

COUNCIL AGENDA

Monday, October 17, 2022



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AMERICANS WITH DISABILITIES ACT

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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_OMAA4oVbQqO4_9cZVOJFgw - 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
Monday, October 17, 2022
7:00 PM - Regular Meeting**

Pledge of Allegiance

1. Call to Order and Roll Call

2. Proclamations

3. Awards and Recognitions

3.A Outstanding Wastewater Treatment Plant 2021 Award [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 October 3, 2022 Regular Meeting
10-3-22 Regular Meeting | 7 |
| 5.B Approve Minutes of October 3, 2022 Study Session
10-3-22 Study Session | 11 |
| 5.C Acknowledge Minutes of Boards and Commissions
DEI Commission Retreat 8-12-22
DEI Commission 9-13-22
Landmarks & Design Commission 9-7-22
Lodging Tax Committee 9-7-22
Sr Advisory Committee 7-21-22 | 12 |
| 5.D Gateway 1 Amendment with Ecology to Extend the Agreement Date to 12/31/2023 and Provide Additional Funding Due to Construction Bid Overrun
Ellensburg Ecology Amendment for Signature | 24 |
| 5.E Consultant Agreement - Brick Road Improvements Design
Ellensburg Brick Rd Agreement | 31 |

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5.H	Project Acceptance Bid Call No. 2020-35 - Helena Avenue Complete Streets Improvements Project	104
5.I	Official Newspaper Contract Bid Award	106
5.J	Department of Commerce Capital Agreement with City of Ellensburg through America Rescue Plan Act State and Local Fiscal Recovery Funds - Connecting Housing to Infrastructure Program (CHIP) CHIP Ellensburg Stuart Meadows Contract	107
5.K	Amendment 1 to Interlocal Cooperation Agreement with NoaNet Interlocal Agreement Ellensburg Amendment 1 Exhibit D NoaNet-City Interlocal Agreement (12-20-21)	138
5.L	Approve University Way Banner Request by Air Force ROTC for November 7 - 13, 2022 Air Force ROTC Banner Request	176
5.M	Approve October 17, 2022 Voucher Listing 10-17-22 Voucher Listing	177
6.	Petitions, Protests, and Communications	
7.	Citizen Comment on Non-agenda Issues	
8.	Business Requiring Public Hearings	
8.A	Public Hearing (Legislative) to consider first reading of Ordinance 4898 (First Reading), for a new Cable Television Franchise Agreement Between the City and Spectrum Pacific West, LLC, an Indirect Subsidiary of Charter Communications, Inc. [Public Comment Opportunity] Ordinance 4898 (First Reading)-Charter Cable Television Franchise Agreement City of Ellensburg - Charter Final Franchise Agreement	178
9.	Introduction and Adoption of Ordinances and Resolutions	
9.A	Ordinance 4897 (Second Reading and Adoption) for Electric, Natural Gas, Stormwater, Sewer, and Water Utility Rates and Plant Investment Fees 2023-2025 [Public Comment Opportunity] Agenda Report Tables 4897-Utility Rate Increase - Second Reading 09.19.2022 Ellensburg Rate Study Presentation 09-19-22 Storm Utility Rate Increase Presentation	213

- 9.B [Resolution 2022-33 to Extend Streatery Permits](#)
[Resolution 2022-33 - Extend Streateries Permits](#) [Public Comment Opportunity] 319
- 9.C [Resolution 2022-34 Authorizing the Acquisition of Real Property \(701 N. Pacific St. Ellensburg, WA\)](#) [Public Comment Opportunity] 323
[Resolution No. 2022-34 - Purchase of 701 N. Pacific](#)
- 9.D [Resolution 2022-35 Amending Previous Resolutions 2021-36 and 2022-18 Regarding the Non-Union Pay Plan for Fiscal Year 2022](#) [Public Comment Opportunity] 325
[Resolution 2022-35 - Amending Pay Plan Resolutions for 2022 Fiscal Year](#)

10. Unfinished Business

11. New Business

- 11.A [Professional Consultant Services Agreement for Unity Park Design and Documentation Services](#) [Public Comment Opportunity] 331
[Professional Services Consultant Contract for Design and Documentation Services Unity Park Scope-Fee](#)
- 11.B [Sustainability & Energy Plan Consultant's Scope, Schedule, and Agreement City of Ellensburg - McKinstry Professional Services Agreement](#) [Public Comment Opportunity] 352

12. Miscellaneous

- 12.A Manager's Report [No Public Comment] 376
[10-17-22 Managers Report](#)
- 12.B Councilmembers' Reports [No Public Comment]

13. Executive Session

14. Adjournment

Next Ord. 4899
Next Res. 2022-36



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of City Council, Regular Meeting

October 3, 2022

7:00 PM

Council Chambers 501 North Anderson Street

Ellensburg, WA 98926

And remotely via Zoom

Pledge of Allegiance

The Pledge of Allegiance was led by Councilmember Elliott

1. Call to Order and Roll Call

Roll Call Present: Rich Elliott, Nancy Goodloe, Nancy Lillquist, David Miller, Monica Miller, Adam Winn

Absent: Sarah Beauchamp

Others present in person: City Manager Behrends Cerniwey, City Attorney Weiner, City Clerk Leader, Executive Assistant LaChappelle-Mathis, HR Director Young, Community Development Director Ayling, Finance Director Pascoe, Public Works & Utilities Director Lyyski, Power & Gas Manager Stanavich, Engineering Manager Mayo, Stormwater Manager Morrow and approximately eight members of the public

Others present remotely via Zoom: approximately four members of the public

Councilmember David Miller moved to Approve an excused absence for Councilmember Beauchamp. **Motion Approved 6-0.**

2. Proclamations

2.A. National Disability Employment Awareness Month Proclamation

Councilmember Goodloe read the proclamation

Councilmember Elliott moved to Approve the Mayor's signature on the proclamation.

Motion Approved 6-0.

2.B. Community Planning Month Proclamation

Councilmember David Miller read the proclamation.

Councilmember Goodloe moved to Approve the Mayor's signature on the proclamation.

Motion Approved 6-0.

3. Awards and Recognitions

The City Manager introduced Executive Assistant, Cyndi LaChappelle-Mathis

4. Approval of Agenda

Councilmember Elliott moved to approve the Agenda as presented. **Motion 6-0.**

5. Consent Agenda

5.A. Approve Minutes of September 19, 2022 Regular Meeting

5.B. Approve Minutes of September 12, 2022 Special Meeting

5.C. Acknowledge Minutes of Boards and Commissions

5.D. Approval of Purchase of Road Deicing Material

5.E. Consultant Agreement – Secondary Clarifiers Rebuild Design

5.F. Approve Voucher Listing for October 3, 2022

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

6. Petitions, Protests, and Communications

6.A. Board and Commission Introductions and Consideration of Appointments
Jill Scheffer and Jeff Snedeker introduced themselves and expressed their interest in serving on the Arts Commission.

Delano Palmer, present remotely, introduced himself and expressed his interest in serving on the Planning Commission

Councilmember Elliott moved to Approve appointment of applicants Jill Scheffer and Jeff Snedeker to the Arts Commission and Delano Palmer to the Planning Commission.
Motion Approved 6-0.

6.B. KEEN Update
Carlyn Saunders, Adrienne Pinsoneault and KEEN board members were present and reviewed a presentation on the program.

7. Citizen Comment on Non-agenda Issues

Becky Pearson, 1115 E 3rd Ave, present remotely, read a letter in honor of Larry Lowther

8. Business Requiring Public Hearings

8.A. Public Hearing (Legislative) - 2023 Proposed Revenue Sources Including Property Tax

The Mayor opened the public hearing. Finance Director, Jerica Pascoe, presented information in the staff report.

There were no questions or comments from the public and Council asked questions of staff. The Mayor closed the public hearing. No action was required.

9. Introduction and Adoption of Ordinances and Resolutions

9.A. Ordinance 4897 (First Reading) for Electric, Natural Gas, Stormwater, Sewer and Water Utility Rates and Plant Investment Fees 2023-2025

Public Works & Utilities Director, Ryan Lyyski, presented information in the staff report. Sergey Tarasov, with FCS Group, was also present remotely to answer questions.

There were no questions or comments from the public. Council asked questions of staff.

Councilmember Elliott moved to Approve First Reading of Ordinance 4897. **Motion Approved 6-0.**

Councilmember Elliott moved to Approve authorizing staff to amend Central Washington University's Interruptible Natural Gas contract rate (G300) to replace the current rate of \$17,832, as listed in the Agenda. **Motion Approved 6-0.**

10. Unfinished Business

11. New Business

12. Miscellaneous

12.A. Manager's Report

The City Manager reviewed the report. It was also reported that a public hearing was set for the October 17, 2022 meeting to consider renewal of a cable franchise with Charter Communications.

There were two letters of support on the dais for HopeSource and Central Transit. Approval of the Mayor's signature was requested on both letters.

Councilmember David Miller moved to Approve authorizing the Mayor's signature on the letters of support for HopeSource and Central Transit. **Motion Approved 6-0.**

An executive session was required per RCW 42.30.140(4)(a) and would last approximately ten minutes.

12.B. Councilmembers' Reports

- Councilmember Elliott reported on KCCOG and attended a EBDA/Centerfuse meeting
- Councilmember Goodloe attended the KCCOG, Council Funded Grant Subcommittee meeting, Habitat groundbreaking, Utility Advisory Committee, employee appreciation BBQ and the Ida Nason Aronica elementary dedication. She also reported on the DEI committee
- Councilmember David Miller attended the Council Funded Grant subcommittee and Arts Commission meetings, employee appreciation BBQ, Ida Nason Aronica dedication, Habitat groundbreaking and Coffee with Council
- Councilmember Monica Miller toured Public Works and Utilities facilities, and was invited to join the Creative Economy Recovery Task Force
- Councilmember Winn attended the Law and Justice Council and Council Funding Grant subcommittee meetings
- Mayor Lillquist attended the Yakima Basin Fish and Wildlife Recovery Board meeting, toured the Teanaway Community Forest with Checkerboard Partnership and attended the Addiction Panel event

13. Executive Session

Per RCW 42.30.140(4)(a), To review collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

Council adjourned to Executive Session at 8:19 pm. It was anticipated to last ten minutes and no action would be taken.

Council reconvened at 8:29 pm.

14. Adjournment

The meeting adjourned at 8:29 pm

Mayor

ATTEST:

City Clerk



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of City Council, Study Session

October 3, 2022

6:00 PM

Council Chambers 501 North Anderson Street

Ellensburg, WA 98926

And remotely via Zoom

Councilmembers present: Rich Elliott, Nancy Goodloe, Nancy Lillquist, David Miller, Monica Miller, Adam Winn

Councilmember absent: Sarah Beauchamp

Others present in person: City Manager Behrends Cerniwey, City Attorney Weiner, City Clerk Leader, Executive Assistant LaChappelle-Mathis, Community Development Director Ayling, Senior Planner Henderson and Amy McGuffin and Matt Anderson with Kittitas County Chamber of Commerce

Others present remotely via Zoom: Parks & Recreation Director Case

1. Tourism Strategic Plan 2020-2024

The City Manager reviewed information and introduced Amy McGuffin and Matt Anderson with the Chamber of Commerce who made a presentation concerning the Strategic Plan.

Council asked questions of Chamber of Commerce staff. This item was for information only.

2. Streeteries Policy Update

The City Manager reviewed information and requested guidance from Council. Councilmembers commented and asked questions regarding guidelines and grandfathering to the guidelines for existing streateries.

