Provide and maintain a comprehensive written account of relocation activities for each parcel;
- Maintain a complete, well organized parcel file for each displacement;
- Ensure occupants and personal property is removed from the ROW;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary.

Contract with a qualified Consultant

vi. **PROPERTY MANAGEMENT:**

Establish property management policies and procedures that will assure control and administration of ROW, excess lands, and improvements acquired on federal aid projects for the Agency. Ensures property management activities are completed in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Account for use of proceeds from the sale/lease of property acquired with federal funds on other title 23 eligible activities;
- Keep ROW free of encroachments;
- Obtain WSDOT/FHWA approval for change in access control along interstate;
- Maintain property records;
- Ensure occupants and personal property is removed from the ROW;
- Maintain a complete, well organized property management file;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary.

Derek K Mayo, PE, City Engineer/City Engineering Services Manager or Contract with a qualified Consultant

- b. Any functions for which the Agency does not have qualified staff, the Agency will contract with another local agency with approved procedures, a qualified consultant, or the WSDOT. An Agency that proposes to use qualified consultants for any of the above functions will need to work closely with their ROW Local Agency Coordinator (LAC) and Local Programs to ensure all requirements are met. When the Agency proposes to have staff approved to negotiate who have limited experience in negotiation for FHWA funded projects, the LAC must be given an opportunity to review all offers and supporting data prior to offers being made to the property owners.
 - c. The Agency's Administrative Settlement Procedures indicating the approval authorities and the procedures involved in making administrative settlement needs to be included with these procedures (see Exhibit A).
 - d. An Agency wishing to take advantage of the AOS process, properties valued up to \$25,000 or less, need to complete Exhibit B of these procedures.
2. All projects shall be available for review by the FHWA and WSDOT at any time and all project documents shall be retained and available for inspection during the plan development, ROW, construction stages, and for a three-year period following acceptance of the projects by WSDOT.
 3. Approval of the Agency's procedures by WSDOT Local Programs may be rescinded at any time the Agency is found to no longer have qualified staff or is found to be in non-compliance with the regulations. The rescission may be applied to all or part of the functions approved.

Mayor, City of Ellensburg

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

Date

EXHIBIT A

Agency's Administrative Settlement Policy

Administrative settlements shall be handled as set forth and required in section 25.11 of the Local Agency Guidelines (M36-63.31).

Item 3. Has been revised to read:

The City Manager may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information including, but not limited to, the following:

1. All available appraisal, including the owner's, and the probable range of testimony in a condemnation trial.
2. Ability of the agency to acquire the property, or possession, through the condemnation process to meet the construction schedule. Impact of construction delay pending acquisition.
3. The negotiator's recorded information.
4. Recent court awards in cases involving similar acquisition and appraisal problems.
5. Likelihood of obtaining an impartial jury in local jurisdiction, opinion of legal counsel where appropriate.
6. Estimate of trial cost weighted against other factors.

Ryan Lyyski, PE, Director of Public Works
& Utilities, City of Ellensburg

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

Date

EXHIBIT B
Waiver of Appraisal
Agency's Administrative Offer Summary (AOS)

The City of Ellensburg , hereinafter Agency, desiring to acquire Real Property according to 23 CFR, Part 635, Subpart C and State directives, and desiring to take advantage of the \$25,000.00 appraisal waiver process approved by the Federal Highway Administration (FHWA) for Washington State, hereby agrees to follow the procedure approved for the Washington State Department of Transportation (WSDOT) as follows:

Rules

- A. The Agency may elect to waive the requirement for an appraisal if the acquisition is simple and the compensation estimate indicated on the ROW Funding Estimate is \$25,000.00 or less including cost-to cure items. A True Cost Estimate shall not be used with this procedure.
- B. The Agency must make the property owner(s) aware that an appraisal has not been completed on the property for offers \$10,000 or less.
- C. The Agency must make the property owner(s) aware that an appraisal has not been completed on the property for offers over \$10,000 and up to \$25,000, and that an appraisal will be prepared if requested by the property owner(s).
- D. Special care should be taken in the preparation of the AOS as no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.

Procedures

- A. An AOS is prepared using comparable sales found at the time of preparation.
- B. The AOS is approved by the Agency staff listed under Program Administration within these Right of Way Procedures. Upon signature a first offer to the property owner(s) is authorized.

Ryan Lyyski, PE, Director of Public Works
& Utilities, City of Ellensburg

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

Date



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Award Bid Call 2022-11 for Middle Reach Reecer Creek Flood Hazard Reduction and Floodplain Restoration Project

Submitted by: Karissa Witthuhn Public Works & Utilities

Recommended Action or Motion: Award Bid Call 2022-11, including the base bid and bid additive, to Hurst Construction LLC, in the amount of \$2,183,607.16, the lowest responsive and responsible bidder, approve the necessary budget adjustments, and authorize the City Manager to execute the contract.

Background/Summary: Bids were received on Tuesday, August 2, 2022 for the above-mentioned project. Hurst Construction LLC was the lowest responsive and responsible bidder in the amount of \$2,183,607.16. Council is being requested to award the bid to Hurst Construction LLC.

West Ellensburg is frequently flooded by Reecer Creek. Referred to as the “middle reach” of Reecer Creek, the unnatural perched location of this area results in the loss of normal floodplain storage and conveyance functions. The area includes over 100 homes, businesses, and critical infrastructure such as City roads, a communications facility, and an electrical switching yard. Many properties in this area have been severely impacted by flooding; however, obtaining accurate economic loss information is difficult because most properties are not in the regulatory floodplain and do not carry flood insurance. Therefore, their flood losses are not tracked. Another challenge is that the lost floodwater does not return to Reecer Creek. This has resulted in a disrupted sediment transport regime that will tend to increase flooding problems over time.

Project elements include a new precast concrete bridge crossing, partial construction of a set-back levee, and excavation of shallow floodplain swales. The new bridge will be installed east of the current Reecer Creek Dolarway Road Bridge and will be approximately 35 feet wide. It is sized to

convey the estimated Reecer Creek left bank 100-year floodwater overflow, plus the 100-year discharge for Whiskey Creek. Along with transmitting Reecer Creek overflows into the lower reach, the bridge can serve as a channel crossing if Whiskey Creek is relocated in the future. The south end of the setback levee will be constructed with this project and the northern portion will be constructed with a future phase. The levee is to provide flood protection for west Ellensburg. The floodplain swales will collect and convey overflows to the new bridge crossing in a controlled manner, preventing scour and reducing risk of levee breach.

In addition to reducing flood hazards, the project will provide ecological benefits and implements strategies consistent with the Yakima Steelhead Recovery Plan and Yakima Subbasin Salmon Recovery Plan.

The City of Ellensburg was successful in securing partial funding for the project through a Floodplains by Design grant award from the Washington State Department of Ecology.

The project was bid in five schedules:

- Schedule A - Dolarway Culvert and related roadway work
- Schedule B – Floodplain swale and setback levee
- Schedule C – Gas Main Relocation (in Dolarway)
- Schedule D – Underground Power Relocation (in Dolarway)
- Schedule E – Water Main Relocation (in Dolarway)

The project included a “base bid” consisting of Schedules A, C, D and E. Schedule B was designated as an “additive bid”, to be awarded in addition to the base bid at the City’s discretion. The low bidder was determined based solely on the base bid amount.

Aspect Consulting LLC designed and prepared bid specifications for this project, Bid Call #2022-11. City staff will provide construction contract administration.

Previous Council Action:

In 2018 the City Council approved the contract to ASPECT Consulting to design the bridge/culvert and levee on Dolarway for \$211,541.00 out of the Stormwater Utility budget. Subsequently, the County made changes to the flood maps in

that region, and the bridge and levee had to be re-designed to meet the new FEMA requirements for certification. The original contract with Aspect was amended to add \$30,711.00 to pay for the redesign, which Council approved on December 3, 2020. In that same year, Council authorized a five million dollar bond to pay for the land acquisition and construction of the project on February 3, 2020. Council later authorized an Interlocal Agreement with the County Flood District to continue certification work with Aspect and FEMA on March 16, 2021.

Analysis:

The project was advertised, and base bids (sum of Schedules A, C, D and E) were received as listed below, including tax:

Hurst Construction LLC:	\$1,754,285.50
Active Construction Inc.:	\$1,780,766.42
Pacific Civil & Infrastructure, Inc.:	\$1,835,434.57
Belsaas & Smith Construction, Inc.:	\$1,879,918.40
Engineer's Estimate:	\$1,792,290.60

There was a math error on the bid proposal from Hurst Construction LLC, which indicated that their total for Bid Schedule A was \$1,621,253.50. A correction was made based on the extension of unit prices, and the total for Bid Schedule A was revised to \$1,620,953.50. This correction did not affect the outcome of the bid. Hurst Construction LLC is the lowest responsive, responsible bidder.

The bids received for the additive bid schedule (Schedule B) were as follows:

Hurst Construction LLC	\$429,321.66
Active Construction Inc.	\$435,449.58
Pacific Civil & Infrastructure, Inc.	\$430,902.47
Belsaas & Smith Construction, Inc.	\$392,560.84
Engineer's Estimate:	\$373,887.86

The project budget is broken out per bid schedule, as follows:

- Schedule A - Dolarway Culvert and related roadway work \$1,620,953.50
- Schedule B – Floodplain swale and setback levee \$429,321.66
- Schedule C – Gas Main Relocation (in Dolarway)

\$30,894.00

- Schedule D – Underground Power Relocation (in Dolarway) \$30,894.00
- Schedule E – Water Main Relocation (in Dolarway) \$71,544.00

Construction is scheduled to begin this September and to be completed in the spring of 2023. A winter shutdown is expected.

Financial Impact:

The total project award is \$2,183,607.16, with the bid schedule breakdown shown above. Adequate funding exists within the 2022 Stormwater Bond budget for Schedules A and B.

Adequate budget also exists within the 2022 Gas Budget for Schedule C. Supplemental budget adjustments are needed for the electrical schedule (Schedule D) and the water schedule (Schedule E) as shown below, including tax:

- 2022 Light Budget: Increase capital outlay \$10,894 utilizing fund balance.
- 2022 Water Budget: Increase capital outlay \$41,544 utilizing fund balance.

Central Washington University

University Way Banner Request Form

Please fill out form and return to Schedule@cwu.edu. The Scheduling Center will submit your form to the City.

Name of Event/Program: "Your Vote Counts" banner (League of Women Voters of Kittitas County)

Contact Person: Karen Raymond Phone Number: 509-929-3094

Banner Hang Dates (Monday-Sunday): 10/24/22 through 11/6/22

☒ CWU Scheduling Center has reserved the banner dates.

Phone: 509-963-1321 or 509-963-1641, Email: schedule@cwu.edu

☒ This Banner is a maximum of 30' x 52" and a minimum of 24' x 48" with 3" turnback at the top and bottom of the banner that will allow steel cable to be strung through it. No grommets.

- We recommend that wind flaps be cut into the banner to prevent wind damage



* Example of a correctly made banner.



YOUR VOTE COUNTS!

LEAGUE OF WOMEN VOTERS



Important Notes:

Banners affiliated with University business have priority. Therefore, banners from non-University groups requesting dates that conflict with a University banner may be rescheduled

If your banner does not meet manufacturing specifications, we will be unable to process your request and the banner will not be hung

The CWU Scheduling Center will not be held responsible for any weather-related damage that occurs to your banner

For more information please contact CWU Student Union Operations & Scheduling Center at 509-963-1321 or 509-963-1641.

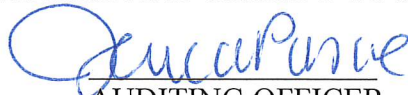
City of Ellensburg approved by: _____ Date: _____

Disapproval/Reasons: _____

Updated June 14, 2021

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

8/10/22
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 **15th 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

Check #'s	158502	TO	158694	\$	683,704.39
EFT #'s	5656	TO	5684	\$	495,716.55

Total Amounts

Payroll Fund

Check #'s	95779	TO	95785	\$	7,221.94
Direct Deposits	69033	TO	69254	\$	429,751.91

Total Amounts

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

ATTEST: _____
CITY CLERK

RESOLUTION NO. 2022-30

A RESOLUTION providing for the enforcement of the historic Ellensburg XX (Double Cross) ordinance.

WHEREAS, in years long past, Ellensburg did have an ordinance which at one time made it a misdemeanor for any resident of Ellensburg or Kittitas County to appear on city streets or in any public place in Ellensburg not properly garbed during the period prior to and the Labor Day Weekend of the Ellensburg Rodeo; and

WHEREAS, said ordinance specified at least three pieces of Western clothing be worn at all times in the business district or public places during the aforementioned period; and

WHEREAS, community interest and enthusiasm toward the Ellensburg Rodeo and Kittitas County Fair is rekindled every year to a high level; the Ellensburg Rotary Cowboys and other public-spirited groups and private citizens wish to see that spirit maintained;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ellensburg, Washington, as follows:

Section 1. That the spirit of the ordinance, if not the letter of the law, be enforced by Special Deputies appointed by the Ellensburg Rotary Cowboys.

Section 2. That the effective date of the enforcement of the Ellensburg XX (Double Cross) ordinance shall be August through and including the Labor Day Weekend.

Adopted by the City Council of the City of Ellensburg this 15th day of August, 2022.

MAYOR

Attest:

CITY CLERK



Ellensburg Noon Rotary Club

Attention Ellensburg City Council Members

RE: Double Cross Ordinance

From: Ellensburg Noon Rotary AKA: Rotary Cowboys

The 68th annual Community Kick-off Breakfast is Schedule for Saturday, August 20, 2022. As you know this kicks off the Fair and Rodeo season. We are requesting that you institute the Double Cross Ordinance to be effective August 15th thru September 5th, 2022.

Additionally, we are requesting the closure of Pearl Street between 3rd and 5th Avenue and 4th Street between the Alley and Pearl Street. Additionally, the use of and closure to parking in the old Drive thru bank parking area (Unity Park). The street closure would be from 5:15 am to 11 am Saturday, August 22, 2022. We are aware and for the sake of the businesses we remove the street closure signs to the side as soon as possible. Cars that are parked on Pearl Street between 4th and 5th and in the Drive thru parking area would need to be removed. Cars on 4th Avenue and on Pearl Street between 3rd and 4th would not need to be removed.

We have submitted the Application to Brad Case and the City Parks Department already.

Please contact me if you have any questions at 509-929-1216 or by email tasker@fairpoint.net.

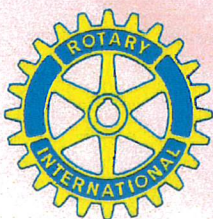
Respectively,

A handwritten signature in blue ink that reads "Diana Tasker".

Diana Tasker

Chair, Rotary Cowboys and the Annual Kick-Off Breakfast

ELLENSBURG NOON ROTARY PRESENTS
FAIR AND RODEO
KICKOFF
BREAKFAST
7AM-10:30AM
SATURDAY, AUGUST 20
ROTARY PAVILION ON PEARL ST.



SUGGESTED DONATION: **\$6** KIDS 6 AND UNDER FREE
PROCEEDS TO BENEFIT
LOCAL ROTARY PROJECTS



Ellensburg Noon Rotary Club

We Invite you to Join us at the Annual Rotary Cowboys Kick-Off Breakfast.

Help us Kick-Off the Fair and Rodeo Season.

Saturday, August 20, 2022 - 7 am to 10:30 am

We partner with other Community Organizations: Please help us give a Shout out to:

Ellensburg Rodeo Top Hands

Rodeo City Kiwanis

Ellensburg Rodeo Board

Kittitas County Fair Board

Kittitas County Friends of Fair

Kittitas County Youth members of: 4H, FFA and Grange

City of Ellensburg

Ellensburg Rodeo Posse

Additionally: We have community businesses and individuals who Sponsors to help make this happen.

MAKE SURE TO BUY YOUR 2022 ROTARY COWBOYS BUTTON!