Adjournment

The meeting adjourned at 6:53 pm

Mayor

ATTEST:

City Clerk

CITY OF ELLENSBURG

**Minutes of Diversity, Equity & Inclusion
Commission Meeting Retreat**

Date of Meeting

August 12, 2022

Time of Meeting

8:00 AM - 1:00 PM

Place of Meeting

Ellensburg, WA 98926

And remotely via Zoom

Present: Kandee Cleary, Tylene Carnell, Teresa Divine, Daniel Amos, Mayra Colazo, and Nancy Goodloe (Chair)

Absent: Alex Mandujano (excused)

Also present: Nicole Klauss, Public Information Officer (Recording Secretary); and Phil Backlund, retreat facilitator.

Two motions were approved by the group regarding the agenda for the Commission's monthly meetings. These motions will most likely need formal approval at the next regular commission meeting.

Tylene Carnell moved and Kandee Cleary seconded a motion that the Commission adopt the following as its meeting agenda, effective with September 1, 2022.

1. ROLL CALL
2. APPROVAL OF AGENDA
3. APPROVAL OF MINUTES
4. PREVIOUS MEETING MOTIONS AND TO-DO LIST REVIEW
5. SUBCOMMITTEE REPORTS
6. COMMISSION MEMBER REPORTS
7. NEW BUSINESS
8. STAFF REPORT
9. PUBLIC COMMENT
10. PREVIEW NEXT MEETING

Daniel Amos moved and Kandee Cleary seconded a motion that staff keep a cumulative list of approved motions together with any due date and people assigned to the action. Incomplete actions will remain on the agenda review list until completed. Completed actions will be moved to a Completed Action List.

The Commission approved the following goals.

1. Core focus (what does this group no one else does?)
 - Collaborate to advance DEI issues

- Promote belonging and inclusion
 - Educate around DEI issues through an equity lens
 - Facilitate community conversations around lived experiences
 - Know where the gaps are
 - Bring broad view of community
 - Assess and monitor pulse of community
 - Awareness of DEI issues
 - Hold mirror to community
2. Ten year (infinity) goals
- Engagement by diverse groups of people and different activities
 - All people in Ellensburg feel represented in all City spaces
 - More diverse community reflection in places where decisions are made
 - All city boards and commissions have accessibility component
 - Increased accessibility in community
 - Community businesses have accessibility and meet ADA standards
 - Commission becomes size to reflect diversity in community
 - City commissions have liaisons to DEI Commission
 - Full-time City staff member working on DEI
 - Workshops for small businesses for business owners of color
 - Full spectrum community center for inexpensive activities
 - A safe community
 - Add blue light safety stations throughout community
 - A more diverse police
 - More diverse shopping/businesses
 - A broader range of community celebrations, concerts, art, and other cultural events
 - Increased community participation/engagement in cultural events
 - Pride event every June
 - Juneteenth celebration
 - A method to report bias/hate crime incidents
 - Developing an effective communication plan to support commission activities
 - Day of Action is well-attended
 - Businesses will acknowledge Black History Month downtown
3. Three year goals
- DEI commissioners should visit each City commission to build relationships
 - Plan Juneteenth event
 - Full-time staff support/event planning for DEI Commission
 - Black History Month celebration by the City
 - City will recognize Trans Day of Visibility
4. One year goals
- Commissioner Carnell continue acting as liaison to Pride 2023 Committee
 - Commission web page is up to date, informative, and accessible

- Commission will establish relationship with City and CWU libraries to host discussions about cultural issues
 - We can include community nonprofits in proclamations as applicable
 - Develop stronger way to communicate internally
 - Collaborate on Day of Action event
 - Cinco de Mayo celebration
 - Ask Council to expand commission membership
5. Ninety day goals and to-do list
- Daniel will finalize first collaboration with CWU and City library about the Japanese American WWII heroes event
 - Nicole needs to set up time for two commissioners to go to another commission meeting
 - Kandee will develop talking points to share when meeting with other commission members
 - Tylenne will finalize sponsorship of Pride 2023
 - Nancy will collaborate with ESD and offer first community conversation event/World Cafe
 - Teresa and Mayra will set first meeting to plan participation in 2023 farmers market
 - Kandee and Nicole will determine what to communicate and what methods of distribution to use
 - Nancy will review subcommittees and individual responsibilities to commission
 - Nancy will discuss what to do with remaining funding for 2022 or if we want to request to carry over
 - Nancy will request city manager include permanent line item in budget for DEI Commission
 - Nicole will draft first annual report to City Council
 - Teresa will meet with CWU Day of Action Committee
 - Mayra will talk to contacts about plans for Cinco de Mayo
 - Nicole will talk to Heidi about more in-depth minutes

Nicole Klauss

Drafted: 9/15/22

Approved: 10/11/22

CITY OF ELLENSBURG

**Minutes of Diversity, Equity & Inclusion
Commission Meeting**

Date of Meeting

September 13, 2022

Time of Meeting

3:00 PM

Place of Meeting

Council Chambers, 501 North Anderson St.

Ellensburg, WA 98926

And remotely via Zoom

1. Call to Order and Roll Call

The Chair called the meeting to order at 3:03 p.m.

Roll Call Present: Kandee Cleary, Teresa Divine, Daniel Amos, Alex Mandujano, Mayra Colazo, and Nancy Goodloe (Chair)

Absent: Tylene Carnell (excused)

Also present: Nicole Klauss, Public Information Officer (Recording Secretary); Phil Backlund, consultant for DEI Commission Retreat; and Heidi Behrends Cerniwey, City Manager.

Commissioner Cleary moved to approve an excused absence for Commissioner Carnell for August 9, 2022. Commissioner Amos seconded the motion. There was no discussion. **Motion Approved 5-0.**

2. Approval of Agenda

Commissioner Cleary moved to approve the amended agenda. Commissioner Divine seconded the motion. The discussion was to remove the library proposal from the agenda and add a budget item under new business. **Motion Approved 5-0.**

3. Approval of Minutes from August 9, 2022 Meeting

Commissioner Divine moved to approve the August 9, 2022 minutes. Commissioner Colazo seconded the motion. There was no discussion. **Motion Approved 5-0.**

4. Previous Meeting Motions And To-Do List Review

Daniel will finalize first collaboration with CWU and City library about the Japanese American WWII heroes event. **Not complete – Daniel contacted Hope Amason with CWU Museum and hasn't heard further details.**

Kandee will develop talking points to share when meeting with other commissions' members. **Not complete. Kandee will share the draft with Nicole to share with the commission. This will be on the agenda for the next meeting to discuss and finalize.**

Kandee and Nicole will determine what to communicate and what methods of distribution to use. **Not complete. They will meet ahead of the October commission meeting.**

Mayra will talk to contacts about plans for Cinco de Mayo. **Not complete. Mayra will reach out to church and CWU contacts for SLICE (Amber Hoefer) and the DEC to talk about collaborations.**

Nancy will collaborate with ESD and offer first community conversation event/World Café. **Not complete. Nancy will meet with Jinger Haberer this week.**

Nancy will review subcommittees and individual responsibilities to commission. **Not complete. Will discuss further in agenda.**

Nancy will discuss what to do with remaining funding for 2022 or if we want to request to carry over. **Not complete. Will discuss further in agenda. Cannot carry over funds to 2023.**

Nancy will request city manager include permanent line item in budget for DEI Commission. **Complete.**

Nicole will draft first annual report to City Council. **Not complete. Nicole will bring a draft to the October meeting for approval.**

Nicole needs to set up time for two commissioners to go to another commission meeting. **Not complete. Nicole will set up a schedule by the October meeting with commission visits starting in 2023.**

Nicole will talk to Heidi about more in-depth minutes. **Complete. Heidi approved detailed minutes approved for Diversity, Equity & Inclusion Commission.**

Teresa and Mayra will set first meeting to plan participation in 2023 farmers market. **Not complete. Nicole to forward contact info for farmers market manager to Teresa.**

Teresa will meet with CWU Day of Action Committee. **Not complete. There has been turnover so Teresa needs to find the new key person for this event at CWU. Looks like it will be a week of action on campus and day of action downtown.**

Tylene will finalize sponsorship of Pride 2023. **Not complete. The DEI Commission will be sponsoring the event. The theme for Pride 2023 is Unity In Community and will kick off with a parade and festival the first weekend in June. Nicole will follow up with Hal Holmes to see if they can sponsor a meeting space for the Pride planning committee.**

5. Subcommittee Reports

Commissioner Carnell moved to eliminate the event subcommittee and keep the three standing committees – policy, proclamations, and listening tour. Commissioner Mandujano seconded the motion. During discussion Chair Goodloe said the work of the event subcommittee is now being done through the to-do list. The commission talked about whether to keep the policy committee or not, and decided to keep it because policy helps embed equity into institutions. **Motion Approved 5-0.**

Commissioner Amos moved to continue the work of the listening tour subcommittee and not wait until January to start them back up again. Commissioner Mandujano seconded the motion. During discussion the commission talked about the importance of continuing to hear voices. **Motion Approved 4-1.**

Commissioner Amos moved for the listening tour subcommittee meet before the October commission meeting to discuss the listening tour structure with timelines, groups to talk with, and goals. Commissioner Mandujano seconded the motion. Discussion included not being ready yet to develop a formal reporting format and Commissioner Mandujano will join the subcommittee. **Motion Approved 5-0.**

6. Commission Member Reports

Commissioner Colazo reported Central Washington Disability Resources will be holding a march to acknowledge Disability Awareness Month on Monday, October 3rd from 1-3 p.m. Colazo will forward the information to Klauss to share with the commission.

7. New Business

Commissioner Goodloe moved to set aside \$2,500 of the remaining DEI Commission budget to support the Ellensburg School District partnership to have a community conversation/World Café. Commissioner Amos seconded the motion. During discussion, Goodloe said the funds would be used to support the facilitator or refreshments. Goodloe will meet with ESD Superintendent Jinger Haberer on September 14 to discuss the event, tentatively set for November. **Motion Approved 5-0.**

Commissioner Cleary moved to approve the National Disability Employment Awareness Month Proclamation and send it to City Council. Commissioner Divine seconded the motion. Discussion was that everyone was that it was well-written. **Motion Approved 5-0.**

Commissioner Goodloe moved to bring the Native American Heritage Month Proclamation to the October meeting for the commission to approve. Commissioner Cleary seconded the motion. There was no discussion. **Motion Approved 5-0.**

Commissioner Amos moved to approve adoption of the new meeting agenda format as recommended by the facilitator at the DEI Commission's August retreat. Commissioner Mandujano seconded the motion. **Motion Approved 5-0.**

Commissioner Cleary moved to add a National Disability Awareness Month Proclamation to the City Council agenda for the October 3 meeting. Commissioner Mandujano seconded the motion. Discussion was that Commissioner Colazo will work on the proclamation with Commissioner Cleary and Chair Goodloe with the deadline of Thursday, September 22. **Motion Approved 5-0.**

8. Staff Report

Klauss said the City Council selected Sarah Beauchamp as the new Councilmember.

9. Public Comment

Phil Backlund, the facilitator for the DEI Commission's August retreat, commented that the commission did a good job using the new agenda format.

10. Preview Next Meeting

Klauss reviewed items that will be on the next agenda:

- Approving the Native American Heritage Month proclamation
- Approving the DEI Annual Report
- Finalize talking points to use when meeting with other commissions

Meeting adjourned at 3:56 p.m.

Nicole Klauss

Drafted: 9/15/22

Approved: 10/11/22



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of Landmarks & Design, Regular Meeting

September 7, 2022

5:45 PM

Council Chambers 501 North Anderson Street

Ellensburg, WA 98926

And remotely via Zoom

1. Call to Order and Roll Call

Roll Call Present- In Person: Darren Reid

Roll Call Present-Via Zoom: Chair Amy McCoy, Dorothy Stanley, Fred Redmon

Absent: Marty Blackson, Zane Kayner

Also present- In Person: Stacey Henderson, Community Development Planner, John & Linda Graf, and Council Liaison Monica Miller

2. Approval of Agenda

Commissioner Stanley moved to approve the agenda. **Motion Approved 5-0.**

3. Approval of the Minutes

Approval of Minutes from the August 16, 2022, LDC meeting.

Commissioner Stanley moved to approve the minutes. **Motion Approved 5-0.**

4. New Business

- A. Public Hearing for consideration of an owner-initiated request to relist their home and barn at 109 East 10th Ave as contributing historic structures in the First Railroad Addition Ellensburg Landmarks Historic District.

Public hearing was opened. Planner Henderson presented a staff report stating that the proposal appears to meet the criteria for listing on the local landmarks register based on the information provided by the applicant. Staff recommend the proposal be approved with no conditions. No public comment. Public meeting closed. Findings of fact read. 1. Per ECC Sections 15.280.090 and 15.530.020, the LDC has jurisdiction to review this project. 2. Per ECC Section 15.280.080 (A), the house addressed as 109 E. 10th Ave. Ellensburg, WA 98926, Parcel ID #083434, meets the following criteria for inclusion in the Ellensburg Landmarks Register: 3) Embodies the distinctive visual characteristics of an architectural type [**Second Empire Vernacular**], period, style, or method of construction. Commissioner Reid made a motion to approve the request for relisting of this house and barn as contributing

structures in the First Railroad Addition Landmarks Historic District be approved, with no conditions. **Motion approved 5-0.**

5. Old Business

A. Final update and review of proposed streatory design guidelines

The subcommittee reviewed the draft design guidelines. The intention of the draft guidelines as proposed, is that these structures are temporary in nature, and do not detract from the historic character of the district. Draft recommendations were presented regarding application, submittals, and design guidelines. Commissioner Redmon made a motion to approve the draft streatory design guidelines as a recommendation to be sent to City Council. **Motion Approved 5-0.**

6. Citizen Comment

None.

7. Staff Update/Discussion Items

A. September 13- CLG First Railroad Survey- Update

B. September 20- LDC Meeting

D. Revitalize WA- October 19-21

8. Commission Representative Update

A. EDA Update

Buskers in the Burg will be held in two weeks. EDA is working on Fundraising. Collaboration with other entities on events is a focus. The new space on third has had a lot of foot traffic for local restaurants in the area. A new tourism video is in the works. EDA wants to be part of mural restoration.

9. Adjournment

Chair McCoy adjourned the meeting at 6:35 p.m.



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of Lodging Tax Advisory Committee, Regular Meeting

September 7, 2022

2:00 PM

Council Conference Room 501 North Anderson Street

Ellensburg, WA 98926

And remotely via Zoom

1. Call to Order and Roll Call

Roll Call Present: Adam Winn, Sarah Beauchamp, Steve Townsend (remotely) and Lacie Dawson (remotely)

Absent: Marie Smith

Also present in person: Matt Anderson, Director of Tourism and Beth Leader, City Clerk

2. Minutes of the August 3, 2022 Meeting

Lacie Dawson moved to approve the minutes as written. **Motion Approved 4-0.**

3. Correspondence and Public Comment. None

4. Unfinished Business

4.A. Budget/Financials Review

Reviewed and acknowledged.

4.B. Tourism Report

Matt reported on events including: Krusin' Kittitas Car show, Lemonade Day, Hoedown in the Downtown, Bite of the Burg, Roslyn Mountain Ale Festival and 100-year Rodeo Celebration coming up in 2023.

5. New Business

5.A. Presentation on Consolidated Lodging Tax Application Scoring

Matt reviewed the process for reviewing and scoring applications and answered questions relating to the process. It was asked when the City's scores are due to the County and Beth offered to get that information to the committee. Adam, Sarah, and Steve volunteered to serve on the Consolidated Committee.

The next meeting is scheduled for October 5, 2022.

With no further business, the meeting was adjourned at 2:44 pm.

Respectfully Submitted,

Beth Leader

Drafted: 9/12/2022

Approved: 10/04/2022



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of Senior Citizens Advisory Committee

July 12, 2022

1:00 PM

City Hall Council Conference Room and Zoom

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

1. CALL TO ORDER

Called the meeting to order at 1:05 pm.

2. ROLL CALL

All present

3. APPROVAL OF MINUTES

3.A. May 2022 Minutes

Councilmember Edward Bracken moved to approve. **Motion Approved 5-0.**

3.B. June 2022 Minutes

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

4. CITIZEN COMMENT ON NON-AGENDA ITEMS

None

5. OLD BUSINESS

Mildred asked for an update on the security cameras. Katelyn explained that the indoor camera order was cancelled by the supplier and the outdoor cameras are still on backorder.

6. NEW BUSINESS

- Senior Citizen Advisory Commission Nomination
 - Chair
 - Vice Chair

Ed Sendelbach nominated for Chair.

Edd Bracken nominated for Vice Chair.

No other nominations.

Positions begin next meeting Ed Sendelbach is Chair and Edd Bracken is Vice Chair.

7. COMMISSION MEMBERS REPORTS/OTHER BUSINESS

Ed Sendelbach commented about the City Council Study Session and learning about Roberts Rules.

Marcia mentioned that for Senior Lounge next year we should do something special since it will be the 100th year for rodeo.

7.A. June 2022 AAC Budget

8. STAFF REPORTS

- June Daily Check In's: 571
- June New/Renew Users: 22

Next meeting is Tuesday, October 11, 2022

Senior Lounge will be Labor Day weekend. Katelyn encourages everyone to volunteer during the lounge. Shifts are in two hour increments and each person can have up to two shifts. Sign-ups can be done at the Adult Activity Center.

Katelyn encourages the Commission to start using their City emails because information and materials will be provided to that email. Please let Katelyn know if assistance is needed with the email. She is willing to help any one who needs help getting into their accounts.

9. ADJOURNMENT

Next Senior Advisory Commission Meeting Tuesday, October 11, 2022 in the City Hall Council Conference Room
Meeting adjourned at 1:28 pm.

Councilmember Edward Bracken moved to approve. **Motion Approved 5-0.**



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Gateway 1 Amendment with Ecology to Extend the Agreement Date to 12/31/2023 and Provide Additional Funding Due to Construction Bid Overrun

Submitted by: Jon Morrow Public Works & Utilities

Recommended Action or Motion: Authorize the Public Works and Utilities Director to sign the amendment and approve the necessary budget adjustments.

Background/Summary: Gateway 1 is currently under construction, but the bid amount for the Ecology funded portion was roughly \$1.3 million over budget due to inflation. Ecology and staff discussed on the phone back in June 2022, and Ecology advised staff to file an amendment to the original agreement to help offset the bid overage and extend the agreement to 2023 because of the one-year delay with communications infrastructure relocation agreements.

Previous Council Action: Council authorized bid award 2022-09 to Rotschy Construction on July 18, 2022.

Analysis: Funds from the amendment will reduce the necessary transfers from the Street and Sidewalk funds, which were initially targeted to pay the bid overage.

Financial Impact: An additional \$522,756.15 in state grant funds will reduce combined transfers from the Street and Sidewalk funds and increase their respective budgeted ending fund balances.

Attachments:
[Ellensburg Ecology Amendment for Signature](#)



AMENDMENT NO. 1
TO AGREEMENT NO. WQC-2019-EllePW-00012
BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
City of Ellensburg

PURPOSE: To amend the above-referenced agreement (AGREEMENT) between the state of Washington Department of Ecology (ECOLOGY) and City of Ellensburg (RECIPIENT) for the Gateway to the City of Ellensburg Stormwater LID Retrofit Project (PROJECT).

This amendment is needed to extend the expiration date of the AGREEMENT from 7/1/2023 to 12/31/2023 and to provide additional funding due to a construction bid overrun. Additional SFAP funds of \$522,756.15 are added through the funding distribution to Task 4 Construction. The new total for Task 4 Construction is \$3,066,302.15. The PROJECT experienced delays as a result of COVID-19 emergency response and due to conflicts with utilities. This time extension will allow the RECIPIENT to complete construction and final close out deliverables. This amendment does not impact the Scope of Work.

IT IS MUTUALLY AGREED that the AGREEMENT is amended as follows:

Total Cost:

Original: 3,546,511.00 Amended: 3,749,377.15

Total Eligible Cost:

Original: 3,226,621.00 Amended: 3,749,377.15

Expiration Date:

Original: 07/01/2023 Amended: 12/31/2023

CHANGES TO THE BUDGET

Funding Distribution EG230019

Funding Title: Construction Bid Overrun

Funding Type: Grant

Funding Effective Date: 07/01/2018

Funding Expiration Date: 12/31/2023

Funding Source:

Title: SFAP - SFY18 (WQC-2019)

Fund: FD
Type: State
Funding Source %: 100%
Description: Environmental Legacy Stewardship Account (ELSA) - State

Approved Indirect Costs Rate: Approved State Indirect: 0%
Recipient Match %: 0%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

Construction Bid Overrun	Task Total
Construction	\$ 522,756.15

Total: \$ 522,756.15

CHANGES TO THE BUDGET

Funding Distribution EG190201

Funding Title: SFAP
Funding Type: Grant
Funding Effective Date: 07/01/2018 Funding Expiration Date: 12/31/2023
Funding Source:

Title: SFAP - SFY18 (WQC-2019)
Fund: FD
Type: State
Funding Source %: 100%
Description: Environmental Legacy Stewardship Account (ELSA) - State

Approved Indirect Costs Rate: Approved State Indirect: 0%
Recipient Match %: 15%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

SFAP	Task Total
Project Administration/Management	\$ 95,458.00
Design Plans and Specs, Environmental Review	\$ 314,795.00

Construction Management	\$ 272,822.00
Construction	\$ 2,543,546.00

Total: \$ 3,226,621.00

CHANGES TO SCOPE OF WORK

Task Number: 4 **Task Cost: \$3,066,302.15**

Task Title: Construction

Task Description:

A. The RECIPIENT will, in accordance with ECOLOGY-accepted plans and specifications, complete construction of bio-infiltration facilities for approximately one mile (both directions) of University Way, porous concrete pedestrian/bicycle paths in both directions and porous concrete bus pull-outs. These BMPs will mitigate runoff from 45 acres of pollution generating impervious surface.

B. Calculate and submit an equivalent new/re-development area for the completed retrofit project(s) using the methods outlined in Section D of the document, "Design Deliverables for Projects with Ecology Funding"

(<http://www.ecy.wa.gov/programs/wq/funding/GrantLoanMgmtDocs/Eng/ECYGrantDeliv050415.pdf>) or other ECOLOGY-approved method.

Task Goal Statement:

Construction of the project in accordance with ECOLOGY-accepted plans and specifications.

Task Expected Outcome:

Constructed project will provide water quality benefits including reductions in total suspended solids (TSS), oil, dissolved copper, dissolved zinc, and total phosphorus and will also reduce flows to the Yakima River through the increased stormwater infiltration.

Recipient Task Coordinator: Jon Morrow

Deliverables

Number	Description	Due Date
4.1	Copy of the contract documents (e.g. bid announcement, bid award and bid tabulations). Upload to EAGL and notify ECOLOGY when upload is complete.	

4.2	Copy of signed and dated construction contract. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.3	Construction progress reports and photos included in progress reports uploaded to EAGL.	
4.4	Completed equivalent new/redevelopment area determination. Upload to EAGL and notify ECOLOGY when upload is complete.	

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
SFAP	15 %	\$ 483,993.15	\$ 2,742,627.85	\$ 3,226,621.00
Construction Bid Overrun	0 %	\$ 0.00	\$ 522,756.15	\$ 522,756.15
Total		\$ 483,993.15	\$ 3,265,384.00	\$ 3,749,377.15

AUTHORIZING SIGNATURES

All other terms and conditions of the original Agreement including any Amendments remain in full force and effect, except as expressly provided by this Amendment.

The signatories to this Amendment represent that they have the authority to execute this Amendment and bind their respective organizations to this Amendment.