If you would like to know more or be involved please contact Diana Tasker 509-929-1216

Rotary  **Ellensburg Noon Rotary celebrating 100 years in the Community!**



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Public Hearing to consider adoption of the 2022-2027 Transit Development Plan and acceptance of the 2021 Annual Report

Submitted by: Betsy Dunbar Public Works & Utilities

Recommended Action or Motion: Adopt the 2022-2027 Transit Development Plan and accept the 2021 Annual Report

Background/Summary: Per RCW 35.58.2795, all public transit agencies are required to prepare a six year transit development plan outlining strategic goals and objectives to meet local, regional and state long range priorities and goals. This plan includes capital and operating improvement plans along with a financial plan and other required elements. Included in the transit development plan is the 2021 annual report.

The 2022-2027 Transit Development Plan and the 2021 Annual Report were unanimously accepted by the Public Transit Advisory Committee (PTAC) on July 19, 2022, which recommended it be submitted to the City Council for approval.

A Notice of Public Hearing was published in the local newspaper and on the City and Central Transit websites pursuant to 35.58.2795.

Previous Council Action: The City Council has approved all previous six year development plans and annual reports.

Analysis: The Transit Development Plan covers 2022-2027 and the Annual Report is based on the 2021 calendar year.

Financial Impact: There are no direct costs associated with this item.

Any project included in the development plan not included in the 2021-2022 Biennial Budget, will be brought to council for budget authority prior to expenditure approval.

Attachments:

Transit Development Plan 2022

**with 2021
Annual Report**

Central Transit 2022 - 2027

Date of Public Hearings:

July 20, 2022 – August 15, 2022.

Adopted: _____, 2022

Americans with Disabilities Act (ADA) Information: This material can be made available in an alternate format by emailing the Office of Equal Opportunity at wsdot.wa.gov or by calling toll free, 855-362-4ADA(4232). Persons who have a hearing impairment may make a request by calling the Washington State Relay at 711.

Title VI Notice to Public: It is the Washington State Department of Transportation's (WSDOT) policy to assure that no person shall, on the grounds of race, color, national origin or sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with WSDOT's Office of Equal Opportunity (OEO). For additional information regarding Title VI complaint procedures and/or information regarding our non-discrimination obligations, please contact OEO's Title VI Coordinator at 360-705-7090.

This document is submitted per the requirements of RCW 35.58.2795.

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Plan Adoption, Public Hearing and Distribution

Plan Adoption

The City of Ellensburg City Council adopted the 2022 - 2027 Transit Development Plan on _____ at 7:00 PM at the City of Ellensburg City Council Chambers, 501 N Anderson Street, Ellensburg, WA 98926.

Public Participation Process

The 2022 – 2027 Transit Development Plan was reviewed by the Public Advisory Committee on July 19, 2022 and recommended it be submitted to the Ellensburg City Council for approval.

Public Comment Period: July 20, 2022– August 15, 2022

Comments Submitted to: transit@ci.ellensburg.wa.us

Central Transit

Betsy Dunbar, Transit Manager

501 N Anderson Street

Ellensburg, WA 98926

Public Hearing: The City of Ellensburg will hold a public hearing on the Transit Development Plan on August 15, 2022 at 7:00 PM at the City of Ellensburg City Hall.

Notice Posed to Website: Central Transit posted a notice of the hearing on the Transit Development Plan to its website at www.centraltransit.org on July 20th, 2022.

Notice Published in Local Paper: The Daily Record published a notice of the hearing on the Transit Development Plan on July 27, 2022.

Request for Paper or Digital Copies: Central Transit allowed the public to request a paper or digital copy of the Transit Development Plan on and after July 20, 2022 by emailing transit@ci.ellensburg.wa.us or by calling 509-925-8680.

Available to the Public for Review: Central Transit allow the public to view a copy of the draft Transit Development Plan at City Hall, 501 N Anderson Street, Ellensburg, WA 98926.

Plan Distribution

On August _____, Central Transit distributed the adopted Transit Development Plan to:

PTDPlans@wsdot.wa.gov

- The agency's assigned WSDOT Community Liaison.
- The Transportation Improvement Board via:

Vaugh Nelson, Finance Manager at vaughnn@tib.wa.gov

Chris Workman, Engineering Manager at christw@tib.wa.gov

All cities, counties and regional transportation planning organizations within which Central Transit operates.

Description of Service Area, Operations and Facilities

Service Area

Central Transit is a rural public transit system serving a population of 19,530 residents within a total area of 7.65 square miles. Located just east of the Cascade Range at the junction of Interstate 90 and 82, Ellensburg is known as the most centrally located city in the state of Washington.

Central Transit serves the general public throughout the city limits of Ellensburg.

Schedules and maps can be found on Central Transit's website at:

<http://www.centraltransit.org>

Operations

Central Transit provides accessible fixed route and complimentary ADA paratransit services.

Central Transit operates 5 fixed routes daily from 7:00 AM to 8:00 PM. Central Transit's system maps Exhibit's C - G, Pages 10 - 14 show the locations of each route, the direction of bus movement, scheduled bus stops, on demand bus stops, bus shelters and transfer service points.

- Routes 12 A and 12 B operate from 7:00 AM to 8:00 PM and serve the north end of the City, Central Washington University, downtown, and the business and shopping areas on the south end of town.
- Route 13 operates from 7:00 AM to 7:00 PM and extends north to Elmview and south to senior housing and the hospital.
- Route 14 operates from 7:00 AM to 7:00 PM and serves additional north end housing and Ellensburg High School on the south end.
- Routes 15 and 16 operates from 7:00 AM to 7:00 PM and serves downtown and the west side of Ellensburg.

The majority of Central Transit's transfer locations allow connections to other ground transportation which include the Kittitas County Connector, Greyhound, Flixbus, the Yakima-Ellensburg Commuter, the Travel Washington Apple Line, and the Bellair Airporter Shuttle which connects with SeaTac International Airport and Amtrak.

Exhibit A: Central Transit Connections



Central Transit also connects passengers with many shared-use biking and walking trails including the Palouse to Cascades State Park Trail.



ADA Paratransit services are available within $\frac{3}{4}$ miles of the fixed route service during the same time as the Central Transit fixed route services.

EXHIBIT B: ADA Paratransit Service



Central Transit's Cabulance service operates independently 24-7 to provide accessible non-emergency medical transportation for individuals within the City limits of Ellensburg to and from specific medical facilities as initiated by Kittitas Valley Fire and Rescue and other contracted facilities.

Transit services operate year-around with the exception of the following holidays: New Year's Day, President's Day, Memorial Day, 4th of July, Thanksgiving Day and Christmas Day.

The City of Ellensburg contracts all transportation operations to HopeSource, a local private nonprofit organization.

The City of Ellensburg provides support for HopeSource's county wide Dial A Ride and Kittitas County Connector services. The City also provides support for Yakima Transit's Yakima-Ellensburg Commuter Service.

Route schedules, maps, route planning, alerts, rider guide, news and information can be found on Central Transit's website at www.centraltransit.org