This amendment will be effective 07/28/2022.

IN WITNESS WHEREOF: the parties hereto, having read this Amendment in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State
Department of Ecology

City of Ellensburg

By: _____

Vincent McGowan, P.E.
Water Quality
Program Manager

Date

By: _____

Ryan Lyyski
Public Works and Utilities Director

Date

Template Approved to Form by
Attorney General's Office



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Consultant Agreement - Brick Road Improvements Design

Submitted by: Karissa Witthuhn Public Works & Utilities

Recommended Action or Motion: Staff recommends that City Council authorize the City Manager to sign the attached professional services agreement with Perteet Inc., to complete the design and preparation of construction bid documents for the Brick Road Improvements project and approve the necessary supplemental budget adjustment.

Background/Summary: Brick Road is a major collector street. It's narrow with a significant amount of vehicular and pedestrian traffic. With limited shoulders and no sidewalk, pedestrians must travel immediately adjacent to the travel lanes. In 2017, the City received a petition from local residents and school district employees expressing the need for safety improvements on this stretch of roadway, which sees high pedestrian usage.

The proposed project will complete multimodal improvements on Brick Road between Radio Road and the north City Limits/McElroy Park. The project will include overlaying the existing roadway to maintain the existing two lanes of travel and will include installation of curb, gutter, sidewalk, stormwater facilities, illumination, and other improvements.

The project has been included on the City's Six-Year Transportation Plan since 2018. In January of 2022, the City was awarded Surface Transportation Block Grant (STBG) regional federal funds in the amount of \$1,284,000 for the Brick Road Improvements project.

Previous Council Action: None.

Analysis: The City was awarded \$1,284,000 in grant funds for the project. The total project cost is estimated at \$1,635,000, and \$351,000 in matching funds will therefore be required.

Staff went through a qualifications-based consultant selection process based on requirements associated with federal funding. Three consultant teams were interviewed for the project and Perteet, Inc. was selected.

Staff has negotiated a proposed Consultant Agreement for consideration, in the amount of \$191,131.

Financial Impact:

The project was awarded grant funding earlier this year, and as such, it is not included in the current budget. A supplemental budget appropriation in the amount of \$191,131 is needed for the 2023 Arterial Street budget for this contract, with \$120,000 offsetting revenues from the STBG grant.

Attachments:

[Ellensburg Brick Rd Agreement](#)

Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement

Agreement Number: 21-130

Firm/Organization Legal Name (do not use dba's): Perteet, Inc.			
Address 2302 W. Dolarway Rd., Ste 1, Ellensburg, WA 98926		Federal Aid Number STPUS-6909(001)	
UBI Number 601-288-065		Federal TIN or SSN Number 91-1505037	
Execution Date		Completion Date March 31, 2024	
1099 Form Required ☐ Yes ☒ No		Federal Participation ☒ Yes ☐ No	
Project Title City of Ellensburg Brick Road Improvements			
Description of Work See attached Exhibit "A", Scope of Services			
☒ Yes	☐ No DBE Participation	Total Amount Authorized: \$191,131.00 Management Reserve Fund: Maximum Amount Payable: \$191,131.00	
☒ Yes	☐ No MBE Participation		
☒ Yes	☐ No WBE Participation		
☒ Yes	☐ No SBE Participation		

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase NOT APPLICABLE
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

Agreement Number: 21-130

THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the CITY OF ELLENSBURG hereinafter called the “AGENCY,” and the “Firm / Organization Name” referenced on page one (1) of this AGREEMENT, hereinafter called the “CONSULTANT.”

WHEREAS, the AGENCY desires to accomplish the work referenced in “Description of Work” on page one (1) of this AGREEMENT and hereafter called the “SERVICES;” and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit “A” attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days’ notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit “A.”

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit “B” attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY’s “DBE Program Participation Plan” and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit “C – Preparation and Delivery of Electronic Engineering and other Data.”

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:		If to CONSULTANT:	
Name:	Karissa Witthuhn	Name:	Russell Craven
Agency:	City of Ellensburg	Agency:	Perteet, Inc.
Address:	501 North Anderson St.	Address:	2302 W Dolarway Rd., #1
City:	Ellensburg State: WA Zip: 98926	City:	Ellensburg State: WA Zip: 98926
Email:	witthuhnk@ci.ellensburg.wa.us	Email:	russell.craven@perteet.com
Phone:	(509) 962-7136	Phone:	(425) 252-7700
Facsimile:		Facsimile:	(425) 339-6018

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES, specified in Section II, "Scope of Work". The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov). The estimate in support of the Cost Plus Fixed Fee amount is attached hereto as Exhibits "D" and "E" and by this reference made part of this AGREEMENT.

- A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.
1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.
 2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits "D" and "E" of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.
A summary of the CONSULTANT'S cost estimate and the ICR percentage is shown in Exhibits "D" and "E", attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all A&E sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: ConsultantRates@wsdot.wa.gov.
Failure to supply this information by either the prime CONSULTANT or any of their A&E sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.
The AGENCY's Project Manager and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.
 3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. (excluding Meals, which are reimbursed at the per diem rates identified in this section) These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

Agreement Number: 21-130

4. **Fixed Fee:** The Fixed Fee, which represents the CONSULTANT'S profit, is shown in attached Exhibits "D" and "E" of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
 5. **Management Reserve Fund (MRF):** The AGENCY may desire to establish MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, "Extra Work."
 6. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. **Monthly Progress Payments:** The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit; all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) working days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and/or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub-consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fixed fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgement between the parties.

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's

Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons 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.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964
(42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973
(23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973
(29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975
(42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987
(Public Law 100-259)
- American with Disabilities Act of 1990
(42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged and any appropriate fixed fee percentage at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to

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date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs and appropriate fixed fee percentage in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold The State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and /or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated between the Parties.

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Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Karissa Witthuhn
Agency: City of Ellensburg
Address: 501 North Anderson St.
City: Ellensburg State: WA Zip: 98926
Email: witthuhn@ci.ellensburg.wa.us
Phone: (509) 962-7136
Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT amount or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

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The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V “Payment Provisions” until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit “G-1(a and b)” are the Certifications of the CONSULTANT and the AGENCY, Exhibit “G-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit “G-3” Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit “G-4” Certificate of Current Cost or Pricing Data. Exhibit “G-3” is required only in AGREEMENT’s over one hundred thousand dollars (\$100,000.00) and Exhibit “G-4” is required only in AGREEMENT’s over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III “General Requirements” prior to its performance of any SERVICES under this AGREEMENT.

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, State security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

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Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties.

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and/or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENT 's, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings,

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tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, “ESI” means any and all computer data or electronic recorded media of any kind, including “Native Files”, that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

“Native files” are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

The CONSULTANT shall include this section XX “Records Maintenance” in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the “Execution Date” box on page one (1) of this AGREEMENT.

Signature

Date

Signature

Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

EXHIBIT A
SCOPE OF SERVICES
City of Ellensburg
Brick Road Improvements

City Project Number: 21-130

Federal Project Funding Number: STPUS-6909(001)

INTRODUCTION

The overall objective of this project is to prepare a bid package for the roadway widening and urban improvements to approximately 2,300 LF of Brick Road from Radio Road to the McElroy Park/northern city limits. Elements of this project will include the details and plans for the roadway improvements, pedestrian amenity improvements, including sidewalk and ADA curb ramps, landscaping, public outreach support, utility coordination technical support, environmental permitting and documentation.

The project is funded by a federal grant (Surface Transportation Block Grant program) and the City of Ellensburg for the design and construction phases of the project. Accordingly, the Consultant will use procedures outlined in the WSDOT Local Agency Guidelines (LAG Manual) during development of the project.

The proposed roadway improvements on Brick Road include widening from a two-lane cross section with gravel shoulders to a cross section with two travel lanes, a parking lane on one side, a planter strip on the other side as the parking lane, curb, gutter, and sidewalks. Other project elements include cut and fill slopes, stormwater infiltration swale and associated conveyance, illumination, landscape restoration, and utility relocations and adjustments.

Temporary construction easements will not be needed to construct the improvements. Environmental documentation and permitting will be in accordance to support NEPA.

It is not anticipated that overhead and underground utility relocations, per franchise agreement where applicable, will be required to accommodate the proposed improvements. Utilities include City of Ellensburg Energy Services (gas and power), Cascade Irrigation District, and City water and sewer.

Consultant's services will be limited to those expressly set forth herein. If the service is not specifically identified herein, it is expressly excluded. Consultant will have no other obligations, duties, or responsibilities associated with the project except as expressly provided in this Agreement.

Transferring Budget within Contract Maximum: The level of effort is specified in the scope of services. The budget may be transferred between discipline tasks at the discretion of the Consultant, provided that the total contracted amount is not exceeded. The Consultant will have the flexibility to manage budget within a given discipline on a subtask level.

Services provided by the Consultant will consist of:

GENERAL SCOPE OF SERVICES

This Scope of Services describes the work elements to be accomplished by the Consultant as summarized under each Task. This scope consists of the following elements:

- Task 1 – Project Management and Coordination
- Task 2 – Survey and Basemapping (OverSite LLC)
- Task 3 – Right-of-Way Services (Tierra ROW Services) (Optional)
- Task 4 – Community Outreach Support
- Task 5 – Geotechnical Evaluations and Design (Aspect Consulting)
- Task 6 – Environmental Documentation and Permitting (Optional where noted)
- Task 7 – Utility Coordination Support
- Task 8 – Conceptual Design and Design Workshop
- Task 9 – Storm Drainage Design (Osborn Consulting)
- Task 10 – 60% PS&E
- Task 11 – Final PS&E
- Task 12 – Ad-Ready Contract Documents
- Task 13 – Maximum Extent Feasible (MEF) Documentation (Optional)
- Task 14 – Bid Support
- Task 15 – Services During Construction (Optional)

Optional Services

With prior written approval by the City and written notice-to-proceed, work elements described in this scope of services as optional services (“Optional”, or “as directed”) may be produced by the Consultant.

This Scope of Services is defined in the tasks below.

SCOPE OF SERVICES DEFINED

Task 1 – Project Management and Coordination

Overall project management and coordination work elements include:

1.1 Project Coordination with City

Consultant will coordinate with the City of Ellensburg on a regular basis to keep the City’s project manager informed about project progress, project issues and schedule.

The Consultant will attend one (1) virtual project kickoff meeting with the City and up to ten (10) virtual project status meetings with the City to occur up to once a month. These meetings under this work element will include the following participation by the Consultant team:

- Kickoff meeting will include attended up to four (4) staff from the Perteet team.
- Up to ten (10) meetings attended by Perteet with up to two (2) staff from the Perteet team.
- Kickoff meeting will include subconsultants, Aspect Consulting (up to one [1] staff), Osborn Consulting (up to two [2] staff), and OverSite LLC (up to one [1] staff).
- Subconsultant attendance at meetings related to design work will be included under those individual design tasks.

- The Consultant will prepare agendas and meeting notes/action items and distribute to attendees.

In the event that the City has a change in the City's project manager, the Consultant will meet with the new project manager, provide a summary of design and progress, provide a summary of decisions made, and provide past deliverables to date. This effort is included in this task. If changes to completed design efforts and/or Scope of Services are requested due to the change in City's project manager, this will require a supplement to the Agreement.

1.2 Project Schedule, Budget, and Team Management

The Consultant will develop an overall project schedule, which will include a detailed schedule by task, for the project phases, through bid advertisement for the full project. The Consultant will prepare a draft and final schedule for the City review, and then the Consultant will prepare a maximum of two (2) schedule updates as the project progresses, when requested by the City. The Consultant will also manage the Consultant budgets, monitor staff and subconsultants, manage change and prepare amendments, and monitor work progress under this work element.

1.3 Progress Reports, Invoices, and Disadvantaged Business Enterprise (DBE) Reporting

As part of the project, the Consultant will prepare monthly progress reports that describe the work items and percentage of work items that were accomplished during a given month, as well as a forecast of work to be completed over the following month. Progress report will include a status of overall project budget, spent and remaining. The Consultant will submit these monthly progress reports to the City's Project Manager with the monthly invoices. The Consultant Project Manager will notify City's Project Manager, in writing (memo or e-mail format), of any out of scope and/or overall project budgetary issues that are inconsistent with this Scope of Services.

Assumptions:

- This contract duration shall be no longer than sixteen (16) months.
- Project kickoff meeting will be held virtually and attended by up to four (4) staff from Perteet and subconsultants as described above.
- The Consultant project manager will attend up to ten (10) virtual monthly project coordination meetings.
- The Consultant will prepare a maximum of sixteen (16) monthly invoices and progress reports monthly.
- Maximum of two project schedule updates will be prepared.
- Meetings between the consultant team will be conducted under other scope tasks.

Deliverables:

- Kickoff Meeting Agenda and Minutes (PDF format)
- Project Schedule and a maximum of two updates (PDF format)
- Project Meeting Agendas for up to ten (10) monthly meetings and notes/action items
- Monthly Invoices and Progress Reports (maximum of sixteen (16); PDF format)

Task 2 – Survey and Basemapping (OverSite LLC)

The intent of this task is to provide basemapping to support design improvements along Brick Road, between Radio Road and the northern city limits, for which the roadway widening, new sidewalks, ADA curb ramps, driveway connections, and utility relocations and adjustments can be designed in detail and constructed. OverSite LLC will

research and compute the underlying right-of-way alignment and margins, City of Ellensburg corporate limit line crossing Brick Road, recover existing primary survey control and establish secondary survey control from which detailed topographic mapping will be performed. The limits for this survey will be an 80-foot-wide corridor centered on Brick Road, running from 30 feet south of the intersection of Brick Road and Radio Road on the south end, and northerly to 50 feet north of the end of the existing curb, gutter, and sidewalk on the east side of Brick Road on the north end. In addition to the 80-foot corridor, Radio Road, Skyline Drive, Bonnie Lane, and the McElroy Park Trail will be surveyed to 100 feet east and west of intersection with Brick Road. Additionally, existing driveways will be surveyed 50' beyond the existing pavement limits, or up to the existing garage door/face of buildings.

Work Elements:

2.1 Research

Research will be performed to recover underlying and/or adjoining survey control data relevant to the subject survey corridor to assist with the determination of right-of-way alignments and as a check on control datum. Underlying and adjoining surveys will be researched and recovered from the Kittitas County Recorder's online records website which together with the City's available GIS information will be used to depict the position of property lines and easements within the survey limits.

2.2 Control Survey

GPS methods will be employed to establish control utilizing Washington State Plane NAD 83(2011) horizontal datum and NAVD 88 vertical datum as the basis of coordinates and elevations. Existing survey control monuments within one-quarter mile of the project corridor, such as those referenced on the Washington Geodetic Survey website, will be located as part of the control survey. Existing street monuments underlying or closely adjoining the project corridor will be located. Auxiliary survey control will be established within the project limits as needed in order to perform the topographic survey.

2.3 Sub-Surface Utility Location

The Northwest Utility Notification Center (a Washington "Call Before You Dig" 811 service) will be used via their internet ticket processing ITIC site at <https://wa.itic.occinc.com> for utility location to identify and mark underground utilities prior to commencement of the topographic survey. This will consist of surface identification and marking of the horizontal location in the field.

Assumptions:

- Utility location purveyor will submit a traffic control plan and a right-of-way use permit to the City

Deliverables:

- Existing utility locations identified on project existing base map

2.4 Topographic Field Survey

- A topographic survey sufficient for the development of 1-foot contours will be conducted across the proposed corridor as described above and as determined by the City of Ellensburg. Traffic Control will not be provided by the City. The survey will locate features as described below:
- Gravity systems, i.e. storm drain and sewer, will be surveyed to the next downstream structure beyond the

limits of the survey corridor.

- Sanitary sewer and storm drain structure inverts will be measured to the extent possible without entry into the structure, defined as confined space entry, which Consultant personnel are not certified to perform. Manhole structure diameter, catch basin size/type, pipe diameters and direction, manhole lid orientation (offset) and pipe material will be noted.
- Water valve manholes will be measured to bottom of structure and top of actuator nut.
- Utility vaults over 4.0' in width will be measured horizontally with a measure down to bottom of vault except where safety is a concern, for example electrical vaults with exposed contacts, if present.
- Water meters will be located throughout the proposed corridor.
- Visible evidence of utility trenches such as patches in asphalt or concrete will be located with the width noted.
- Spot elevations will be collected at a maximum spacing of 50-feet longitudinally within the existing road prism and 25-feet in areas outside of the prism with additional spots as required to adequately identify grade breaks and other topographic features.
- Sidewalks, curbs (with type noted), driveways and curb ramps will be located as will pavement edges with type of paving noted.
- At curb ramps, spot elevations will be taken at top/bottom of ramp, grade breaks and grade transitions, and at curb transitions.
- Fences and walls will be described as to type and other identifiable features, i.e. 6' high chain-link, 4' high wooden, etc.
- Street channelization, crosswalks and parking space lines, within the project limits, will be located to reflect existing conditions.
- Lane markings, such as directional arrows and bike lanes will be located.
- Traffic signs will be located and labeled as to their type; i.e. stop, yield, bike lane, etc.
- Significant trees with a 6" or greater caliper when measured 4.5 feet above natural ground will be located with drip-line noted.
- Survey will also include, but not be limited to:
 - Grade breaks
 - Top and bottom of retaining walls
 - Top and bottom of curbs
 - Limits of shrubs, vegetation and landscaping limits
 - Buildings and structures, with finish floor elevations
 - Fences and gates
 - Utility access points - cleanouts, hand-holes, traffic signal control vaults, etc.
 - Irrigation control valves
 - Traffic signal, power, telecommunication and luminaire poles
 - Fire hydrants
 - Fire department connections and detector check vaults
 - Sub-Surface utility locations marks as delineated by a professional locating service
 - Street monuments and survey control points

2.5 Survey Basemapping

A topographic survey map will be prepared in AutoCAD Civil 3D (2020 version) format depicting features located during the field survey as well as 1-foot contours and computed parcel and right-of-way lines. More specifically:

- Basemap will incorporate field-located utility appurtenances and sub-surface utility paint marks.
- Surveyed points will be shown to the nearest 0.01' on hard surfaces and 0.1' on unpaved surfaces.
- Manholes:
 - Inverts will be shown for pipes into or out of structures detailing pipe diameter, pipe material type, and direction of pipe.
 - Manhole labels will also include manhole numbers that correspond to the City GIS ID for the structure with nominal diameter of manhole as measured in the field.
 - Pipe connections shown on the plan will be to center of structure rather than center of access lid.
- Commercial meter vaults and other below grade structures 4'x4' and larger will be shown to scale and bottom of vault elevation noted.
- Water line appurtenance symbols will be per APWA standards and shown at a 1"=20' scale on plans.
- Lane striping and parking striping within the survey limits will be shown as it appears in the field.
- Dashed striping will be shown as a dashed line and solid striping as a continuous line.
- Breaks in lane striping, such as left turn lanes that have a break in the line to allow vehicles to enter the lane, will show true location of where lane striping starts and stops.
- Traffic signals will be shown using standard traffic symbols for mast arms, lights, and pedestrian buttons.
- Line work will be in model space. Drawing units will be U.S. decimal feet.
- An electronic copy of the triangulated irregular network (TIN) will be provided.
- APWA CAD standards for layers and symbols will be used.

2.6 Survey QA/QC of Deliverables

An internal Consultant quality assurance/quality control review of deliverables will be conducted, as well as confirmation that comments received have been addressed. A record of comments received will be maintained. Response to each comment received will be tracked to document that they have been addressed.

Assumptions:

- City will take the lead on coordinating directly with right-of-entry for landowners refusing entry. In no case will survey personnel enter private property prior to the right of entry being obtained.
- Consultant's personnel are not certified for confined space entry and as such utility manholes may only be measured from the surface. Invert elevations up to a depth of 25 feet will be measured with an electronic distometer with an IMU for angle compensation.
- Title reports for land parcels adjoining and/or underlying the survey corridor are not anticipated to be needed for this project.

Deliverables:

- A digital copy of the survey drawing, provided in AutoCAD Civil 3D format, version 2020
- LandXML files
- Copies of field notes
- Point list in ascii or text format, comma delimited

Task 3 – Right-of-Way Services (Tierra ROW Services) (Optional)

This task will be negotiated later, if the City chooses to utilize the Consultant to assist with right-of-way services, such as temporary construction permits or easements.

Task 4 – Community Outreach Support

The City has not yet informed homeowners in the vicinity that the Brick Road project is upcoming. However, some of the homeowners signed a petition requesting a project to address safety in the corridor in 2017. The Consultant will support the City's Community Outreach efforts by performing the support tasks listed below.

Work Elements:

- Consultant will prepare one door-hanger including project information and perform door to door outreach to hand deliver door hangers along project limits prior to or during the conceptual design phase. They will share information, as agreed to with the City, with residents and give opportunities to join a project specific email group for project related information sharing.
- The Consultant and the City will perform door to door outreach to discuss the project and understand the breadth of public concerns and interests related to the project and how they would like to be engaged during design. Support will include developing questions, organizing the appropriate project materials, and documenting input received during the meetings.

Assumptions:

- City of Ellensburg representative will attend door to door outreach with one Consultant representative.
- Consultant will hang door hangers for up to thirty (30) homes and one church.
- Consultant will provide translation services for door hangers.
- No Perteet staff will attend City Council Meetings.
- The Consultant will prepare up to one (1) roll plot showing the proposed project footprint and up to two (2) typical sections showing the proposed roadway elements.
- Community meeting is assumed to require ten (10) hours of preparation and up to ten (10) hours of attendance by one Consultant team member. Community meeting will only happen if allowed by local health department. If not allowed, the City and Consultant will revise scope via change management to determine an appropriate outreach event.

Deliverables:

- One informational door hanger in English and Spanish
- Up to one (1) roll plot showing the proposed project footprint (PDF format)
- Up to two (2) typical sections showing the proposed roadway elements (PDF format)
- Documentation of input received during door to door meetings from up to thirty-one (31) meetings (PDF format)

Task 5 – Geotechnical Evaluations and Design (Aspect Consulting)

Aspect Consulting, LLC (Aspect) will provide geotechnical engineering services to support project pavement and stormwater infiltration design. Aspect will review mapped geologic conditions and visit the Site with City work crews during completion of up to four test pit explorations at the road shoulder and four cores of existing pavement and base course within the existing roadway, over the duration of one (1) day in the field. Aspect will provide location input to the test pit and coring locations with utility locating, traffic control, and excavation/coring equipment provided by the City.

Aspect will complete hand probing at selected depths in selected test pits to measure in-situ relative densities, collect soil samples, and log soils and groundwater conditions in accordance with ASTM standards. Aspect will produce an exploration site plan using a base map provided by Perteet.

Aspect will complete geotechnical laboratory tests on selected soil samples, including moisture content determination, grain size analysis and cation exchange capacity (CEC).

Following the field investigations, Aspect will discuss preliminary results of the field investigation with Perteet and the design team and analyze collected field investigation data to characterize the geotechnical properties of the subsurface at the Site.

Aspect will provide design stormwater infiltration feasibility evaluation, rates, and treatment potential based on grain size analysis and cation exchange test methods (from soil samples collected from the test pits) presented in the Stormwater Management Manual for Eastern Washington.

Aspect will provide recommendations for hot mix asphalt and base course pavement section using AASHTO 1993 flexible pavement analysis and traffic data/assumptions provided by the City.