EXHIBIT C: Full Service Map

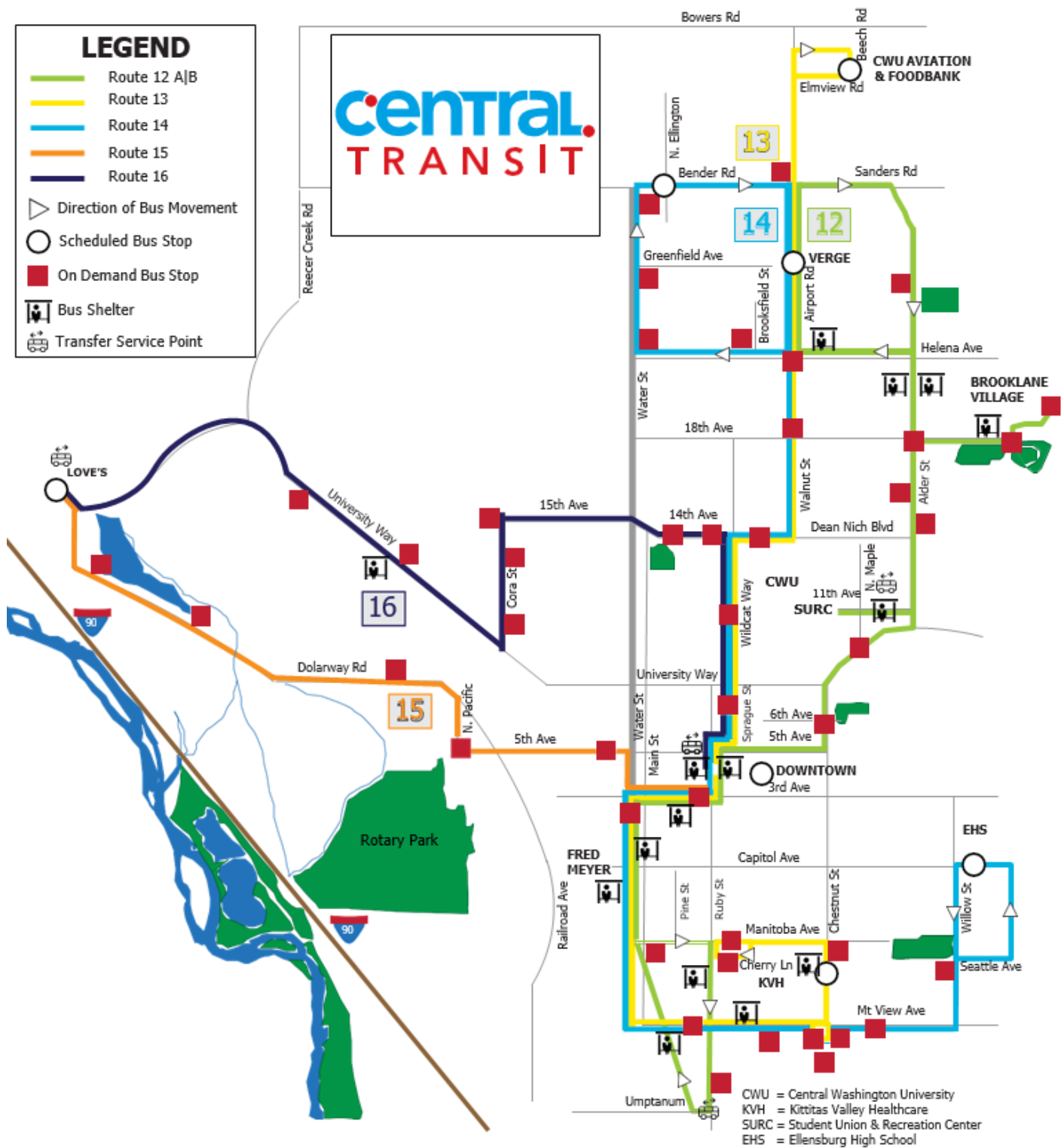


EXHIBIT D: Route 12 A | B Service Map

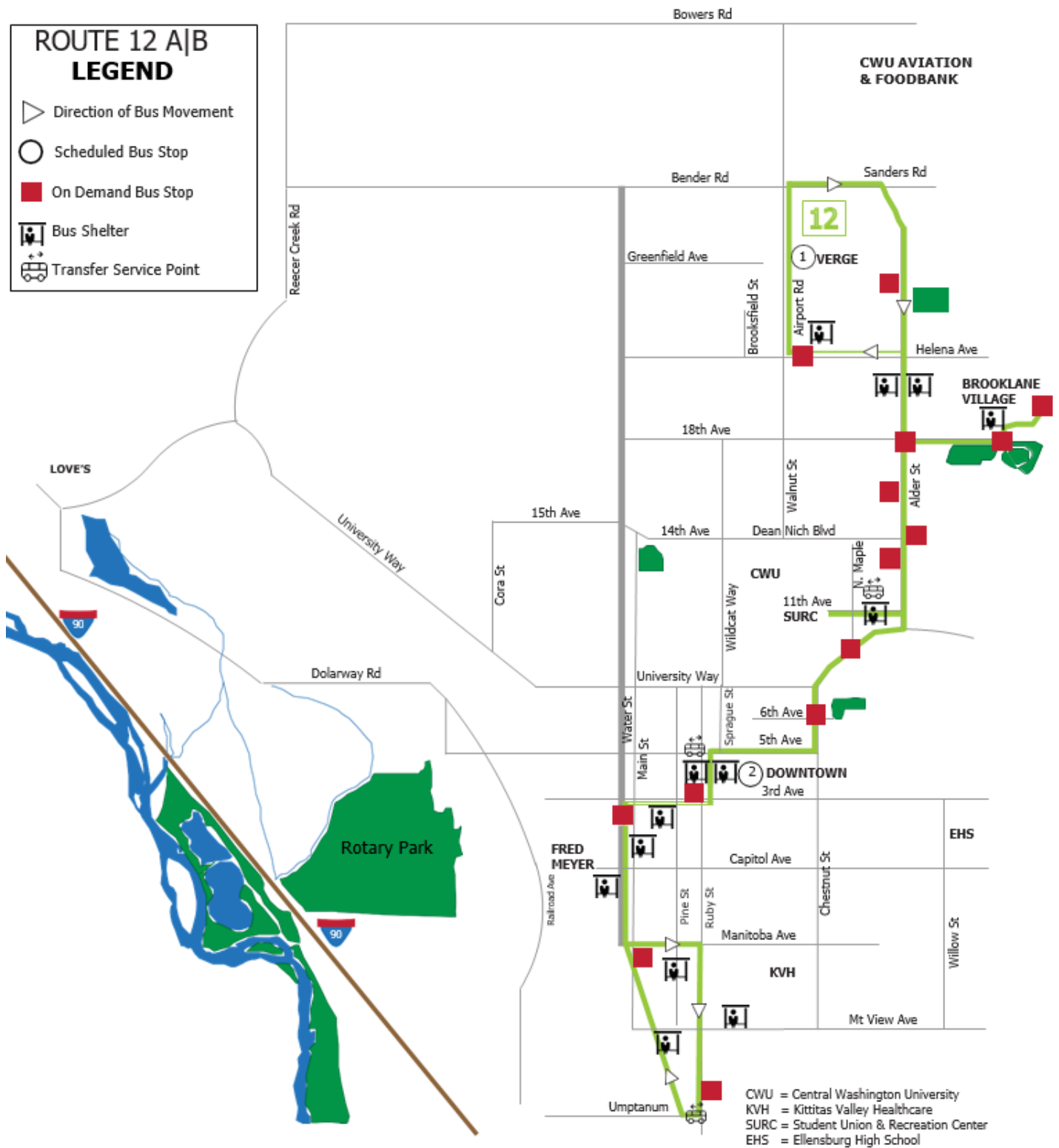


EXHIBIT E: Route 13 Service Map

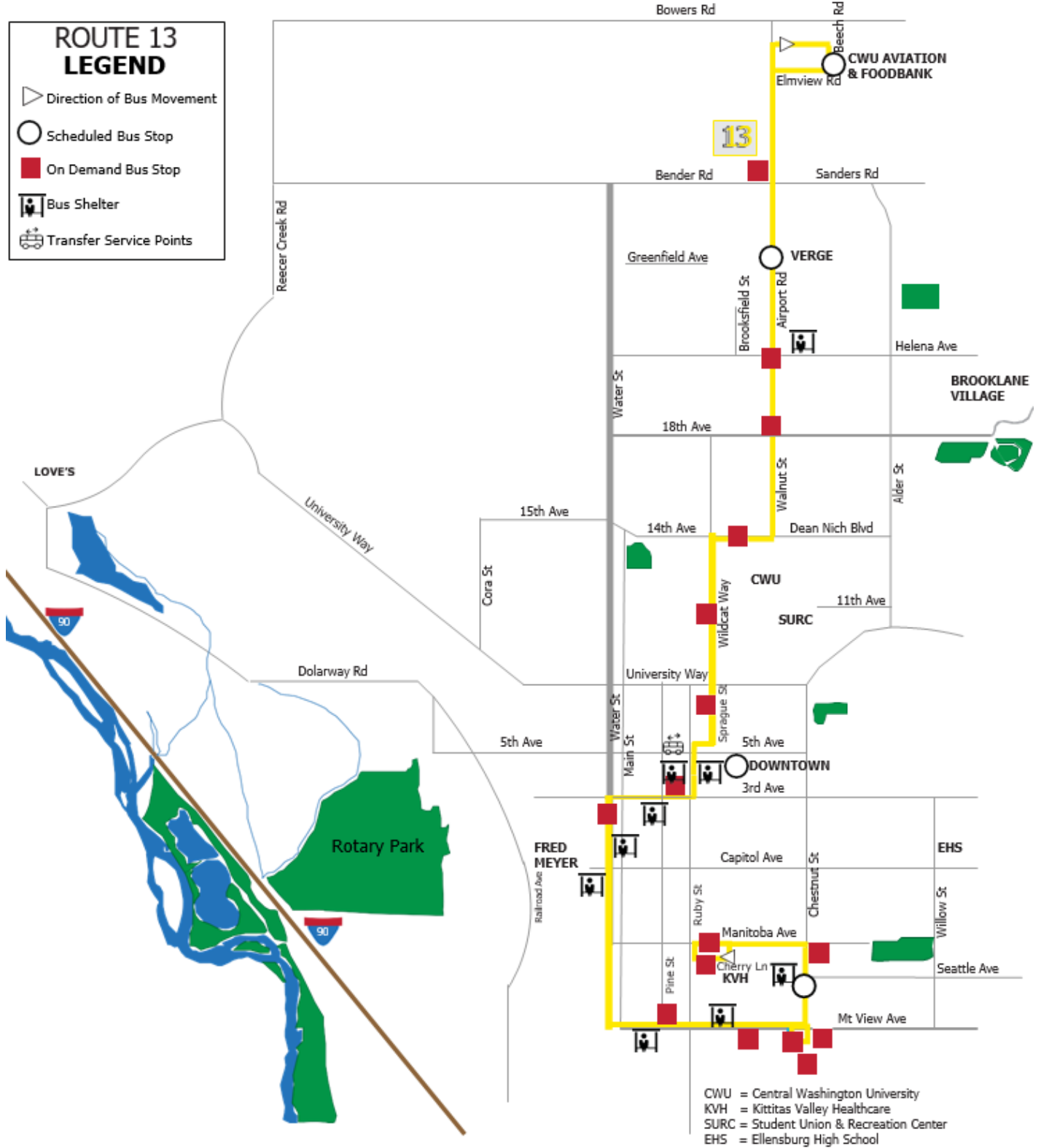


EXHIBIT F: Route 14 Service Map

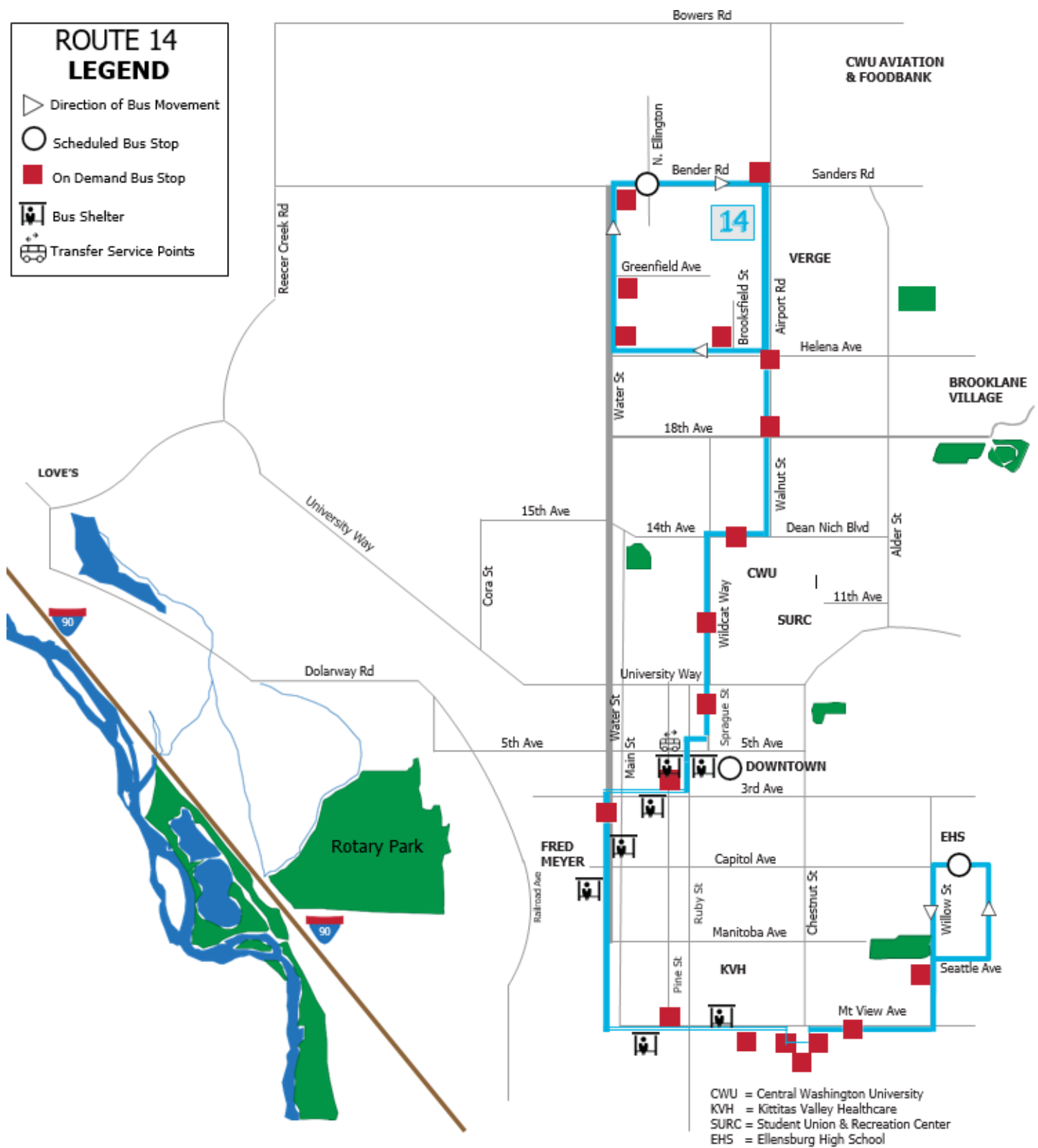
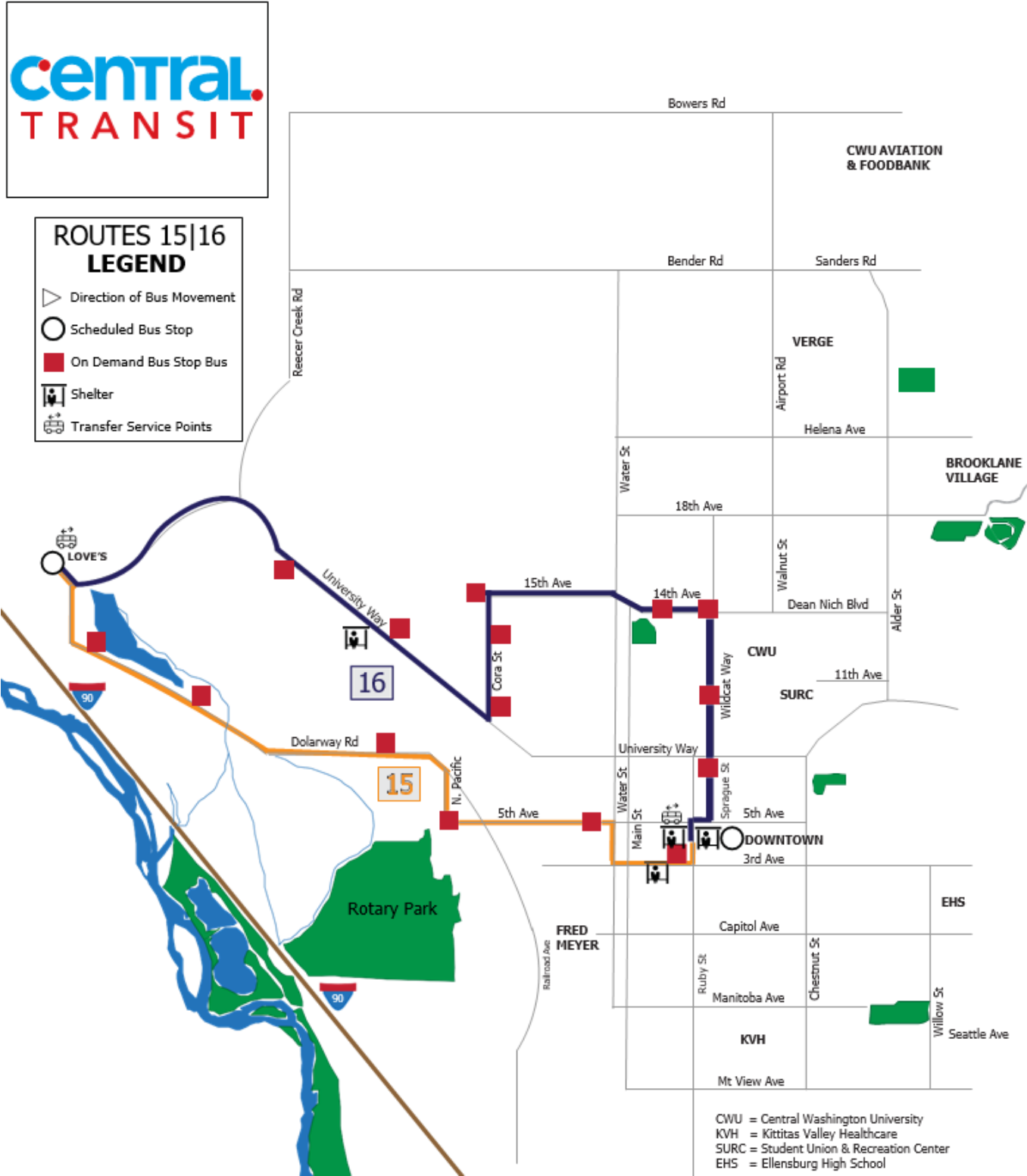


EXHIBIT G: Route 15 | 16 Service Map



Fares

All Central Transit services are fare free.

Facilities

All operational equipment is owned and maintained by HopeSource located at 700 E. Mountain View, Suite 501, Ellensburg, Washington 98926.

EXHIBIT H: Contractor Facility



Central Transit's administrative office is located at 501 N. Anderson Street, Ellensburg, Washington 98926.

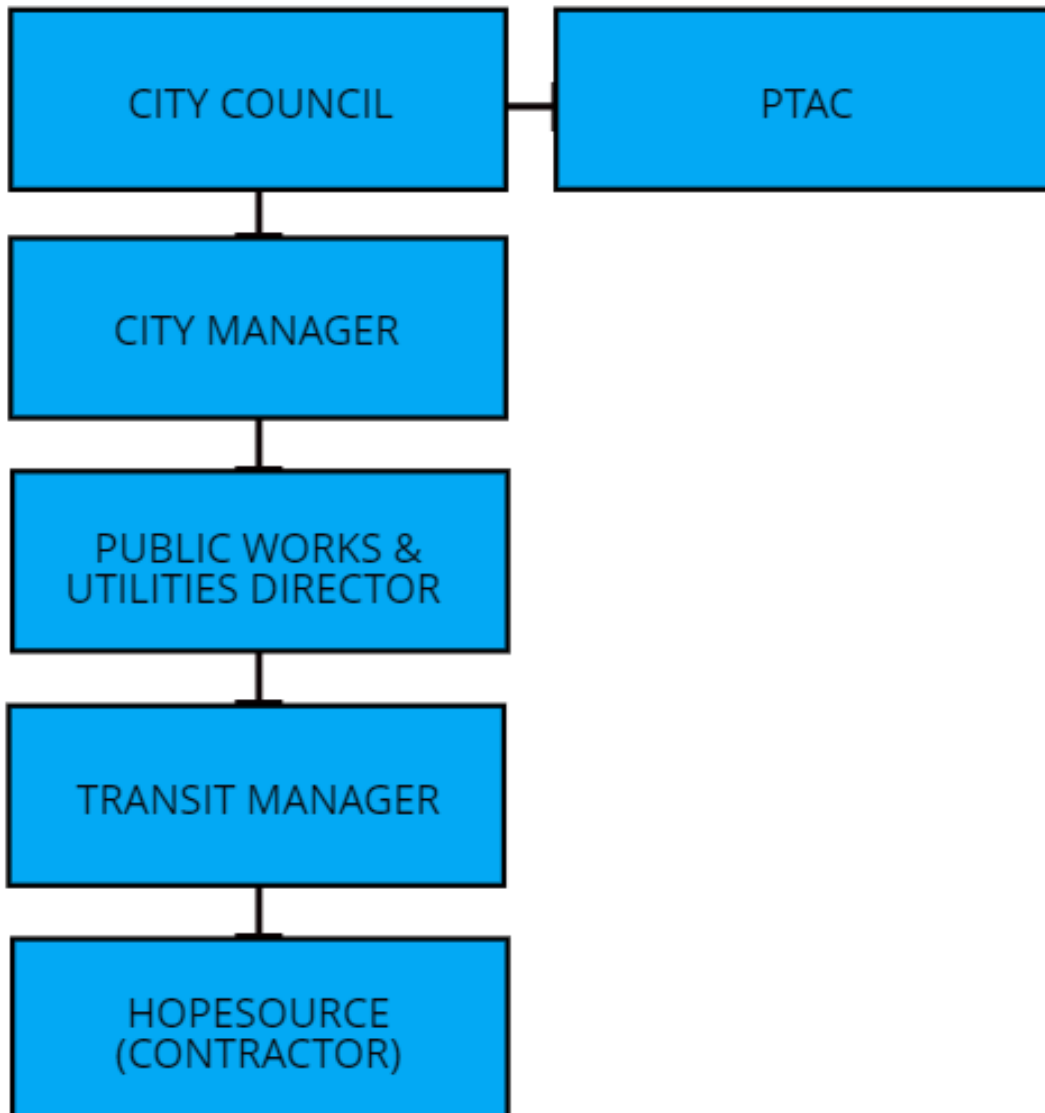
EXHIBIT I: City Hall



Organization

The Ellensburg City Council is responsible for Central Transit's operations. The Public Transit Advisory Committee provides oversight of the transit system and reports to the City Council on those and other elements as directed. The City Manager and Public Works and Utilities Director also report to the City Council on Transit activities, policies and finances. The Transit Manager oversees and manages the operational activities of the Transit System.

EXHIBIT J: Organization Chart



State and Agency Goals, Objectives and Strategies

From 2022-2027, Central Transit will focus on the five key priorities in Table 1 below. The table conveys how Central Transit's local priorities align with state goals established in the Washington State Transportation Plan.

Central Transit strives to provide safe reliable transportation services connecting passengers to employment, essential services, education and many other services which increases the quality of life in the community. To that end, Central Transit's proposed project and action strategies align our goals with regional and state's public transportation objectives.

The state's six policy goals are:

1. **Economic Vitality:** To promote and develop transportation systems that stimulate, support and enhance the movement of people and goods to ensure a prosperous economy.
2. **Preservation:** To maintain, preserve, and extend the life and utility of prior investments in transportation systems and services.
3. **Safety:** To provide for and improve the safety and security of all passengers and the transportation system.
4. **Mobility:** To improve the predictable movement of goods and people throughout Washington State.
5. **Environment:** To enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities and protect the environment.
6. **Stewardship:** To continuously improve the quality, effectiveness, and efficiency of the transportation system.