Aspect will also provide general site earthwork recommendations for selection, placement, and compaction of structural fill, including assessment of suitability for use of site soils as structural fill.

The results and recommendations will be presented in a Draft Geotechnical Report for Perteet and City review. Following review, Aspect will revise the report as needed to produce a finalized version.

Assumptions:

- The City will perform the test pit digging and pavement coring with City crews and equipment at locations recommended by Aspect.
- Traffic control for test pits and pavement coring will be provided by the City.
- Restoration of test pit and pavement core areas will be provided by the City.
- Aspect and Aspect's subcontractors will not be subject to prevailing wage rates.
- Test pits and pavement cores will be located within City right-of-way.
- Aspect is not responsible for repair or other associated costs of incorrectly marked public property utilities.
- There will be one consolidated round of draft report comments from the design team and the City.
- If it is determined during design that a fill wall is needed requiring geotechnical recommendations, this would be considered an additional service, and a supplement to the Agreement would be required.

Deliverables:

- Draft Geotechnical Report for Perteet and City review (PDF format)

- Final Geotechnical Report (PDF format)

Task 6 – Environmental Documentation and Permitting (Optional where noted)

The Consultant will provide environmental documentation and permitting assistance for required federal, state, and local permits, as required by the various resource agencies.

6.1 Background Information Review and Analysis (Optional)

The Consultant will obtain project and resource information relevant to the environmental context of the project action, inclusive of resource agency database review of available information on historical/cultural resources, ecology facilities, priority/threatened/endangered species, and information from the design team applicable to the environmental context to begin document preparation or exclusion documentation/consideration.

Assumptions:

- No other special studies of permits or documents outside of this task are assumed.
- Fee for the Background Information Review and Analysis subtask will be negotiated after confirmation from the City of need for the task.

Deliverables:

- Project and resource information relevant to the environmental context of the project as part of discipline documents

6.2 WSDOT Early Coordination with City (Optional)

A Categorical Exclusion (CE) form will be preliminarily drafted and a virtual meeting will be scheduled by the Consultant with the City and WSDOT staff to consider categorical exclusions and the extent of requested supplemental documentation for: hazmat review, noise analysis, environmental justice, cultural resources, endangered species, and other CE classification categories under WSDOT NEPA CE review.

Assumptions:

- One (1) virtual meeting will be attended with WSDOT staff, City staff, and Consultant staff (assumed to include the project manager, lead engineer, and the environmental planning lead).
- The meeting will occur after the completion of the conceptual design level detailed in Task 8 and project guidance will be based on preliminary design knowledge.
- It is assumed that an air analysis will not be required for this project.
- Fee for the WSDOT Early Coordination with City subtask will be negotiated after confirmation from the City of need for the task.

Deliverables:

- Meeting notes/comments provided to City via email after virtual meeting

6.3 NEPA CE Form (Optional)

The Consultant will prepare a draft and final CE form for submittal to WSDOT at the 60% design level inclusive of draft discipline memos.

Assumptions:

- Coordination will occur with WSDOT after submittal to respond to review comments. One (1) revision to the CE form is assumed.
- Once WSDOT agrees the CE form and other supporting documents under this task are complete, they will request the CE be signed by the City for final submittal.
- The APE is assumed to be approved and a cultural resources assessment is required.
- No other special studies of permits or documents outside of this task are assumed to support the CE.
- SEPA is not included in this scope and will be completed by others if required.
- Fee for the NEPA CE Form subtask will be negotiated after confirmation from the City of need for the task.

Deliverables:

- Draft and final CE form to City and WSDOT with attachments
- Review correspondence via email

6.4 Cultural Resources Assessment (CRA)

The Consultant will check DAHP's Washington Information System for Architectural and Archaeological records Data (WISAARD) for information about previous cultural resources assessments in the project vicinity and identified archaeological sites. Other background information will be collected from previous geotechnical studies, local historical societies, libraries, and ethnographic accounts. Concerned Tribes will be contacted to solicit additional information about the project vicinity and will be invited to observe field investigations.

Prior to the field survey, Perteet will submit a utility locate request, as required by law, and will mark the locate area with white paint. A professional archaeologist will conduct a survey of the project Area of Potential Effect (APE). The fieldwork will include pedestrian survey of the area of proposed ground disturbance and up to 4 shovel probes will be excavated in areas free of impervious surfaces and buried utilities. Each shovel probe will measure 40 cm in diameter and will be excavated by shovel to one meter below the surface or until culturally sterile deposits are encountered. Where Holocene sediments extend more than one meter, shovel probe excavations will be extended by hand auger. Spoils from the shovel probes will be screened through ¼ inch mesh to identify buried cultural material. If artifacts are identified, they will be bagged, labelled and returned to their probe of origin. Fire modified rock, if present, will be counted and weighed and recorded on shovel probe forms. Each shovel probe will be recorded with a Global Positioning System (GPS) unit with submeter accuracy. The sediments and cultural material from each probe will be described on standard forms.

Perteet will prepare a report that will include a description of the project, a summary of the background research, and an assessment of the project's potential to impact cultural resources. The report may include recommendations for ways to complete identification of archaeological sites, including an inadvertent discovery plan or archaeological monitoring during ground disturbance. The report will be suitable for submission to WSDOT and the DAHP.

Assumptions:

- No Historic buildings will be evaluated or recorded;
- If at any time human remains are encountered, work will cease, and local law enforcement, the DAHP, WSDOT, and affected Tribes will be notified;
- The Consultant will mark the locate area with white paint;
- Up to 4 shovel probes will be excavated;

- Up to one (1) site inventory form will be completed; if multiple sites are identified, a budget adjustment would be required to complete documentation;
- WSDOT will conduct Tribal consultation as required for Section 106 compliance; and
- The report will undergo one (1) round of review.

Deliverables:

- Draft report, 1 PDF by email
- Final report, 1 PDF by email

6.5 Environmental Justice (EJ) (Optional)

An EJ memo will with related maps, figures, and tables be prepared to evaluate disadvantaged populations that may occur in the context of the project action pursuant to CE review criteria.

Assumptions:

- The City will provide one (1) consolidated review on the draft EJ memo prior to being finalized by the Consultant team for WSDOT submittal.
- Fee for the Environmental Justice subtask will be negotiated after confirmation from the City of need for the task.

Deliverables:

- Draft and final EJ memo (PDF)
- Correspondence via email

6.6 Environmental Noise Evaluation (Optional)

The project is not assumed to have Type I activities under 23CFR772.5 or to require a noise study at this time. If during design and WSDOT coordination, it is discovered a noise study is needed, this task will be negotiated later and is included as an optional service to provide a noise study for NEPA review.

6.7 Biological Assessment (BA) No-Effect Letter (Optional)

A BA no-effect letter checklist with supporting information from other tasks included in this Scope of Services will be prepared to evaluate threatened/endangered that may occur in the context of the project action pursuant to CE review criteria.

Assumptions:

- City will provide one (1) consolidated review on the draft BA no-effect information prior to being finalized by the Consultant team for WSDOT submittal.
- Infiltration of stormwater is assumed. Formal ESA consultation and BA preparation is not assumed to be required and is not included in the Scope of Services. If formal ESA consultation and BA preparation is determined to be required during design, this would be considered an additional service, and a supplement to the Agreement would be required.
- Fee for the BA No-Effect Letter subtask will be negotiated after confirmation from the City of need for the task.

Deliverables:

- Draft and final BA no-effect review and checklist (PDF)
- Correspondence via email

6.8 Hazardous Materials Investigation and Technical Memorandum (Optional)

The primary objective of the Hazardous Materials Technical Memorandum is to evaluate the project area, with focus on the historic and current use of the properties adjacent to the proposed project corridor, for obvious evidence of existing and potential hazardous materials conditions. The Hazardous Material Technical Memorandum will be completed in support of the National Environmental Policy Act (NEPA) documentation for the project. The Hazardous Materials Technical Memorandum will include the following elements:

- Review of federal, state, and local agency environmental regulatory databases for the project corridor area and adjoining properties focusing on the identification of any record of the presence of hazardous substances, underground storage tanks (USTs), or hazardous substance spills
- Review of historical documentation, including:
 - Historical aerial photographs
 - Sanborn Insurance Maps, if coverage is available
 - Reverse city directories for the streets included in the project area
- Review of existing reports documenting previous investigations (if available from Washington State Department of Ecology and/or City of Ellensburg)
- Site reconnaissance from public rights-of-way or publicly accessible public properties
- Prepare draft and final Hazardous Materials Technical Memorandum deliverable

A Hazardous Materials Technical Memorandum is not considered to be a Phase I ESA that adheres to the American Society for Testing and Materials (ASTM) standards. If the Hazardous Materials Technical Memorandum analysis reveals issues that could impact the project area, more detailed investigations, which may include Phase I ESAs or Phase II ESAs, may be recommended. If further investigation is recommended, a scope of work and cost estimate will be provided at that time.

The Hazardous Materials Technical Memorandum scope of work does not include any specific testing or analysis to determine the presence or absence of any physical, radiological, or biological hazard or condition, including, but not limited to: wetlands, endangered species issues, asbestos containing materials, lead-based paint, lead in drinking water, or radon.

The Hazardous Materials Technical Memorandum and any further recommended investigations (if deemed necessary) will be performed by Consultant staff who, to the best of our professional knowledge and belief, meet the definition of Environmental Professional as defined in §312.10 of 40 CFR 312. Consultant staff members have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the project area.

Assumptions:

- City will provide one (1) consolidated review on the draft Hazmat memo prior to being finalized by the Consultant team for WSDOT submittal.
- Fee for the Hazardous Materials Investigation and Technical Memorandum subtask will be negotiated after confirmation from the City of need for the task.

Deliverables:

- Draft and final Hazmat memo (PDF)
- Correspondence via email

Task 7 – Utility Coordination

The Consultant will assist the City in managing the utility coordination process for the project, which will include reviewing as-built and GIS information from the City to confirm the survey basemap and identification of utility conflicts for resolution.

The City will be responsible for gathering as-built and GIS information from all utilities within the project limits, including utility franchises and City-owned power, gas, storm, water and sanitary sewer systems, and existing irrigation lines. The Consultant will update the existing basemap with existing utilities not shown.

The Consultant will prepare a design with the intent to avoid conflicts with existing utilities when feasible and practical. If conflicts are unavoidable, or create significant cost to the City, and the design requires the relocation of existing utilities, the Consultant will develop a list of utility conflicts to be investigated. The City is responsible for determining the level of utility investigation required. The City will coordinate with utilities to discuss utility conflicts and resolution.

Services provided by the Consultant under this task will include:

- The Consultant will update existing utility basemapping based on confirmation of location/type/size by each utility and as shown on GIS and as-built information, or as directed by the City.
- Potential utility conflicts of all types with the proposed improvements will be identified by the Consultant and provided to the City. The City will lead resolution efforts with private franchises and City owned utilities.

It is assumed that the following utility franchises exist along the Brick Road corridor. These include:

- Power (City of Ellensburg Energy Services) – unknown if within existing ROW or outside existing ROW
- Communication and Fiber-optics (Charter and Consolidated Communications)
- Gas Distribution (City of Ellensburg Gas Division)
- Water (City of Ellensburg Water Division)
- Stormwater and Sewer (City of Ellensburg)
- Irrigation (Cascade Irrigation District)

Power, gas, stormwater and sewer are assumed to be fully under the jurisdiction of the City and coordination for this utility will be performed by the City.

Assumptions:

- The City will provide the Consultant with existing utility information from the City's GIS database.
- It is assumed that if utility conflicts exist with franchise utilities, the City will work towards resolution and relocation of the utilities with the utility providers.
- Perteet will provide basemaps and CAD design for sewer and water improvements as necessary for the City to utilize when resolving utility conflicts.
- The City will verify the terms of all franchise agreements, including the responsibilities for potholing (if needed) and relocations of franchise owned utilities.

- The redesign and/or relocation of City owned and/or franchise owned utilities for construction will not be performed by the Consultant, and relocation Plans prepared by the City and/or franchise utility will not be included in this project. It is assumed that the City and/or franchise utilities will be responsible for preparing design plans and details for construction of new or relocated facilities under a separate construction contract, obtaining necessary permits for utility construction, and that utilities will be relocated prior to the construction contract.
- The Consultant will not prepare inter-local agency agreements between the City and the utility franchises for incorporation of relocations required by the proposed improvements. Examples of the services that could be included are: the adjustment of utilities, removal of abandoned structures and facilities, trenching, and traffic control.
- It is assumed that there are no planned new utilities or expansions/upgrades by the private and public utilities within the project limits.
- The budget assigned for this work element will be limited to the amount designated for this work element in the fee proposal. If additional design services are required, a supplement will be prepared.

Deliverables:

- List and/or locations of utility conflicts with proposed design to be investigated by the City (PDF)
- CAD file(s) for City and/or franchise use in preparing relocation design, if needed (at 60% and Final)

Task 8 – Conceptual Design and Design Workshop

The Consultant will prepare materials for and attend a conceptual design and design workshop meeting with the City of Ellensburg, up to two (2) hours long. The purpose of the meeting will be to confirm the draft conceptual design and preliminary opinion of cost and what work is likely to be completed within the City's existing construction budget, and assist the City in making decisions on moving forward if the work cannot be completed within their existing construction budget. Discussion materials will include a draft concept level drawing built on top of the surveyed basemap, an opinion of cost, and a fact sheet stating current assumptions for conceptual design. Key design workshop meeting talking points will include potential cost savings and ways in which the design can be refined to optimize project buy-in from the adjacent property owners.

After the design workshop meeting, the Consultant will develop the final conceptual design layout and conceptual opinion of cost for final City review prior to design progression. This effort will include refining the preliminary roadway design; including proposed roadway improvements, curb ramp locations and types, driveway cuts and tie-ins, preliminary illumination design, bicycle facilities, and proposed utilities including surface water design features as noted in the Task 9.

Assumptions:

- Conceptual roadway and stormwater design will be shown on a roll plot and will include concept-level linework. Pipe sizing and elevations will not be included.
- The construction budget is \$1,485,000 as reflected in the City of Ellensburg 6-Year Transportation Improvement Plan as amended by Resolution No. 2022-03.
- The design workshop meeting will last up to two (2) hours and will be attended by up to three (3) Perteet employees.
- Up to twelve (12) hours of additional design support (designer and CAD technician) to refine and prepare the final conceptual design roll plot and opinion of cost following the design workshop meeting. No additional alternatives will be prepared.

- The opinion of cost will be based on current bid climate unit prices and incorporate contingencies to account for the level of completeness of plan preparation for each submittal (draft and final), and to reflect past experience on similar projects within the region. In providing opinions of probable construction cost, the City understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Consultant's opinions of probable construction costs are made on the basis of the Consultant's professional judgment and experience. The Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from the Consultant's opinion of probable construction cost.
- The City will finalize the general geometric layout of the proposed improvements through the development and review of the project layout following the design workshop. A substantial change in design after the Conceptual Design phase will constitute a change in scope and will allow the Consultant to negotiate additional compensation for the change in the form of a supplement.

Deliverables:

- Draft and final roll plots showing up to one (1) conceptual design layout (PDF)
- Concept Opinion of Cost for the draft and final conceptual designs (PDF)
- Memo documenting findings of Design Workshop (up to three [3] pages) (PDF)

Task 9 – Storm Drainage Design (Osborn Consulting, Inc.)

Osborn Consulting, Inc. (OCI) will support Perteet (Prime) by developing the project stormwater design including water quality treatment, conveyance, and flow control.

General Assumptions:

- No work will be required by OCI to investigate streams, wetlands, or other critical environmental features within the project limits.
- City will coordinate with property owners for rights-of-entry and notices in advance to private properties if required for site survey, site investigation, and data gathering.

9.1 Conceptual Design

OCI will complete the following tasks:

- OCI will attend two (2) virtual meetings to coordinate with City of Ellensburg stormwater staff and the maintenance department regarding proposed drainage systems planned for the project and preferred maintenance alternatives.
- Complete one site visit to observe conditions at the site and collect visual observations to support storm drainage design.
- Develop up to one (1) conceptual sketch for storm drainage design to be incorporated by Perteet into an overall project roll plot to be used in the Design Workshop.
- Provide bullet point summary of anticipated storm drainage design elements.
- Attend one comment review meeting with the City.

Assumptions:

- Conceptual designs will be developed in GIS or Bluebeam. AutoCAD will not be used.
- Conceptual designs will be plan view only, no profiles or pipe sizes will be developed.

- Comment review meeting assumes up to three (3) hours per person for one (1) OCI staff member (including preparation and meeting time).

Deliverables

- Up to one (1) draft and final conceptual storm drainage design sketches (PDF)
- Draft and final bullet point summary of drainage design elements (email or Word)

9.2 Design Calculations

OCI will complete storm drainage design calculations for the preferred alternative including the following:

- Hydrologic calculations for developing of peak flows for the following design storms: water quality design storm, 2-year, 10-year, 25-year, and 100-year events.
- Sizing calculations for the proposed swales for water quality treatment, flow control, and infiltration.
- Develop a written memo of storm drainage design to be included in the Project File to be submitted to the City by Perteet.

Assumptions:

- Proposed drainage features are assumed to be swales that will infiltrate all stormwater runoff. Design will not include stormwater conveyance, flow control, or water quality facilities other than swales.
- If it is determined during design that not all stormwater runoff will infiltrate, and additional stormwater design is required, this would be considered an additional service, and a supplement to the Agreement would be required.
- Hydrologic calculations will be completed using AutoCAD Storm and Sanitary Analysis software with the Curve Number method.
- Conveyance analysis will be conducted using Manning's Equation or with AutoCAD Storm and Sanitary Analysis.
- Conveyance calculations will be performed for proposed storm drain conveyance systems only. Existing storm drain conveyance systems will not be analyzed.
- Storm drainage design memo will be up to five (5) pages.

Deliverables:

- Design memo of proposed storm drainage design (up to 5 pages)

9.3 60% Drainage PS&E

OCI will complete the following tasks:

- Develop 60% plan sheets. Plans shall include up to two (2) engineering plan sheets, which are expected to include the following.
 - Storm drainage detail sheets – 2 sheets
- Develop 60% CAD base file for drainage swales.
- Develop 60% opinion of cost for storm drainage items.
- Develop a list of special provisions that will be required for storm drainage items.
- Attend one virtual comment review meeting with the City.

Assumptions:

- Proposed drainage features are assumed to be swales that will infiltrate all stormwater runoff. Design will not include stormwater conveyance, flow control, or water quality facilities other than swales.
- Drainage details will be developed in AutoCAD and follow City of Ellensburg CADD standards.
- CAD base and drainage design information for swales will be incorporated into CAD plan sheets by Perteet.
- Special provisions will not be prepared until 90% design.
- Only one round of review is required for each PS&E submittal.
- Comment review meeting assumes up to two (2) hours per person for one (1) OCI staff member (including preparation and meeting time).
- 60% design will include only one (1) preferred roadway alignment design.

Deliverables:

- 60% drainage design base file (AutoCAD file version 2020)
- 60% plans – up to two (2) sheets (PDF)
- 60% opinion of cost for storm drainage items (PDF and Excel)
- List of special provisions for storm drainage items (PDF)
- 60% design package comment responses (PDF)

9.4 Final Drainage PS&E

OCI will complete the following tasks:

- Develop Final plan sheets and drainage design base file. See Subtask 9.3 for plan sheet list.
- Develop Final CAD base file for drainage swales.
- Develop Final opinion of cost for storm drainage items.
- Develop Final special provisions for storm drainage items.
- Attend one comment review meeting with the City.

Assumptions

- Comment review meeting assumes up to two (2) hours per person for one (1) OCI staff member (including preparation and meeting time).
- Following submittal of Final PS&E package, Perteet will make all necessary updates to the plan sheets and CAD base file to prepare the Ad-Ready PS&E package. OCI will not develop deliverables for the Ad-Ready PS&E package.
- Construction Stormwater Pollution Prevention Plan (SWPPP) will be developed by the Contractor and Contractor will be responsible to coordinate submittal and approval of the SWPPP with the City.

Deliverables

- Final drainage design base file (AutoCAD file version 2020)
- Final plans – up to two (2) sheets (PDF)
- Final opinion of cost for storm drainage items (PDF and Excel)
- Final special provisions for storm drainage items (Word)
- Final design package comment responses (PDF)

9.5 Ad-Ready Drainage PS&E

OCI will complete the following tasks:

- Provide final comments and coordination for development of the Ad-Ready drainage PS&E package.

Assumptions

- Up to four (4) hours are budgeted for final comments and coordination.

Deliverables

- Final comments and coordination via email

Task 10 – 60% Plans, Specifications, and Opinion of Costs

The Consultant will prepare 60% plans, specifications, and opinion of costs for the construction contract, and incorporate applicable comments received from the City based on the final conceptual design submittal and community outreach. The plans, specifications, and opinion of cost will be submitted to the City for review and comment.

10.1 60% Plans & Design

Work Elements:

- Site visit to confirm paving limits, site features, proposed curb ramp locations, and existing utilities and landscape features as shown on the survey basemap.
- Prepare 60% design-level plans.

It is anticipated that the 60% plans will consist of the following sheets (41 sheets):

- Cover Sheet w/Vicinity Map and Index (1 sheet)
- Legend and Abbreviations (1 sheet)
- Survey Control and Construction Alignment Plan (1 sheet)
- Site Preparation/Temporary Erosion and Sediment Control Plans (3 sheets)
- Typical Roadway Sections (3 sheets)
- Roadway & Drainage Plan and Profile (7 sheets)
- Drainage Details (2 sheets) (developed in Subtask 9.3)
- Miscellaneous Details (2 sheets)
- Curb Ramp Details (3 sheets)
- Driveway Profiles (4 sheets)
- Driveway Details (1 sheet)
- Channelization and Signing Plan (3 sheets)
- Channelization and Signing Details (1 sheet)
- Illumination Plan (3 sheets)
- Illumination Details (1 sheet)
- Traffic Control Plan (3 sheets)
- Pedestrian Traffic Control Plan (2 sheets)

Assumptions:

- Note that 60% Plans will not include curb return elevations and site specific curb ramp details. These will be provided at Final level.
- The City will provide illumination as-built plans for use.
- The Consultant will review illumination as-builts and identify potential illumination service connection points and coordinate service points with City of Ellensburg Energy Services.
- Irrigation design will not be required.
- Water and sewer main design will not be required. Minor adjustments or modifications will be shown on sheets.

Deliverables:

- Electronic copy of the 60% plan set (half size [11" x 17"]) in PDF format via e-mail

10.2 60% Opinion of Costs

The Consultant will calculate 60% level quantities and opinion of construction costs based upon the 60% design and construction plans and anticipated unit bid prices. The Consultant will address applicable conceptual design level review comments and make revisions as necessary.

Assumptions:

- The opinion of cost will be based on current bid climate unit prices and incorporate contingencies to account for the level of completeness of plan preparation for each PS&E submittal, and to reflect past experience on similar projects within the region. In providing opinions of probable construction cost, the City understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Consultant's opinions of probable construction costs are made on the basis of the Consultant's professional judgment and experience. The Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from the Consultant's opinion of probable construction cost.
- The opinion of cost will include up to one (1) bid schedule.

Deliverables:

- Electronic copy of the 60% opinion of cost summary submitted in PDF format via e-mail

10.3 60% Specifications

The Consultant will prepare Contract Provisions ("Specifications") for the 60% submittal. These will include Special Provisions for the items of work that are not covered by the current WSDOT/APWA Standard Specifications, including Ellensburg General Requirements. Bid forms will not be included in the 60% submittal.