Table 1: 2022 – 2027 Goals, Objectives, Strategies and Alignment with State Goals

Goals, Objectives and Strategies	Economic Vitality	Preservation	Safety	Mobility	Environment	Stewardship
Goal 1: Improve convenience, reliability and customer service of Transit Services						
Objective 1.1: Evaluate current Central Transit reliability and on-time performance.						
Strategy 1.1.1: Evaluate current Central Transit fixed route reliability and on-time performance.	X			X		X
Strategy 1.1.2: Use technology to review and adjust schedules to improve on-time performance.	X			X		X
Strategy 1.1.3 Promote website for convenient transit information and data.	X			X		X
Strategy 1.1.4: Promote passenger real time information applications for easy access and reliable transit information.	X			X		X
Strategy 1.1.5: Promote SMS & IVR navigation tools for passengers with special transportation needs.	X	X		X		X
Strategy 1.1.6: Coordinate with connecting services to ensure timely connections.	X	X		X		
Objective 1.2: Provide amenities to make riding transit more comfortable and convenient to passengers.						
Strategy 1.2.1: Add additional bus shelters and bench seating.	X		X	X		X
Strategy 1.2.2: Add additional ADA landings and bus turnouts.	X		X	X		X
Objective 1.3: Improve service accessibility for non-motorized modes.						
Strategy 1.3.1: Identify and complete a prioritized list of non-motorized access deficiencies at existing bus stops and bus shelters.	X		X	X		

Strategy 1.3.2: Provide connecting services to pedestrian and biking trails.	X		X	X	X	
Goal 2: Improve operational safety and security						
Goals, Objectives and Strategies	Economic Vitality	Preservation	Safety	Mobility	Environment	Stewardship
Objective 2.1: Review best practices and industry standards in the area of safety.						
Strategy 2.1.1: Update and implement a safety plan which meets the requirements of 49 C.F.R. Part 673.		X	X			X
Strategy 2.1.2: Ensure vehicle operator trainings occur quarterly and vehicle operators are trained to proficiency in operating the accessibility equipment, including wheelchair and passenger securements on board the vehicles.			X			X
Strategy 2.1.3: Install additional surveillance cameras at transit facilities.			X			X
Strategy 2.1.4: Enforce transit rules and establish a culture of excellent customer service.			X			X
Goal 3: Enhance the integration of transit services to support the economy and preserve the environment.						
Objective 3.1: Reduce fossil fuel consumption through the consideration of alternative fuel vehicle technology.						
Strategy 3.1.1: Acquire a zero-emissions transition plan.					X	X
Strategy 3.1.2: Support the procurement of alternative fuel transit vehicles.					X	X
Strategy 3.1.3: Support the development of a zero-emissions infrastructure.	X				X	X
Goal 4: Maximize and expand transit services						
Objective 4.1: Operate an efficient, cost effective transit system.						
Strategy 4.1.1: Maintain internal controls and compliance over public resources.		X				X

Goals, Objectives and Strategies	Economic Vitality	Preservation	Safety	Mobility	Environment	Stewardship
Strategy 4.1.2: Plan financially for future operational and capital needs.		X				X
Strategy 4.2.3: Provide connections to other transportation services throughout the state.	X	X		X	X	
Strategy 4.1.4: Strengthen coordination and integration of social services and transportation resources.	X	X		X		
Strategy 4.1.5: Expand transportation services within the county.	X	X		X	X	
Objective 4.2: Improve equal access to public transit.						
Strategy 4.2.1: Evaluate service coverage and re-route design standards to improve access for low-income, youth, aging adults and persons with limited mobility. Improve and predict the movement of people throughout the city and state with multimodal connections and other accessible modes of transportation.	X	X		X	X	
Goal 5: Meet the requirements of the Americans with Disabilities.						
Objective 5.1 Ensure Central Transit buses and amenities are ADA accessible.						
Strategy 5.1.1: Continue to provide ADA Paratransit services for those who qualify.	X	X		X		X
Strategy 5.1.2: Participate in community events, education and direct and indirect public outreach.	X	X		X		X

Table 2: 2022 – 2027 Local Performance Measurements and Targets

Performance Measure	Target
Technology Amenities	Provide additional apps and icons on the Central Transit website. Add additional software to track on-time performance and reliability.
Passenger Amenities	Add additional bus shelters at active stop and vulnerable population locations. Add additional turnouts, ADA landings, benches and lighting to create convenient, safe locations for passengers to wait for the bus.
Connectivity	Improve non-motorized access deficiencies at existing bus stops and shelters.
Collisions	Zero Collisions
Alternative Fuels	Acquire a zero-emissions transition plan the end of 2022. Use the plan to support the transition to alternative fuel vehicles with a supportive infrastructure.
Transit Productivity	Fixed Route: Increase passenger count per revenue hour by 10-15%. Paratransit: Increase qualified passenger ridership by 5-20%.
Amenity State of Good Repair	Maintain all transit amenities within a state of good repair.
Service Coverage	Review and adjust routes if needed to ensure demographics in service areas within 0.5 miles of a transit stop serve priority populations.
Growth	Expand or add additional routes in community growth and development areas.

Plan Consistency

Central Transit is a voting member on the 4-County Community Transportation Planning Team and participates in the planning of regional projects, policies and program decisions. Central Transit service information is submitted to the Coordinated Public Transit Human Services Transportation Plan to align with the region's goals. Planned goals and projects are then submitted to the Regional Transportation Improvement Program for inclusion in the State Transportation Improvement program.

Central Transit continues its own strategic planning process by identifying goals, objectives and work plans. Annually, the work plan is reviewed to develop projects adhering to local, state and federal guidelines.

Central Transit continues to develop its own strategies, goals and work plans. Annually, the work plan is reviewed to develop projects adhering to local, state and federal guidelines.

Central Transit's services and key priorities outlined in Table 3, are consistent with regional and state goals and policies.

- Work with other agencies and jurisdictions to coordinate a safe, accessible and integrated system of public transportation.
- Encourage citizens, students and businesses to use Central Transit as an alternative to the single-occupant vehicle.
- Support adequate funds for Central Transit services to provide services for persons with special transportation needs.
- Encourage coordination among other transit service providers as well as other modes of transportation services.

Planned Capital Expenses

Table 3 2022-2027 Summary of Planned Capital Expenses

Year	Projects	Preservation Replacement	Expansion Improvement
Amenities and Infrastructure			
2022	Bus shelter artwork at CWU bus stop. Add additional bus shelters with artwork, bus turnouts, ADA landings, bus stop seating and lighting.	X	X
2023	Additional bus shelters with artwork, bus turnouts, ADA landings, bus stop seating and lighting. Improve service accessibility with curb cuts, sidewalks and connections to non-motorized pathways and trails. Support a zero-emissions infrastructure, and an intermodal transit station.	X	X
2024	Additional bus shelters with artwork, bus turnouts, ADA landings, bus stop seating and lighting.	X	X

	Improve service accessibility with curb cuts, sidewalks and connections to non-motorized pathways and trails. Support a zero-emissions infrastructure, and an intermodal transit station.		
2025 - 2027	Additional bus shelters with artwork, bus turnouts, ADA landings, bus stop seating and lighting. Improve service accessibility with curb cuts, sidewalks and connections to non-motorized pathways and trails. Support a zero-emissions infrastructure, and an intermodal transit station.	X	X

Planned Operating Expenses

Table 4: 2022-2027 Summary of Planned Operating Projects

Years 2022 - 2027	Projects	Reduction	Expansion Improvement
	Increased safety measures to ensure the safety of vehicle operators and passengers.		X
	Implement transit services in areas with high key priority populations.		X
	Use technology to monitor, analyze and improve route schedules.		X
	Promote Central Transit services.		X
	Provide direct and indirect community outreach.		X
	Adjust routes to service new housing and business developments.		X
	Adjust routes to better serve passengers.		X
	Update schedules and timetable brochure.		X

Multiyear Financial Plan

2022-2027 Capital Improvement Program and Financial Assumptions

Central Transit's capital improvement program includes the capital expenses identified in Table 4 above.

Retail sales tax collected in Central Transit's public transportation benefit area is the primary revenue source. Other funding sources include support from Central Washington State University, state operating grant funding, federal capital funding and other miscellaneous revenues.

Growth in Local Sales Tax revenue throughout the planning period of 2-3 percent in all years based on recent trends.

Minimal growth in formula in federal and state operating grants throughout the planning period is 2-3 percent respectively.

Central Transit will be responsible for any matching funds.

These system projects and improvements noted above are subject to change pending inputs from the City of Ellensburg's Finance Department, the Public Transit Advisory Committee, and the City Council.

Table 5: 2022-2027 Capital Improvement Financial Plan

Capital Expenditure	2022	2023	2024	2025	2026	2027
Bus Stop Seating	5,000	10,000	10,000	10,000	10,000	10,000
Bus Shelters	20,000	50,000	50,000	50,000	50,000	50,000
Safety	5,000	50,000	5,000	5,000	5,000	5,000
Zero-Emissions Transition Plan	120,000					
Infrastructure		200,000	125,000	50,000	50,000	50,000
Artwork	10,000	15,000	15,000	15,000	15,000	15,000

Capital Revenue	2022	2023	2024	2025	2026	2027
Federal						
Green Transportation	120,000					
CRRSAA	629,644					
Total	902,144					

Table 6: Operating and Maintenance Financial Plan

Operating Revenue	2022	2023	2024	2025	2026	2027
State						
PTD0513 WSDOT 2021 - 2023	5,604		2,800	2,800	2,800	2,800
2023 I Special Needs Formula		1,166				
2021 ARPA Operating Grant	142,983					
PTD0307 Consolidated Grant 2021 - 2023	480,670	240,335				
Consolidated 2023 - 2025		240,335	480,670	240,335	480,670	240,335
WSTIP	2,500	2,500	2,500	2,500	2,500	2,500
Transportation Services (ASCWU)	75,000	75,000	75,000	75,000	75,000	75,000
Interest Income	20,000	20,000	20,000	20,000	20,000	20,000
Operating Revenue	2022	2023	2024	2025	2026	2027
Local Sales Tax	1,356,000	1,360,000	1,365,000	1,370,000	1,375,000	1,400,000
Total	2,082,757	1,939,336	1,945,970	1,710,635	1,955,970	1,740,635

Operating Expenses	2022	2023	2024	2025	2026	2027
Administrative	280,000	285,000	290,000	295,000	300,000	305,000
Fixed Route	1,200,000	1,300,000	1,350,000	1,400,000	1,450,000	1,500,000
Paratransit	17,000	17,500	18,000	18,500	19,000	19,500
Cabulance	42,500	43,000	43,500	44,000	44,500	45,000
Dial A Ride	82,000	82,500	82,500	82,500	82,500	82,500

Kittitas County Connector	44,000	44,000	44,000	44,000	44,000	44,000
Yakima-Ellensburg Commuter	20,000	20,000	20,000	20,000	20,000	20,000
Total Expenses	1,685,500	1,792,000	1,848,000	1,904,000	1,960,000	2,016,000

2021 Annual Report

2021 Revenues and Expenses

Ellensburg Public Transit Revenues thru 12-31-21	2021 Total
Retail Sales Tax .02% for Public Transit	1,358,736
Fed Transit Funding via WSDOT – CARES Act (1 st dist.)	
Fed Transit Funding via WSDOT – CARES Act (2nd dist.)	208,194
WSDOT Consolidated Grant – No Federal Money	
Special Transportation Needs Grant	
WSDOT Consolidated Grant	110,263
WSDOT CRRSAA	
WSDOT- Capital Rural Mobility	10,366
WSTIP	
WSTIP - Risk Management Grants	2,500
Transportation Services	
Interest Income	11,349
Transit – Misc. Revenue	75,000
Total Revenues	1,776,408

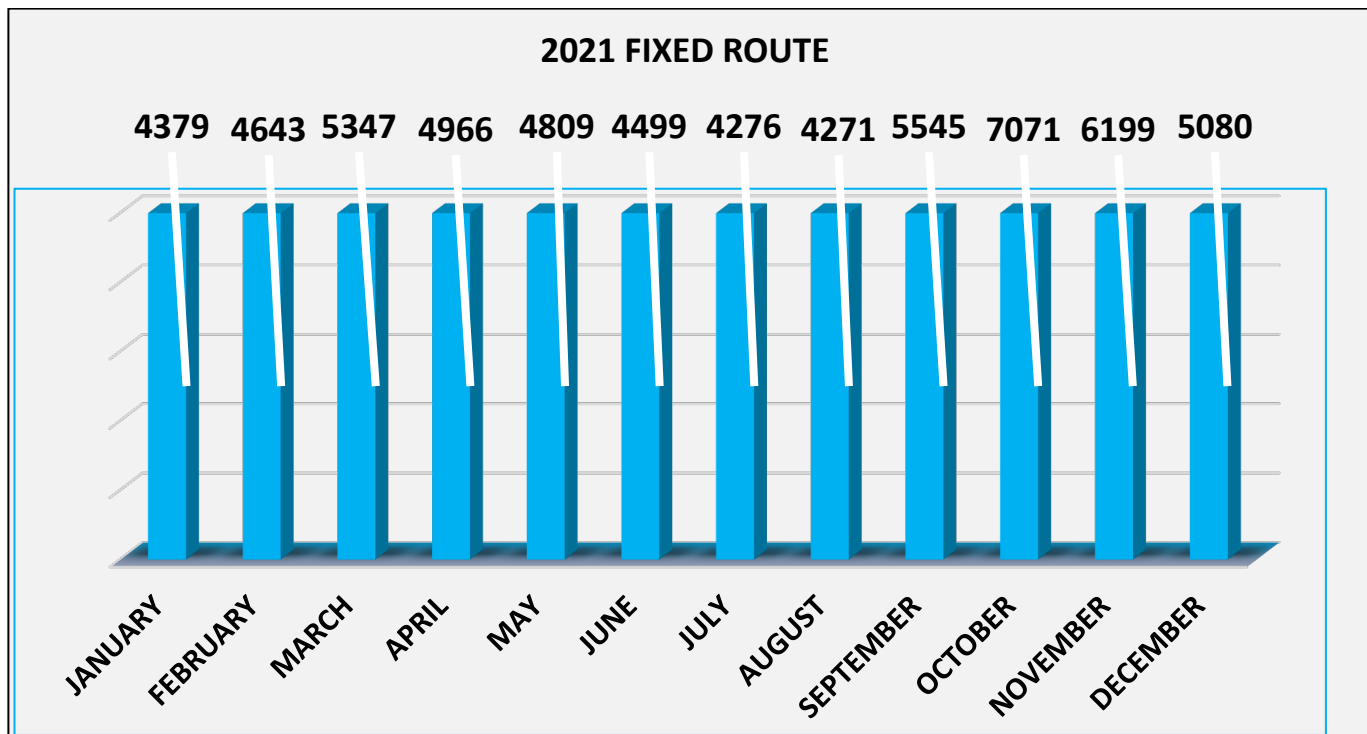
Central Transit Public Transit Expenditures thru 12-31-21	2021 Total
Total Administrative	173,800
Fixed Route	1,187,319
Paratransit	15,960
Cabulance	41,818
Yakima Transit	20,000
Dial A Ride	81,813

Kittitas County Connector	43,500
Total Transit	1,564,210

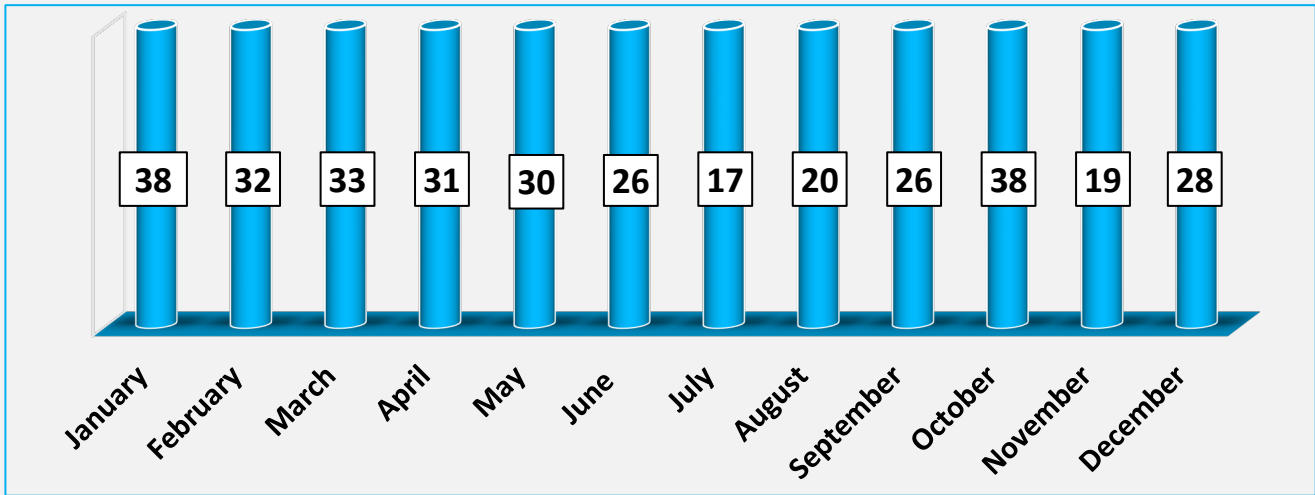
2021 Central Transit Ridership Stats



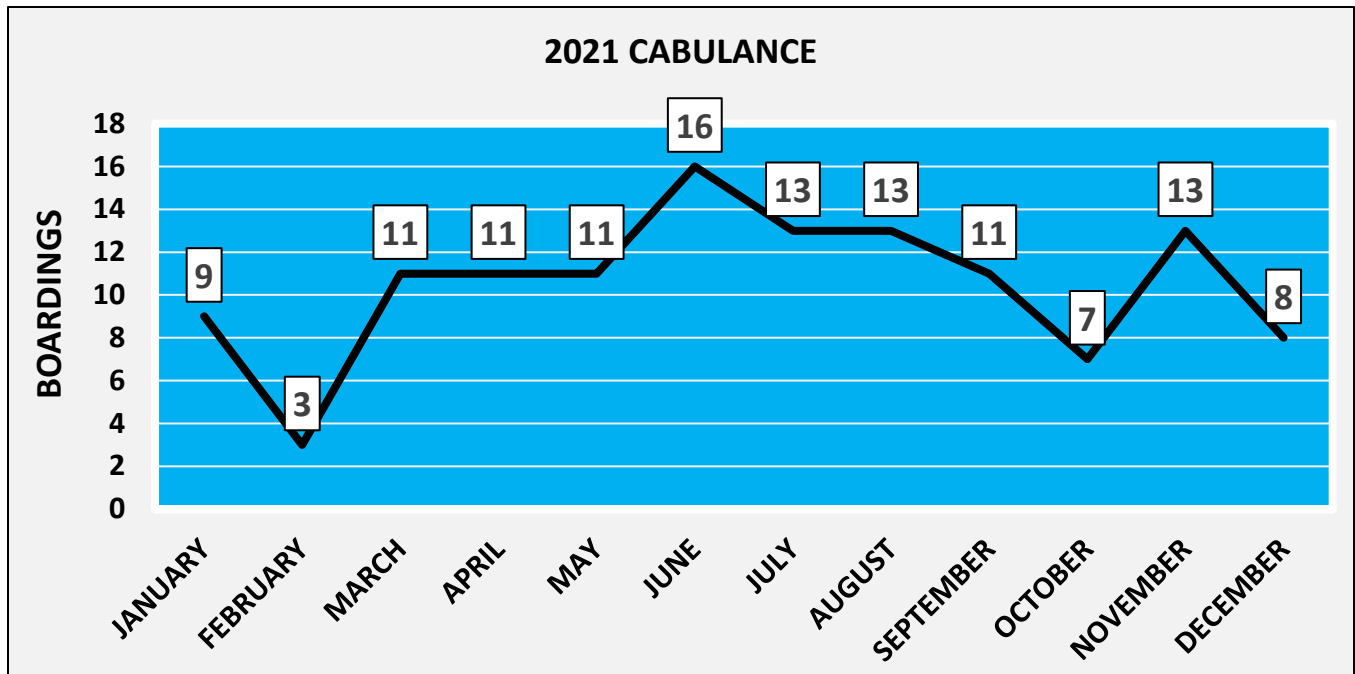
SERVICE	1-WAY BOARDINGS	REVENUE MILES	REVENUE HOURS	GALLONS OF FUEL	COLLISIONS	INJURIES
Fixed Route	61,082	238,278	21,305	34,486	0	0
Paratransit	338	1450	307	266	0	0
Cabulance	126	227	236	41	0	0
Dial A Ride	9,072	86,238	8,466	12,902	0	0
KCC	4,742	94,270	4,510	9,018	0	0
Total	75,360	420,463	34,824	56,713	0	0

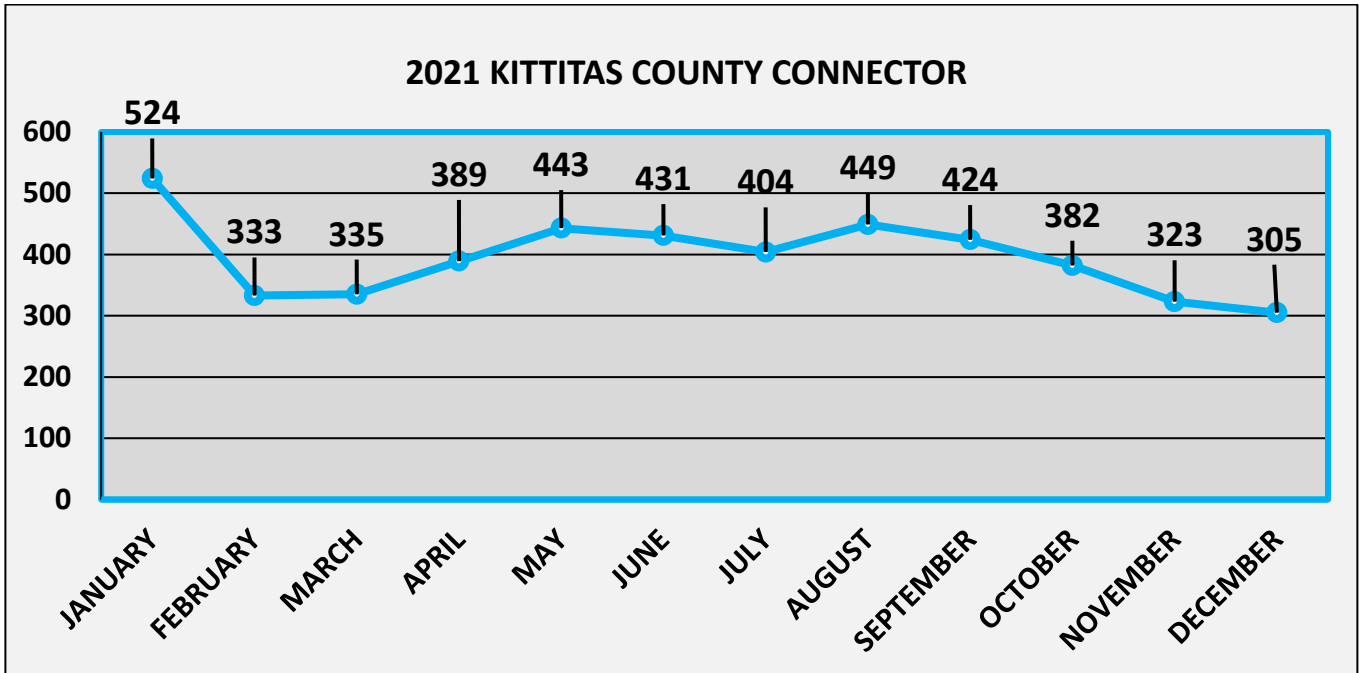
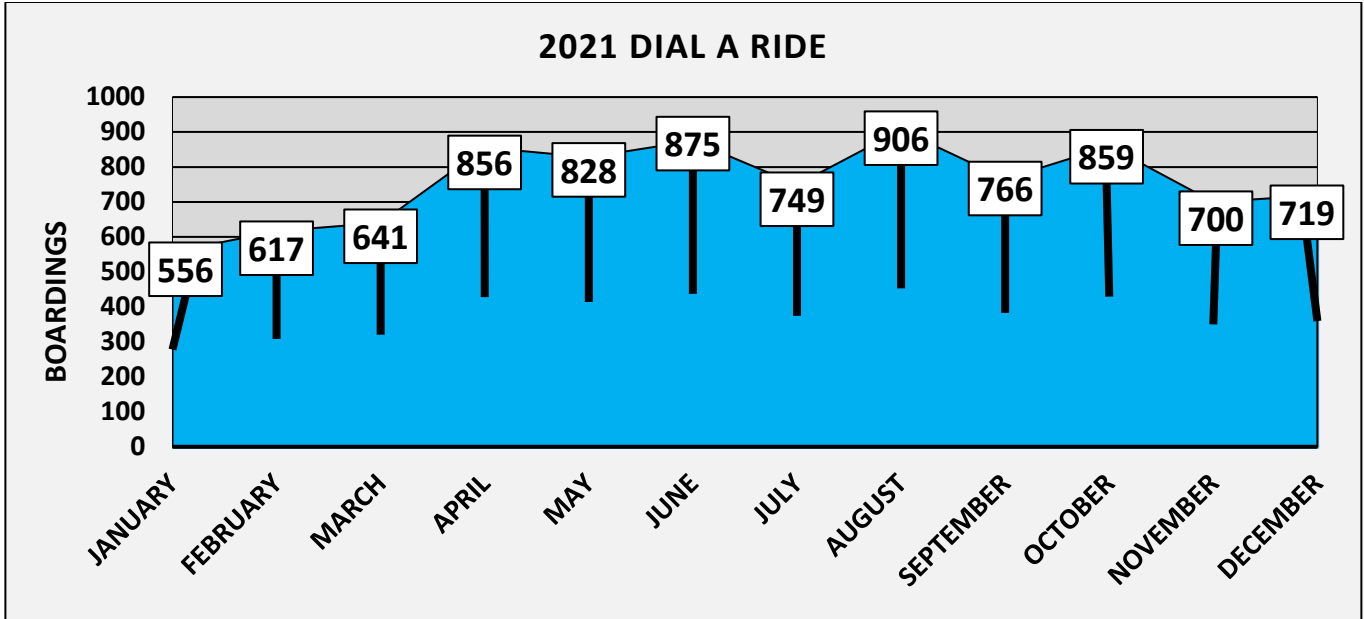


2021 PARATRANSIT



2021 CABULANCE





Central Transit	2021
Transit Data - Fixed Route	
City Employees – FTE's	1.5
Farebox Revenues	0
Gasoline Fuel Consumed (gallons)	34,486
Passenger Trips	61,082
Revenue Vehicle Hours	21,305
Revenue Vehicle Miles	238,278
Total Vehicle Hours	22,254
Total Vehicle Miles	246,099
Transit Data - Demand Response Paratransit	
City Employees – FTE's	1.5
Gasoline Fuel Consumed (gallons)	266
Operating Expenses	15,960
Passenger Trips	388
Revenue Vehicle Hours	307
Revenue Vehicle Miles	1450
Total Vehicle Hours	343
Total Vehicle Miles	1610
Revenue - Local Operating	
Sales Tax	1,358,736
Revenue - State Operating	
Other State Operating Grants	0
Sales Tax Equalization	0
State Operating Distribution	0
State Regional Mobility Operating Grants	0
State Rural Mobility Operating Grants	0
State Special Needs Operating Grants	0
Revenue - State Capital	
Other State Capital Funds	0
Sales Tax Equalization - Capital	0
State Regional Mobility Grants	0
State Rural Mobility Grants	10,366
State Special Needs Grants	0
Revenue - Federal Operating	
Capital Assistance Spent on Operations (§5317)	0
CARES Act Rural Area Program Funds (§5311)	208,194

Federal Section §5307 Operating	0
Federal Section §5307 Preventative	0
Federal Section §5311 Operating	110,263
FTA §5310 Capital Assistance Spent on Operations	0
FTA §5310 Special Needs of Elderly Individuals and Individuals with Disabilities Formula Program Funds	0
Revenue - Other Operating	
Other-Advertising	0
Other-Gain (Loss) on Sale of Assets	0
Other-Interest	11,349
Other-MISC	75,000
Revenue - Other Capital	
Land Bank Agreement & Credits	0
Expenses - Expenses	
Debt service - Interest	0
Debt service - Principal	0
Depreciation (Not included in Total Expenditures)	0
Local Capital Funds	0
Other - Expenditures	0
Fund Balances - Ending Fund Balances	
Capital Reserve Funds	0
Contingency Reserve	0
Debt Service Funds	0
General Fund	540,968
Insurance Funds	0
Operating Reserve	1,585,266
Other Balance	0
Unrestricted Cash and Investments	456,896
Working Capital	0

2021 Transportation Improvements

ADA curb cuts and ramp upgrades.
Sidewalk repairs and improvements.
Bus shelter artwork installed.
Updated Central Transit Logo.
Updated bus wraps.
New bus stop signs with SMS & IVR services.
New Interactive Central Transit Website.
Live Central Transit Operations Dashboard and GPS Playback.
TRANSIT Application linked to Google Maps.
Service Alerts for TRANSIT App and Google Maps.
Additional ADA landings.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Resolution 2022-27 to Declare City Property known as Catherine Park, Parcel 694034, as Surplus for the Public Benefit of Affordable Housing

Submitted by: Jamey Ayling Community Development

Recommended Action or Motion: Adopt Resolution No. 2022-27 declaring parcel 694034 as surplus for the purpose of being developed as affordable housing

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. 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 2021, 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 this City-owned site for surplus declaration for the development of cottage style affordable housing.

The Affordable Housing Commission will consider applications

through an open application process from anyone that can demonstrate the ability to construct an affordable cottage housing complex on the property.

Previous Council Action: At its July 5, 2022 meeting, City Council considered whether the Catherine Park should be declared surplus and developed as cottage housing for an affordable housing project, and directed staff to prepare a resolution declaring the property surplus to the City's needs.

Analysis: The Catherine Park property consists of one parcel 694034, approximately 0.75 located on the north side of Vantage Highway, identified by the Kittitas County Assessor's Office as Parcel No. 694034, and legally described as:

Lot 1, as described and delineated on short plat No. P-80-B, Recorded October 6, 1980, under Auditor's File No. 446237 and filed in Volume B of Short Plats, Page 11 Records of Kittitas County, Washington. Being a portion of Tracts 51 and 52 State addition to the City of Ellensburg as per plat thereof recorded in Book 2 of Plats, Page 48 Records of Kittitas County, State of Washington.

The property was deeded to the City by John and Catherine DiMeo on November 6, 1980 as part of a short plat. A condition of deed transfer was included that some type of appropriate notation be made indicating that the donation was made on behalf of Catherine M. DiMeo.

Upon surplus declaration of the Catherine Park property, the parcel will be promoted by the City soliciting interest from developers to apply to develop affordable cottage housing on the property. Any request submitted will be reviewed by the Affordable Housing Commission who will make a recommendation to council for consideration.

Financial Impact: A current value for the property has not been obtained, however an appraisal of the property will be conducted prior to future transfer of the parcel.

Attachments:

[Catherine Park Surplus Resolution 2022-27](#)
[Catherine Park](#)

RESOLUTION NO. 2022-27

A RESOLUTION declaring the City-owned real property known as the “Catherine Park” as surplus to City of Ellensburg needs.

WHEREAS, Catherine Park is approximately .74 acres in size, located on the north side of Vantage Highway, identified by the Kittitas County Assessor’s Office as Parcel No. 694034, and legally described as:

Lot 1, as described and delineated on short plat No. P-80-B, Recorded October 6, 1980, under Auditor’s File No. 446237 and filed in Volume B of Short Plats, Page 11 Records of Kittitas County, Washington. Being a portion of Tracts 51 and 52 State addition to the City of Ellensburg as per plat thereof recorded in Book 2 of Plats, Page 48 Records of Kittitas County, State of Washington; and

WHEREAS, the Catherine Park is zoned Residential-Low (R-L); and

WHEREAS, the Ellensburg City Council considered at its July 5, 2022 meeting whether the Catherine Park should be declared surplus and developed as cottage housing for an affordable housing project, and directed staff to prepare a resolution declaring the property surplus to the City’s needs; and

WHEREAS, RCW 39.33.015 authorizes state or local governments to dispose of surplus property at no cost to the grantee(s) for the development of affordable housing; and

WHEREAS, the Ellensburg City Council conducted a duly noticed public hearing on August 15, 2022, to declare Catherine Park as surplus property to be used for affordable housing in accordance with the provisions outlined in ECC 2.06.080;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of The City of Ellensburg, Washington, as follows:

Section 1. The real property commonly known as Catherine Park is hereby declared surplus to the City of Ellensburg’s needs and is no longer required for providing municipal services.

Section 2. The means of disposal for all surplus property identified in this Resolution shall be by a no cost transfer to grantees conditioned upon review and recommendation by the City’s Affordable Housing Commission and approval by the City Council of an agreement with the City for a cottage housing developed as affordable housing for the public benefit in conformance with RCW 39.33.015.

// // //

ADOPTED by the City Council of the City Ellensburg this 15th day of August, 2022.

Mayor

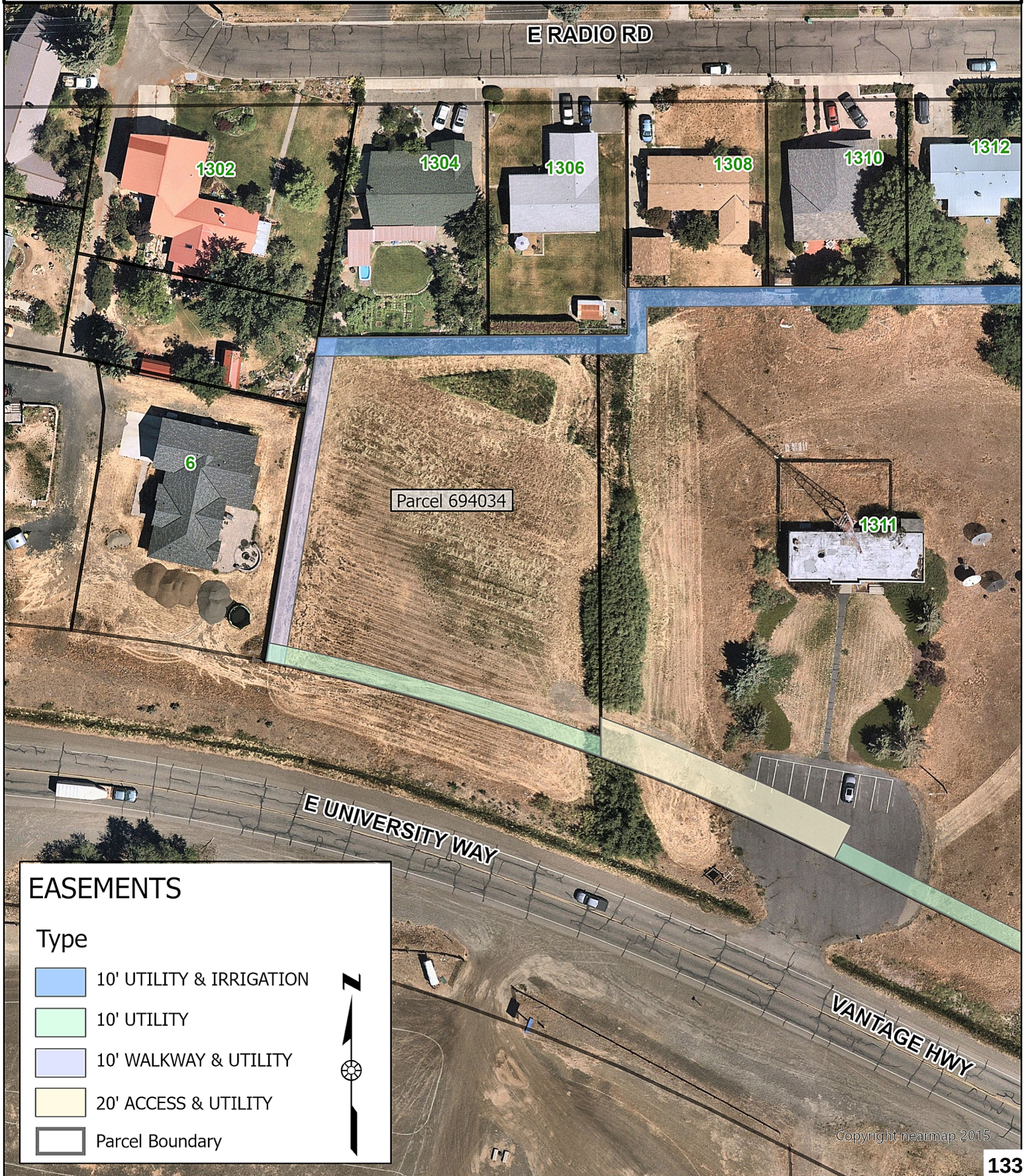
Attest: _____
City Clerk



City of
Ellensburg
WASHINGTON

CATHERINE PARK

Parcel 694034





CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Resolution 2022-28 to Declare Whitfield Triangle Surplus to City Needs and Amending Resolution 1963-17

Submitted by: Brad Case Parks and Recreation

Recommended Action or Motion: Adopt Resolution 2022-28 declaring Whitfield Triangle as surplus to city needs and directing the removal of a portion of a restrictive covenant from Resolution 1963-17 upon the sale of the property pursuant to RCW 35.A.21.410.

Background/Summary: In 1933 the City accepted a land donation from Kittitas County which included what is now Reed Park and the Whitfield Triangle property. While Reed Park was developed into a community park, Whitfield Triangle has remained a small landscaped turf area with no other park improvements. In 1963, the City passed Resolution 1963-17 declaring the property surplus and identifying conditions of the sale and residential development. The reasons cited by Kittitas County to allow for the surplus of the property have not changed and the property is still not suitable for public park purposes.

Previous Council Action: The Whitfield Triangle property has been discussed at the following Council meetings:

- July 19, 2021 Council Meeting - Staff presented a summary of city-owned real estate that the City Council may wish to consider for future disposal or surplus for affordable housing or residential development. Whitfield Triangle was included on the list. Council directed staff to take steps to surplus Whitfield Triangle and Catherine Park.
- December 20, 2021 Council Meeting - Staff presented four options for the surplus of Whitfield Triangle and requested that Council provide direction on future actions. Council directed staff to move forward with the surplus of Whitfield Triangle, dedicate the proceeds from the sale of the property to the parks and recreation department, and identified the requirement that the buyer of the property maintain the property in its current state

until it's developed, and that the future residential unit built on the Whitfield Triangle site does not exceed 4,000 square feet.

- April 4, 2022 Council Meeting - Staff presented a resolution reaffirming city owned property surplus to City needs based on the direction Council provided at their December 20, 2021 meeting. Council discussed the proposed resolution and directed staff to explore public/private partnerships, options for a Local Improvement District, and options for surplus with height restrictions.
- At its July 5, 2022 meeting Council discussed whether Whitfield Triangle should remain as part of the City's Park system and be improved through a public/private partnership or if the property should be declared surplus to city needs and sold for residential development.

Analysis:

At its July 5, 2022 Council meeting Council passed a motion to surplus Whitfield Triangle and to incorporate the existing covenants as stated in Resolution 1963-17, with one amendment, removing Section 2.e that required the purchaser of the property to build within one (1) year of purchasing the property. Analysis performed by Community Development staff has determined that based on setback alone, the buildable square footage of Whitfield Triangle property is 3,400 square feet. Resolution 2022-28 removes the restriction in section 2(e) of Resolution 1963-17 as it pertains to constructing the property within one year of sale by the City, but leaves intact the portion that requires all covenants run with the land (i.e., are binding in subsequent purchasers, heirs, etc.).

Disposition of the property shall be by sealed bid with the City reserving the right to reject any and all bids, or any other method allowed by City code, as determined to be in the City's best interests and administered by the City Manager.

Financial Impact:

Proceeds from the sale will be directed to the Parks & Recreation Department budget.

Attachments:

[Resolution 2022-28 - Surplus of the Whitfield Triangle](#)
[Resolution 1963-17 \(Whitfield Triangle\)](#)

RESOLUTION NO. 2022-28

A RESOLUTION reaffirming Resolution 1963-17 declaring the City-owned real property known as the "Whitfield Triangle" as surplus to City of Ellensburg needs, and directing the removal of a restrictive covenant from the deed upon sale of the property pursuant to RCW 35A.21.410.

WHEREAS, the Whitfield Triangle is approximately .30 acres in size, located on N. Alder Street, identified by the Kittitas County Assessor's Office as Parcel No. 065633, and legally described as:

Lot 15, Block "F" LEE'S SUBDIVISION OF SECOND RAILROAD
ADDITION TO THE CITY OF ELLENSBURG, in the County of Kittitas, State
of Washington; and

WHEREAS, the City Council adopted Resolution 1963-17 on July 15, 1963, which declared the Whitfield Triangle abandoned for City park purposes and therefore surplus to the City's needs, and set forth certain terms and conditions for sale; and

WHEREAS, the Whitfield Triangle is zoned Residential-Low (R-L); and

WHEREAS, at its December 20, 2021 meeting, the Ellensburg City Council determined it is in the public interest to sell the Whitfield Triangle and that conditions be included in any deed of conveyance, as set forth herein; and

WHEREAS, the Ellensburg City Council considered at its July 5, 2022 meeting whether the Whitfield Triangle should be used improved as part of the City's Park system or be declared surplus, and directed staff to prepare a resolution declaring the property surplus to the City's needs; and

WHEREAS, the Ellensburg City Council conducted a duly noticed public hearing on August 15, 2022, to reaffirm its surplus of the Whitfield Triangle in accordance with the provisions outlined in ECC 2.06.080; and

WHEREAS, pursuant to RCW 35A.21.410, City Council's August 15, 2022 public hearing also considered removing one of the restrictive covenant's included in Resolution 1963-17; and

WHEREAS, the Ellensburg City Council has determined that proceeds from the sale of the property shall be directed back to the Parks & Recreation Department budget;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of The City of Ellensburg, Washington, as follows:

Section 1. Section 1 of Resolution 1963-17, attached hereto as Exhibit 1, which declared the Whitfield Triangle abandoned for park purposes and surplus to the City's needs, is hereby reaffirmed.

Section 2. Section 2 of Resolution 1963-17 is reaffirmed as hereby amended pursuant to RCW 35A21.410 by removing the following language, marked as strikethrough, from the deed of sale at the time the property is sold:

~~e. That the deed of conveyance shall include said restrictions as covenants running with the land and shall also provide that, in the event the purchaser, or his successor in interest, within one (1) year from date of conveyance by the City, has failed to construct or enter into a valid contract for the construction of a dwelling, upon demand of the City the title to said real estate shall revert to the City and the City shall thereupon be required to refund to the purchaser, or his successor, but 90% of the purchase price without interest.~~

Section 3. City staff is directed to take any action(s) necessary to remove the deed restriction referred to as stricken in Section 2 of this Resolution.

Section 4. Disposition of the property shall be by sealed bid with the City reserving the right to reject any and all bids, or any other method of sale allowed by City code, as determined to be in the City's best interests and administered by the City Manager.

Section 5. Except as stated in Section 3 above, all other conditions for the deed of conveyance for sale of the Whitfield Triangle contained in Resolution 1963-17 shall remain in full force and effect.

ADOPTED by the City Council of the City Ellensburg this 15th day of August, 2022.

Mayor

Attest: _____
City Clerk

WHEREAS the City of Ellensburg acquired the hereinafter described real estate from Kittitas County for park purposes as provided in the deed of conveyance recorded in Volume 52 of Deeds, page 542; and

WHEREAS Kittitas County has by appropriate resolution of the Commissioners consented to the sale of said property; and

WHEREAS said property is not suitable for public park purposes and its sale will provide much needed funds for other capital park expenditures; and

WHEREAS it is for the public interest that certain restrictions, covenants and reservations be contained in any deed of conveyance, and that said property be sold for residential purposes only;

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington, DO RESOLVE as follows:

Section 1: That the following described real estate is hereby abandoned by the City of Ellensburg for public park purposes and is declared to be surplus property of the City to-wit:

Lot 15, Block "F" LEE'S SUBDIVISION OF SECOND RAILROAD ADDITION TO THE CITY OF ELLENSBURG, in the County of Kittitas, State of Washington.

Section 2: That said real estate be offered for sale under sealed bids subject to the following terms and conditions:

- a. The purchaser and his successors in interest shall agree that said property shall be used for residential purposes only;
- b. That no portion of the roof of a dwelling built on said premises shall exceed a height of fifteen feet above the highest grade of the abutting northerly alley.
- c. The existing sprinkler system shall be retained by the City and removed at City expense upon notice on intention to construct a dwelling.
- d. That the premises shall be maintained in their existing condition until construction is begun.
- e. That the deed of conveyance shall include said restrictions as covenants running with the land and shall also provide that in the event the purchaser, or his successor in interest, within one (1) year from date of conveyance by the City, has failed to construct or enter into a valid contract for the construction of a dwelling, upon demand of the City the title to said real estate shall revert to the City and the City shall thereupon be required to refund to the purchaser, or his successor, but 90% of the purchase price without interest.
- f. The City shall in its call for bids reserve the right to reject any and all bids.
- g. The City will furnish the purchaser with evidence of title with right to convey.

Adopted by the City Council this 15 day of July, 1963.



Mayor

Gertrude Hutchens
City Clerk



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Resolution 2022-29 - Outside Utility Agreement for Walter T. Coy II and Mary A. Coy at 400 W Helena Avenue

Submitted by: Hunter Slyfield Public Works & Utilities

Recommended Action or Motion: Approve Resolution 2022-29 authorizing the Outside Utility Agreement extension request and the Mayor to execute the Agreement.

Background/Summary: Council set a public hearing to consider a request from Walter T. Coy II and Mary A. Coy for connection of water and electric service to the parcel they own at 400 W Helena Avenue (parcel #583033), pursuant to the provisions of Chapter 2.48 ECC. The utility extension, if granted, would be pursuant to the provisions of the attached "Utility Extension Agreement and Agreement Waiving Right to Protest LID and Annexation." The property covered by the agreement is shown on the attached map and is within the City's Urban Growth Area. There is currently no sewer available for connection.

Chapter 2.48 ECC ("Utility Extension Agreements") sets forth the terms and conditions upon which the City of Ellensburg may provide utility service outside the City limits and within the City's Urban Growth Area, and requires that a property owner desiring such extension sign a standard contract ("Utility Extension Agreement and Agreement Waiving Right to Protest LID and Annexation") with the City as a condition of receiving such service.

A public hearing as set forth in ECC 2.48.060B must be conducted to consider the request and a resolution approving the request must be approved if the request is granted by Council.

Previous Council Action: None

Analysis: Issues for Council's consideration include:

Whether the requested extension is consistent with the City's adopted water plans. (Staff confirms the request is consistent with those adopted plans.)

Whether the City has capacity in its water rights to accommodate the request. (Staff confirms the water capacity exists to serve the request.)

Whether the property owner agrees to all terms of a proposed Utility Extension Agreement and Agreement Waiving Right to Protest LID and Annexation. (The owner has indicated they agree to all terms of agreement.)

Financial Impact:

No Fiscal Impact. The applicant will be required to pay for applicable utility connection fees at time of connection, including the applicable Latecomers Fee for the cost of the water main installation along the parcels of the Helena Avenue frontage.

Attachments:

[Resolution 2022-29](#)

RESOLUTION NO. 2022-29

A RESOLUTION approving a request from Walter T. Coy II and Mary A. Coy for the connection of City of Ellensburg utilities pursuant to the provisions of Chapter 2.48 of the Ellensburg City Code.

WHEREAS, pursuant to the provisions of Chapter 2.48 ECC, Walter T. Coy II and Mary A. Coy (“Property Owners”) have requested the connection to City of Ellensburg electric and water service to their property located in the City of Ellensburg’s Urban Growth Area and described as Kittitas County Assessor Parcel Numbers 583033, and

WHEREAS, the City Council conducted a duly noticed public hearing on this request on August 15th, 2022, during a regularly scheduled council meeting, and

WHEREAS, the City Council finds the requested extension is consistent with the City’s adopted water plans and that the City has the domestic water capacity to serve the request, and

WHEREAS, the Property Owner agrees to all of the terms of that certain Utility Extension Agreement and Agreement Waiving Right to Protest LID and Annexation (Exhibit 1- Agreement) made a part of the record in the August 15th, 2022 public hearing,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ellensburg, Washington, as follows:

The request from Walter T. Coy II and Mary A. Coy, Property Owners, for the connection of City of Ellensburg electric and water service to Kittitas County Assessor Parcel Numbers 583033 as fully described in Exhibit 1 (the Agreement), and is hereby approved, subject to the terms of that certain Utility Extension Agreement and Agreement Waiving Right to Protest LID and Annexation (the Agreement), and the Mayor is authorized to execute the Agreement on behalf of the City of Ellensburg.

ADOPTED by the City Council of the City of Ellensburg this 15th day of August, 2022.

Mayor

Attest: _____
City Clerk

EXHIBIT 1

After Recording, Return To:

Name: City of Ellensburg
Public Works & Utilities
Address: 501 N. Anderson Street
Ellensburg, WA 98926

UTILITY EXTENSION AGREEMENT AND AGREEMENT WAIVING RIGHT TO PROTEST LID AND ANNEXATION.

THIS AGREEMENT is entered into on this _____ day of _____, 2022, between the City of Ellensburg, Washington, hereinafter referred to as the "City", a Washington Municipal Corporation and Walter T. Coy II and Mary A. Coy, as husband and wife, hereinafter referred to as "the Owners."

RECITALS

WHEREAS, the Owners are the owners of certain real property located in Kittitas County which is legally described as set forth in Exhibit 'A' attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owners' property is not currently within the City limits of the City, but is within the City Urban Growth Area; and

WHEREAS, properties connecting to City water, sewer or electric service are required pursuant to Ellensburg City Code ("ECC") 9.25.030(H) to connect to all three utilities if available; and

WHEREAS, the Owners desire to connect to the available City electric and water utility systems, hereinafter referred to as "the utility," and the City is willing to allow connection only upon certain terms and conditions in accordance with Chapter 2.48 of the Ellensburg City Code, as now enacted or hereinafter amended; and

WHEREAS, the Owners agree to connect to the City sewer utility within one (1) year of the utility becoming available; and

WHEREAS, the City Council held a public hearing on this Agreement on _____, 2022, during a regularly scheduled Council meeting, and authorized the Mayor to execute this Agreement on behalf of the City;

NOW, THEREFORE,

AND IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties agree as follows:

TERMS

1. **Warranty of Title.** The Owners warrant that they are the Owners of the property described in Exhibit 'A', which is attached hereto and incorporated herein by this reference, and is authorized to enter into this Agreement.

2. **Extension Authorized.** The property described in Exhibit 'A' is not currently within the City limits, but is located in the boundaries of City's Urban Growth Area. The City hereby authorizes the Owners to extend service to Owners' property (as legally described in Exhibit 'A') from existing utility facilities to be determined by the City.

3. **Costs.** Owners will pay all costs of designing, engineering, constructing and field inspection of the construction of the public improvements covered by this agreement. All construction shall be done to City standards and according to plans approved by the City Public Works & Utilities Director. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owners.

4. **Permits - Easements.** Owners shall secure and obtain, at Owners' sole cost and expense, any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by federal, state, county and city governmental departments including, but not limited to, the Kittitas County Public Works Department, Kittitas County Health Department, State Department of Ecology, and City of Ellensburg.

5. **Turn Over of Capital Facilities.** If the extension of utility service to Owners' property involves the construction of electric, water or sewer main lines, pump stations, wells, and/or other City required capital facilities, the Owners agree if required by the City to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owners will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Public Works Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;
- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Public Works Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of one (1) year.

6. **Connection Charges.** The Owners agree to pay the connection charges for electric and water utility systems, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owners request to actually connect their property to the system. The Owners will also be responsible for connection to City sewer within one (1) year of written notification by the City of the utility becoming available, along with all connection and service charges

applicable at the time the Owners connect to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges.

7. Service Charges. In addition to the charges for connection, the Owners agree to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, or as they may be hereafter amended or modified.

8. Petition and Covenant for Annexation. Owners understand that annexation of the property described on Exhibit 'A' to the City will result in the following:

- A. In general, Kittitas County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. In general, City of Ellensburg ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police and other utility service, will be provided to the property by the City of Ellensburg upon the effective date of annexation;
- D. The property may be required to assume all or any portion of the existing City of Ellensburg indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;
- E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and
- F. The property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owners' decision to forego opposition to annexation of the property to the City of Ellensburg, Owners covenant and agree to sign a petition for annexation to the City of the Owners' property as provided in RCW 35A.14.120, as it now exists or as it may hereafter be amended, at such time as the Owners are requested by the City to do so. The Owners also agree and appoint the Mayor of the City as Owners' attorney-in-fact to execute an annexation petition on Owners' behalf in the event that Owners shall fail or refuse to do so, and agree that such signature shall constitute full authority from the Owners for annexation as if Owners had signed the petition for themselves. Owners further agree not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owners' property is not annexed for whatever reason, including a decision by the City not to annex, Owners agree to sign any and all subsequent petitions for annexations. In the event that any of Owners' property is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

9. Land Use. The Owners agree that as long as the property has not been

annexed to the City, any development of the property shall meet the requirements of the Kittitas County Comprehensive Plan, and the applicable Kittitas County zoning.

10. Public Works Development Standards. The development or redevelopment of the property shall comply with all Ellensburg Public Works Development Standards, as these standards now exist or may hereafter be amended, applicable to the construction of electric, water, sanitary sewer, and street improvements, which street improvements include, but are not limited to, street, sidewalk, curb and gutter, surface water treatment/flow control and associated conveyance systems, street signs, street lighting, hot or warm mix asphalt, gravel base course, gravel top course, geotextile fabric, excavation, sawcutting, roadway fill material, striping, and street light improvements. All other items of work necessary to the construction of the improvements included in this paragraph, but not specifically listed, shall be considered incidental to this Agreement and shall be designed and constructed in accordance with the engineer's design and approved by the Public Works Director. The intent of this section is that future annexation of the property to the City of Ellensburg shall result in a development which conforms to these cited Public Works Development Standards.

11. Liens. The Owners understand and agree that delinquent payments under this agreement shall constitute a lien upon the above-described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.290, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended. If the extension is for electric service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

12. Termination for Non-Compliance. In the event Owners fail to comply with any term or condition of this Agreement, the City shall have the right, at any time, to enter onto the Owners' property and for that purpose disconnect the electric, sewer and/or water, in addition to any other remedies available to the City.

13. Waiver of Right to Protest Local Improvement District ("LID") or Utility Local Improvement District ("ULID") or When Improvements Are Required By City Council. Owners acknowledge that the entire property legally described in Exhibit 'A' would be specially benefited by the following improvements:

electric, water, sanitary sewer, surface water flow control and treatment, street improvements, and other improvements identified in paragraph 10 above

- A. Owners agree to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owners hereby appoint the Mayor of the City as their attorney-in-fact to sign such a petition in the event Owners fail or refuse to do so.
- B. With full understanding of Owners' right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owners agree to participate in any such LID or ULID and to waive the right to protest formation of the same. Owners shall retain the right to contest the method

of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court.

- C. Owners also acknowledge and agree that the City Council has the authority to require construction of any and all of the improvements identified in paragraph 10 above even in the absence of a LID or ULID. In such instance, Owners agree to participate in paying for the cost of such improvements to the same extent and manner as if a LID or ULID had been formed, and without in any manner protesting, objecting to, or otherwise opposing the City Council's decision to require construction of the improvements.

14. Enforcement. In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

15. Covenant. The conditions and covenants set forth in this Agreement shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties and their heirs, successors and assigns. The Owners, and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee, transferee, or successor shall observe and fully perform all of the duties and obligations of the Owners contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it. All costs of recording this Agreement with the Kittitas County Auditor shall be borne by the Owners.

16. Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this Agreement. Venue of such action shall lie in Kittitas County Superior Court or the U.S. District Court for Eastern Washington.

17. Notices. Notices and correspondence to the City and Owners shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated below. Notice to the City shall be to the attention of both the City Manager and City Attorney. Notice to any person who purchases any portion of the Property from the Owners shall be required to be given by the City only for those property purchasers who provide the City with written notice of their address. The parties hereto may, from time to time, advise the other of any new addresses for notice and correspondence.

TO THE CITY:

City Manager
Ellensburg City Hall
501 North Anderson St
Ellensburg, WA 98926

TO THE OWNERS:

Walter T. Coy II and Mary A. Coy
2004 E 1st Ave.
Ellensburg, WA 98926

City Attorney
Ellensburg City Hall
501 North Anderson St.
Ellensburg, WA 98926

18. Severability and Integration. This Agreement and the Exhibits attached hereto constitute the agreement between the parties on this subject matter, and there are no other understandings, verbal or written, that modify the terms of this Agreement. If any phrase, provision, or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the resolution or ordinance adopting this Agreement, such invalidity shall not affect the other terms of this Agreement.

19. Recording. This Agreement shall be filed for record with the Kittitas County Auditor.

DATED this ____ day of _____, 2022.

OWNER

Name: Walter T. Coy II

STATE OF WASHINGTON)
) ss.
COUNTY OF KITTITAS)

I certify that I know or have satisfactory evidence that _____ are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it as the Owners of the property described in Exhibit A to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature _____
Print Name: _____

NOTARY PUBLIC for the State of Washington,
residing at _____
My commission expires: _____

OWNER

Name: Mary A. Coy

STATE OF WASHINGTON)
) ss.
COUNTY OF KITTITAS)

I certify that I know or have satisfactory evidence that _____ are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it as the Owners of the property described in Exhibit A to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature _____
Print Name: _____

NOTARY PUBLIC for the State of Washington,
residing at _____
My commission expires: _____

CITY OF ELLENSBURG

Mayor: Nancy Lillquist

STATE OF WASHINGTON)
) ss:
COUNTY OF KITTITAS)

I 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 and acknowledged it as
the Mayor 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: _____

Signature _____

Print Name: _____

NOTARY PUBLIC for the State of Washington,
residing at _____

My commission expires: _____

EXHIBIT "A"

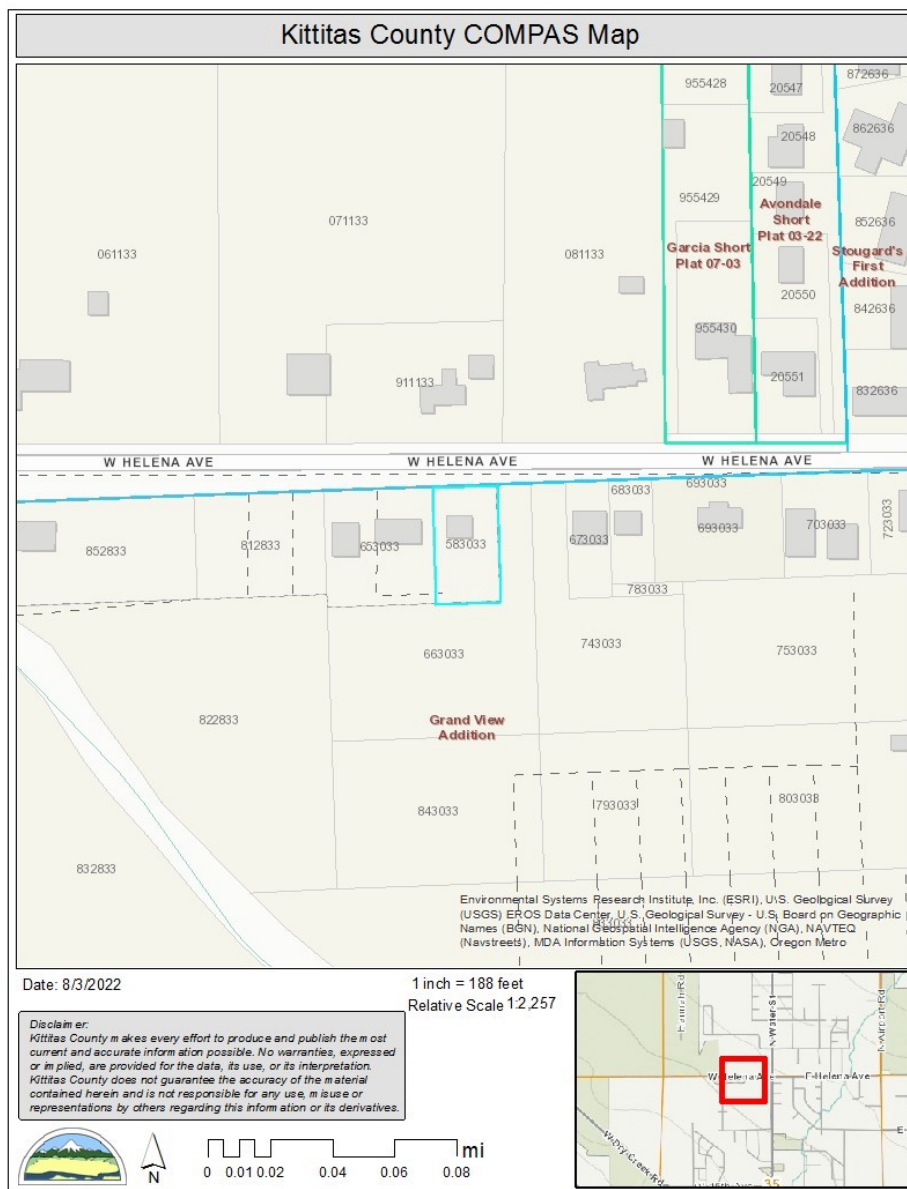
That portion of land lying within Kittitas County, State of Washington, Section 35,
of Township 18 North, Range 18 East, more particularly described as follows:

400 W Helena Avenue

Kittitas County Parcel Number: 583033

Kittitas County Map Number: 18-18-35054-0205

Containing 0.22 acres more or less





CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Ordinance 4895 (First Reading) Regulating Camping on City Property

Submitted by: Terry Weiner City Attorney Department

Recommended Action or Motion: Conduct first reading of Ordinance 4895 to regulate camping on City-owned property.

Background/Summary: Like many of the larger communities on the west coast, Ellensburg has been experiencing more impacts from the increasing issue of homelessness over the past several years. The causes of homelessness are complex and varied. City staff and the Ellensburg Police Department engage with HopeSource, Merit Resource Services, Comprehensive Health and other local resources to connect those persons with appropriate services. In addition, the Kittitas County Ministerial Association has been operating a Cold Weather Overnight Shelter since 2014. The Cold Weather Shelter operates from approximately mid-November to mid-March, weather-dependent. HopeSource also has a number of shelter beds for other qualifying individuals, but there is no other emergency overnight shelter operating the remainder of the year (March through November) in the county.

The City is experiencing a number of consequences of the increase in homeless individuals within the City. As has been noted by staff and residents, homeless persons have been observed camping or squatting on park property, including Unity Park, Kiwanis Park, Memorial Park and Irene Rinehart Riverfront Park, as well as other City-owned properties. This has led to increased trash, debris and, at times, human waste being observed in these areas. Staff have also noted at least one individual using park restrooms as temporary housing, which precludes their use by the public as restrooms. And earlier this year one or more individuals were camping on the property currently leased by the City for use as the Community Garden.

Parks and other public property are intended for shared use by the public, and are not intended for use as habitation. Like many communities, Ellensburg seeks to further exercise its police powers to regulate these public areas within the constraints of the law. Although overnight camping in City parks is prohibited by ECC 2.34.160(J), there is no other camping prohibition on other City property. Moreover, the recent case of *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019) limits the City's ability to criminally cite individuals for camping on public property if there is not any or sufficient homeless shelter bed space available at the time enforcement is sought. However, the Court also recognized that cities could identify certain areas where no public camping could occur so long as there was not a total camping ban on all public property.

Previous Council Action:

Council held a study session on June 6, 2022 to discuss problems associated with the City's homeless population and camping on public property. At a joint study session held on December 9, 2021, the Kittitas County Board of County Commissions (BOCC) and City Council created an Ad Hoc Committee on Homelessness, with an update provided at their subsequent June 16, 2022 joint study session.

Analysis:

Proposed Ordinance 4895 would prohibit camping and storage of personal property on all City-owned property. Removal of unauthorized encampments and personal property would require posted notice before removal, and storage of personal property for at least sixty (60) days. However, consistent with the *Boise* decision, enforcement of the ordinance is suspended if there is no available overnight shelter space available for the individual violating the ordinance. Nonetheless, and also consistent with the *Boise* decision, the ordinance would enforcement at certain locations, including City Hall, the Library, Unity Park, Friendship Park, and various Public Works & Utilities properties. In addition, the camping regulations could be fully enforced to the extent there is space available at the Cold Weather Shelter. It is anticipated, however, that enforcement action will only be taken in cases where other criminal or unsafe activities are occurring until a year-round sleep center is established.

The proposal to support a year-round overnight sleep center has been proposed to Kittitas County, and the County's

Homelessness and Affordable Housing Committee voted to support the proposal at its July 29, 2022 meeting. Staff anticipates the proposal will be on the Board of County Commissioners' agenda for consideration in September. If the proposal moves forward with funding and construction, the City would be able to fully enforce the camping regulations for all City-owned property.

Financial Impact:

There is no direct fiscal impact resulting from the ordinance. Staff anticipates bringing forward a separate funding request for the overnight sleep center at a later date.

Attachments:

[4895 - Ordinance Regulating Camping on Public Property](#)

ORDINANCE NO. 4895

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO CAMPING AND CREATING A NEW CHAPTER TO THE ELLENSBURG CITY CODE ENTITLED “5.70 REGULATING PUBLIC CAMPING.”

WHEREAS, Article XI, section 11 of the Washington State Constitution authorizes the City to make and enforce in its limits all such local police, sanitary and other regulations as are not in conflict with general laws; and

WHEREAS, the City of Ellensburg is a non-charter optional code city as provided in Title 35A RCW and incorporated under the laws of the state of Washington; and

WHEREAS, the City of Ellensburg has a homeless population that lives in its public areas using makeshift and temporary shelters and tents; and

WHEREAS, the City of Ellensburg has experienced public health, safety, and welfare problems that are associated with the homeless population camping on City-owned property; and

WHEREAS, camping without adequate sanitation services, such as sewer, water, and garbage, presents a significant public health and safety concern due to increased risk of spread of disease and potential for citizens contracting illnesses; and

WHEREAS, public property is intended for, and should be, available to the public for its intended purposes, including daily City operations, park recreational use, pedestrian, bicycle and vehicular transportation, and other public uses; and

WHEREAS, the City Council recognizes the importance of working with outside and contracted agencies to create permanent overnight shelter space for the homeless population; and

WHEREAS, the City Council wishes to protect the public health, safety and welfare of its residents and visitors by identifying public areas and rights of way that are not suitable for overnight camping;

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

Section 1. Findings. The City Council hereby finds that the recitals set forth above are hereby adopted as findings for this Ordinance and incorporated herein as such.

Section 2. A new chapter entitled “5.70 Regulating Public Camping” is hereby added to the Ellensburg City Code to read as follows:

Chapter 5.70 REGULATING PUBLIC CAMPING

Sections

- 5.70.010 Purpose.**
- 5.70.020 Definitions.**
- 5.70.030 Unlawful camping.**
- 5.70.040 Storage of personal property in public places.**
- 5.70.050 Removal of unauthorized encampments and individual camps.**
- 5.70.060 Penalty for violations.**
- 5.70.070 Enforcement suspended.**
- 5.70.080 No public duty created.**
- 5.70.090 Severability.**

5.70.010 Purpose.

It is the purpose of this chapter to prevent harm and to promote the public health, safety and general welfare and environment by keeping public streets, sidewalks, parks, and other city-owned and/or city-maintained public property and public rights-of-way within the city readily accessible to the public, and to prevent use of city-owned and/or city-maintained public property for camping purposes or storage of personal property which interferes with the rights of others to use the areas for the purposes for which they were intended.

5.70.020 Definitions.

The following definitions are applicable in this chapter unless the context otherwise requires:

“Camp” or “camping” means to pitch, erect, or occupy camp facilities, or to use camp paraphernalia or both, for the purpose of, or in such a way as will facilitate, taking up temporary residence overnight; or parking a camper, recreational vehicle, trailer, or other vehicle for the purpose of taking up temporary residence overnight.

“Camp facilities” include, but are not limited to, tents, huts, temporary shelters made of any material, campers, recreational vehicles, or trailers.

“Camp paraphernalia” includes but is not limited to tarpaulins, cots, beds, sleeping bags, hammocks and/or cooking facilities and similar equipment.

“City” means the city of Ellensburg.

“Contraband” means any item, material, or substance that is unlawful to produce or possess.

“Litter” shall have the same meaning as used in RCW 70A.200.030(6) and (11) as adopted or may be amended.

“Park or park facility” means any building, structure, equipment, sign, shelter, swimming pool, vegetation, playground, real property, or other physical property owned or controlled by the city for park purposes. Park or park facility includes all associated areas, including but not limited to parking lots for parks.

“Personal property” in addition to its common meaning, means an item that is:

1. Reasonably recognizable as belonging to a person;
2. In its present condition has apparent utility and/or value; and
3. Is not unsanitary.

“Right-of-way” shall have the same meaning as is stated in ECC 15.130.180.

“Solid waste” shall have the same meaning as used in RCW 70A.205.015(22) as currently enacted or may be amended.

“Store” means to put aside or accumulate for use when needed, to put for safekeeping, or to place or leave in a location.

“Trail” means a public path owned, operated, or maintained by the city for the primary purpose of walking, biking or other non-vehicular travel.

“Unauthorized encampment” means two or more camp facilities in an identifiable area which appear to be used for unlawful camping. For purposes of this chapter an identifiable area includes areas where the camp facilities are in sight of each other and/or areas where each camp facility is located within 300 feet of another camp facility.

“Vehicle” means the same as defined in RCW 46.04.670, as currently enacted or hereafter amended.

5.70.030 Unlawful camping.

A. It is unlawful for any person to camp, occupy camp facilities for purposes of habitation, or use camp paraphernalia in the following areas, except as otherwise provided by the Ellensburg City Code or where specifically designated:

1. Any street, alley, sidewalk or right-of-way;
2. Any trail, park, or park facility, except as authorized by the Parks & Recreation Director pursuant to ECC 2.34.160(J);
3. Any publicly owned parking lot or publicly owned area, improved or unimproved; or
4. Any other city-owned or city-maintained property.

B. It is unlawful for any person to occupy a vehicle for the purpose of camping while that vehicle is parked in the following areas, except as otherwise provided by ordinance or as permitted pursuant to ECC 2.34.160(J):

1. Any park;
2. Any street, alley or right-of-way; or
3. Any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.

5.70.040 Unlawful storage of personal property in public places.

A. It is unlawful for any person to store personal property, including camp facilities and camp paraphernalia, in the following city-owned and/or city-maintained areas, except as otherwise provided by the Ellensburg City Code:

1. Any right-of-way;
2. Any trail, park, or park facility;
3. Any publicly owned parking lot or publicly owned area, improved or unimproved; or
4. Any other city-owned or city-maintained property.

B. This section shall not apply to vehicles, including trailers, recreational vehicles, and campers, which are legally parked in rights-of-way, unless otherwise prohibited by law.

5.70.050 Removal of unauthorized encampments and individual camps.

A. The personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and/or solid waste located at an unauthorized encampment may be removed subject to the following provisions:

1. Upon a determination by law enforcement or designated city personnel that an area constitutes an unauthorized encampment or that an individual is engaged in unlawful camping or storage of personal property in public places.
2. Property which presents an immediate and substantial risk of harm. If the unauthorized encampment, unlawful camping, or unlawful storage of personal property results in an immediate and significant risk of harm to any person or impedes pedestrian or vehicular traffic, then police, city staff and/or its contracted agent may immediately remove any personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and solid waste, which shall be stored or disposed in the manner as set forth below in subsection (3)(b) below.
3. Except as stated in subsection (A)(2) above, prior to removing property from an unauthorized encampment or unlawful camp, or removing personal property unlawfully stored on city-owned or city-maintained public property, the following shall occur:
 - a. The city shall post at least a 48-hour advanced notice, which shall include the following:
 - i. The address or location of the unauthorized encampment, unlawful camping, or unlawful storage of personal property;
 - ii. A statement that camping or storage activity is prohibited by ECC 5.70.030 and/or 5.70.040;
 - iii. A statement that any individual continuing to use the area for unlawful camping or storage of personal property may be subject to criminal penalties pursuant to ECC 5.70.060;
 - iv. A statement that any personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and solid waste remaining after the notice period is subject to removal and, as may be applicable, temporary storage by the city.
 - b. At the end of the 48-hour notice period, any personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and solid waste may be removed by city personnel or agents thereof. Furthermore:
 - i. Any personal property that is removed shall be stored by the city for at least sixty (60) days prior to being disposed of;
 - ii. Notice of where personal property removed from the encampment may be claimed shall be posted at the location;

- iii. If the name and contact information for the owner of a particular item of personal property can reasonably be identified, the city shall attempt to contact the identified owner and provide notice that the item has been removed and how to claim the item;
- iv. Any contraband located at the area shall be seized and properly disposed or retained as evidence of criminal activity; and
- v. Any litter or solid waste found at the area shall be properly disposed of.

5.70.060 Penalty for violations.

Violation of any of the provisions of this chapter is a misdemeanor and shall be punished upon conviction of such violation by a fine of not more than \$1,000 or by confinement not to exceed 90 days, or by both such fine and confinement. Each and every day, or portion thereof, that the violation continues shall constitute a separate violation.

5.70.070 Enforcement suspended.

A. Except as otherwise provided in this section, there shall be no enforcement of criminal provisions of this chapter when there is no available overnight shelter space or beds available in homeless shelters located in the city. The space is considered available if the individual could not use the space due to voluntary actions such as intoxication, drug use or unruly behavior.

B. Notwithstanding subsection (A) above, all provisions of this chapter shall continue to apply to camping, storage of personal property, including camp facilities and camp paraphernalia, and unauthorized encampments at the following:

1. The following real property owned by the city:

- a. The Ellensburg City Hall (Kittitas County parcel number 197433);
- b. The City Library and Hal Holmes Community Center (Kittitas County parcel number 107033);
- c. Unity Park (Kittitas County Parcel Number 146933) and Friendship Park (Kittitas County Parcel Number 066933);
- d. The Public Works & Utility Department's Shop and Warehouse Facility (Kittitas County parcel numbers 326833 and 518633); and
- e. The Wastewater Treatment Facility and associated property adjacent to or in proximity of the facility and/or the Yakima River (Kittitas County parcel numbers 168733, 188733, 178733, 228733, 698733, 598733, 028733, 258733, 17163).

2. Park facilities, including but not limited to all buildings, structures, equipment, shelters, swimming pools, water recreation facilities, playgrounds, bathrooms, courts or designated sports fields available for reservation; and

3. Public rights-of-way and city-owned real property within 30 feet of such rights-of-way.

C. Nothing in this chapter shall preclude enforcement of any other federal, state, or local laws, including enforcement of Chapter 2.34 ECC.

5.70.080 No public duty created.

A. It is expressly the purpose of this chapter to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons or individual who will or should be especially protected or benefited by the terms of this chapter.

B. Nothing contained in this chapter is intended nor shall be construed to create or form the basis of any liability on the part of the city or its officers, employees, or agents for any injury or damage resulting from any action or inaction on the part of the city related in any manner to the enforcement of this chapter by its officers, employees, or agents.

5.70.090 Severability.

If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of the chapter as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

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 ____ day of September, 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. 4895 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4895 was published as required by law.

BETH LEADER



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: August 15, 2022

Item Title/Agenda Subject: Memorandum of Understanding (MOU) with OPEIU Local 8, Amending Job Title, Wage, and Department for the GIS Coordinator Position

Submitted by: Lisa Young Human Resources

Recommended Action or Motion: Authorize the City Manager to sign the MOU, or a substantially similar document, once formally approved by the Union.

Background/Summary: The City has two GIS positions - a GIS Coordinator and a GIS Specialist. These positions have resided in IT; however, the majority of funding came from the Public Works & Utilities budget as the primary user of GIS technology. The GIS Coordinator position was vacated earlier this year and has not yet been filled, which presented an opportunity to assess the needs of the Public Works & Utilities Department, IT, and the City as a whole.

Previous Council Action: N/A

Analysis: In preparation for recruitment, the Human Resources Department reviews the job description and engages in conversation with the hiring manager to ensure the City is covering the current needs of the department and presenting the most accurate information to the candidates. This process led to many conversations between HR, City Administration, and the leadership of Public Works & Utilities and IT. After extensive review, it was determined there could be improved communication and workflow efficiencies by moving the GIS positions to the Public Works & Utilities department, which already funds a majority of these positions.

With this change, it was also determined that the GIS Specialist would likely benefit from the direct supervision of someone in their same field of expertise; therefore, the GIS Coordinator will assume supervisory responsibility of the GIS Specialist, necessitating a title change to GIS Supervisor, and an amended pay rate.

These changes were presented to the Union and agreed to by email, but staff is still awaiting their signature on the MOU.

Financial Impact:

The GIS Coordinator monthly rate of pay for 2022 is \$6,415. With the reclassification to GIS Supervisor, the new pay rate for 2022 will be \$7,057 (a 10% increase). The position will be posted, filled, and paid per Article 3 of the Collective Bargaining Agreement (CBA). If the new employee starts at 80% of the current pay rate as provide in the Collective Bargaining Agreement, it will actually result in a base-rate savings of \$769 per month for the remainder of the year in addition to the vacancy savings of \$6,415 per month starting in May (excluding benefits and other payroll costs).

Attachments:

[MOU - OPEIU City - Reclass GIS Supervisor](#)

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE CITY OF ELLENSBURG
AND
OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 8

This memorandum of understanding (MOU) is entered into by and between the City of Ellensburg ("Employer") and the Office and Professional Employees International Union, Local 8 ("Union"), with regard to the Collective Bargaining Agreement (CBA) between the parties for the period of January 1, 2020 through December 31, 2022.

WHEREAS, the City of Ellensburg has had two GIS position in the IT Department - a GIS Specialist and a GIS Coordinator; and

WHEREAS, the majority of funding for these positions comes from the Public Works & Utilities Department as the primary user of GIS services; and

WHEREAS, the recent vacancy in the GIS Coordinator position provided an opportunity to assess efficiencies and workflows for Public Works & Utilities, IT, and the City as a whole, leading to extensive discussions about where the GIS positions should reside; and

WHEREAS, it was agreed by all parties that moving these positions to the Public Works & Utilities department would improve communication and efficiency, which will better serve the needs of the GIS employees, the Department, and the City; and

WHEREAS, it was also determined that the GIS Specialist position would likely benefit from the direct supervision of someone in their same field of expertise; therefore the parties agree that the GIS Coordinator will assume supervisory duties, necessitating a title change to GIS Supervisor, and an amended pay scale;

NOW, THEREFORE, the Union and Employer agree as follows:

- 1) The position title and monthly wage shall be amended for 2022 as follows:

Position Title	2022 Wage
GIS Coordinator	\$6,415
GIS Supervisor	\$7,057

- 2) The position is currently vacant, and upon approval of this MOU it will be posted, filled, and paid per Article 3 – Hiring, Promotions, and Downgrades – of the Collective Bargaining Agreement.
- 3) This MOU shall expire on December 31, 2022.

- 4) Nothing in this MOU shall be construed as modifying any other term of the CBA between the parties, except as specifically provided in this MOU. This agreement is entered into pursuant to Chapter 41.56 RCW.

OPEIU Local 8

The City of Ellensburg

Angie Wedekind, Union Representative

Heidi Behrends Cerniwey, City Manager

Date

Date



MANAGER'S REPORT

DATE: August 15, 2022
To: Ellensburg City Council
FROM: Terry Weiner, Assistant City Manager/City Attorney

1. Waste Management 2022 Inflation Increase and Disposal Adjustment.

Waste Management has notified the City that the 2022 inflation increase for services is 7.568%. This increase is allowed in section 3.3.1 "Annual Rate Adjustment" of the Waste Management agreement with the City. The increase is based on the Consumer Price Index for the period for the 12-month period ending the December prior to adjustment date (December 2021). The rate increase will be in effect beginning October 1, 2022.

2. Gas Division is American Public Gas Association Safety Contest Winner.

The City Gas Division is an American Public Gas Association (APGA) Safety Contest winner for the 2021 calendar year. Each year, utilities submit applications for the contest and winners are determined by the lowest number of recordable injuries per man hours worked. The City of Ellensburg Gas Division has now been a winner for three consecutive years. The APGA recognizes each winner with a certificate, announcement at the Annual Conference, and on APGA's social media platforms.