Assumptions:

- It is assumed that the City will provide the Consultant with any Ellensburg General Special Provisions and Requirements to be used on the project.
- It is assumed that the City will provide the Consultant with their standard, current, boilerplate contract language ("front end docs") to be used for the project.

Deliverables:

- Electronic copy of the 60% specifications in Microsoft Word format via e-mail

10.4 60% PS&E QA/QC and Constructability Review of Deliverables

An internal Consultant quality assurance/quality control review of deliverables will be conducted, as well as documentation that comments received have been addressed. A record of comments received will be maintained. Response to each comment received will be tracked to document that they have been addressed.

Task 11 – Final Plans, Specifications, and Opinion of Costs

The Consultant will revise the 60% plans, specifications, and opinion of cost estimate based on the City's comments and prepare a Final PS&E package. This submittal will include the preparation of the Bid Schedule to be included in the Specifications.

The Consultant will provide WSDOT with a Final set of bid documents for review. The Consultant will also submit the Final PS&E package, including the Bid Schedule, to the City for a Final check print before assembling the contract documents. Final comments will be delivered electronically and incorporated into the Final bid documents.

Assumptions:

- It is assumed that the Final review comments will be minor in nature and not reflect any significant changes to design. If there are significant changes to the design or Plans, this would be considered an additional service, and a supplement to the Agreement would be required.

11.1 Response to 60% Comments

The Consultant will attend one (1) comment review meeting with the City staff and provide the City with written responses to the City's comments. Responses will be provided on the commented documents provided by the City.

Assumptions:

- 60% plan review comments from City staff will be consolidated by the City and conflicting comments will be resolved by City staff prior to transmitting to the Consultant.
- Up to two (2) Consultant staff will attend one (1) comment review meeting held virtually.

Deliverables:

- Written responses to 60% comments (PDF)

11.2 Final Plans

The Plan sheets will be the same as those identified under the 60% design phase.

Deliverables:

- Electronic copy of the Final plans (full-size [22" x 34"]) in PDF format via e-mail

11.3 Final Opinion of Costs

The Consultant will update the project quantities and prepare a Final opinion of construction costs based upon the Final design and construction plans and current unit bid prices. The Consultant will address applicable 60% review comments and make revisions as necessary.

Deliverables:

- Electronic copy of the opinion of cost summary submitted in PDF format via e-mail

11.4 Final Specifications

The Consultant will prepare the Final Specifications based upon the Final design. The Consultant will address applicable 60% review comments and make revisions as necessary. Bid forms will be filled out with the project quantities with this submittal.

Deliverables:

- Electronic copy of the Final bid documents Contract Specifications, including the Bid Schedule, submitted in PDF format via e-mail

Task 12 – Ad-Ready Contract Documents

The Consultant will finalize the Final plans, specifications, and opinion of cost estimate based on the City's comments and WSDOT review comments and prepare Ad-Ready Contract Documents. It is assumed that Final review comments will be minor in nature and not reflect any changes to the design. The fee effort for this task includes a review of the 2023 Standard Specifications for changes from the 2022 Standard Specifications and an update of the Special Provisions and WSDOT GSP's (due to the long schedule duration of the development of this project and more frequent publications, and timing of publications, of the Standard Specifications, it is assumed the 2023 Standard Specifications will need to be used).

The Consultant will provide WSDOT with an Ad-Ready set of bid documents for approval.

Assumptions:

- The fee effort for this task assumes the City will provide one (1) set of compiled and consolidated comments reflective of all City comments from the final check set submittal. It is assumed that final review comments will be minor in nature and not reflect any changes to design. If additional comments are made, or if any comments are made that alter the design, and it is determined that addressing them would cause significant changes to the plans, this may be considered additional work to be included in a supplement.
- Prior to bid advertisement, the Consultant may make minor revisions to the Plans, Specifications, and Opinion of Cost. It is assumed that the drainage and ADA standards applying to this project will not be changed.
- The City will provide Builders Exchange with a camera-ready or electronic plan set for purposes of their scanning and contract document distribution during bidding.
- The City will provide Builders Exchange with a camera-ready or electronic set of Contract Specifications for purposes of their scanning and contract document distribution during bidding.
- WSDOT comments that are to be incorporated into the contract documents that are a significant change to the design or finalization of the ad-ready contract documents will be considered an additional service and may need a supplement to this Agreement.

Deliverables:

- Electronic copy of the Ad-Ready plans; half size (11" x 17") and full size (22" x 34") signed plans, in PDF format via e-mail
- Electronic copy of the opinion of cost summary submitted in PDF format via e-mail
- Electronic copy of the Ad-Ready bid documents Contract Specifications, including the Bid Schedule, City contracting documents, specifications, standard details, and wage rates, submitted in PDF format via e-mail
- Written responses to the Final review comments

Task 13 – Maximum Extent Feasible (MEF) Documentation (Optional)

13.1 Coordination with WSDOT

The Consultant will coordinate with WSDOT regarding acceptance and the determination of compliancy of pedestrian facilities. This includes up to two (2) virtual meetings with WSDOT, phone, and e-mail coordination.

The Consultant will also coordinate with WSDOT regarding a courtesy review of the MEF documentation, and regarding pedestrian facility design questions from WSDOT.

Assumptions:

- Fee for the Coordination with WSDOT subtask will be negotiated after confirmation from the City of need for the task.

Deliverables:

- WSDOT concurrence regarding curb ramp

13.2 Design MEF Documentation

When full ADA accessibility criteria cannot be met by the pedestrian facility improvements, an MEF Document must be prepared as part of the project documentation. The Consultant will prepare a designed conditions MEF document for the project. Justification will be provided as part of the documentation.

Work Elements:

The Consultant will prepare design MEF documentation for the City's documentation. The MEF documentation is anticipated to include the following elements:

- Project Description – this will be a general description of the overall project.
- Design Standards – this will be a general statement identifying the guidelines/manuals used and the criteria to be met for pedestrian facilities.
- Summary of Facilities and Evaluation – this will be a short summary of the facilities that will be evaluated, including a general statement that the project design was intended to be compliant, then identifying specific elements that are non-compliant and a justification for the reason(s) why.
- Summary of proposed design and compliancy for curb ramps, pedestrian crossings, driveways, and sidewalks, as applicable.
- The Consultant will provide a draft MEF Document for the City to review. The Consultant will incorporate the review comments into a final MEF Document.

This task provides for the preparation of the design MEF document, which will reflect the Consultant's designed improvements, and will be provided to the City. Upon completion of construction, it is recommended that the design MEF document be modified to reflect the constructed improvements as the constructed MEF document. This Scope of Services does not include work to revise the design MEF document and produce the constructed MEF document.

Assumptions:

- The Proposed Guidelines for Accessible Public Rights-of-Way (PROWAG), July 26, 2011 (2011 PROWAG) will be the design guidelines and measurement of compliance for pedestrian facilities, as determined by WSDOT.
- Detailed information for every pedestrian facility (for example, each curb ramp with every slope measurement, dimensions, etc.) will not be provided in the MEF.
- Existing non-compliant curb ramps are generally non-compliant in most or all of the elements (such as dimensions, landings, slope); therefore, a detailed overview of the individual existing elements will not be provided for each curb ramp, but there will be a general statement of "non-compliance" for each ramp, as necessary.
- Fee for the Design MEF Documentation subtask will be negotiated after confirmation from the City of need for the task.

Deliverables:

- One (1) electronic copy of the Draft MEF Document in PDF format
- One (1) electronic copy of the Final MEF Document in PDF format

Task 14 – Bid Support

The Consultant will support the City during the bidding phase of the project. The Consultant will respond to requests for clarifications and assist the City with preparing up to two (2) Addenda. The budget assigned for this work element will be limited to the amount designated for this work element.

14.1 Provide Bid Clarifications

The Consultant will respond to Contractor questions as requested by the City during the bidding process. The Consultant will provide clarifications to the City, which may include information clarification or clarification on Plan sheet information or Special Provision language.

Deliverables:

- Written clarifications to bid questions, including text and plan sheet information (e-mail format)

14.2 Addenda

The Consultant will assist the City with preparing materials to be included with up to two (2) Addenda, as required.

Assumptions:

- The City will prepare addendums for distribution during the bidding process.
- The City will prepare the bid tabulation.
- The City will determine if the bids are responsive or not.
- The City will track bid questions and communicate with bidders.

- The City will produce bid sets.
- The City will review bid tabulations against the opinion of cost (engineer's estimate).
- The budget assigned for this work element will be limited to the amount designated for this work element.

Deliverables:

- Materials to be included with addenda, as requested, for up to two (2) Addenda

Task 15 – Services During Construction (Optional)

This task will be negotiated later, if the City chooses to utilize the Consultant to assist with construction management or design support during construction.

Additional (Optional) Services

The Consultant may provide additional services as directed by the City which are not identified in this Scope of Services. Additional services shall not commence without written authorization and approval from the City and a supplement to the contract.

Services Not Included in this Scope of Services

1. Modeling or calculations for downstream analysis of the receiving drainage system.
2. Backwater conveyance analysis for the downstream receiving drainage systems.
3. Drainage design above what is described in this scope of services.
4. Preparation of discipline reports or memos to support the SEPA process.
5. Preparation of a construction SWPPP.
6. Prepare a Notice of Intent application and supporting documentation for the construction NPDES permitting process.
7. Construction management services.

Items to be furnished by the City**Information Provided by Others:**

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys, and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. Further, the Client agrees that the Consultant will have no responsibility for any portion of the Project designed by other consultants engaged by the Client.

The City shall furnish the following:

1. All available "As-Built" information, including for the existing illumination systems.
2. Updated underground utility information relative to the City owned utilities and private utility franchises.
3. Any applicable preliminary design reports, geotechnical reports, environmental reports, and identified up and downstream problems.
4. Updated City of Ellensburg General Provisions.

Design Criteria

As of the date this Agreement is signed, design file, reports, documents, and plans prepared as part of this Scope of Services, to the extent feasible, will be developed in accordance with the latest edition and amendments to the following documents:

1. Standard Specifications for Road, Bridge, and Municipal Construction, 2022 English Edition, published by WSDOT and the Washington State Chapter APWA
2. Standard Plans for Road, Bridge, and Municipal Construction, (M 21-10), published by WSDOT
3. “Local Agency Guidelines” published by WSDOT
4. AASHTO: A Policy on Geometric Design of Highways and Streets (2011 Edition)
5. 2009 Manual on Uniform Traffic Control Devices (MUTCD)
6. AASHTO Guide for the Development of Bicycle Facilities, 4th Edition
7. Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Rights-of-Way, July 26, 2011 (2011 PROWAG)
8. City of Ellensburg Public Works Development Standards, 2019 Edition
9. Department of Ecology (Ecology) 2019 “Stormwater Management Manual for Eastern Washington”

Changes in any design standards or requirements after services have begun may result in extra work and require a supplement to the Agreement.

Exhibit B

DBE Participation

To address the 16% goal for this project, the following subconsultants have been identified to provide services under this agreement:

OverSite, LLC DBE Certification D5M0026848
MBE Certification M5M0026848

Osborn Consulting, Inc. DBE Certification D2F0019030
WBE Certification W2F0019030

The amount of the agreement with OverSite, LLC is \$14,130 and with Osborn Consulting, Inc. is \$34,728. The total DBE participation is \$48,858 out of the total \$191,131, for a DBE participation rate of 25.56%.

Agreement Number: 21-130

Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

CAD 2020, XML

B. Roadway Design Files

CAD 2020, XML

C. Computer Aided Drafting Files

2020 CAD

D. Specify the Agency's Right to Review Product with the Consultant

E. Specify the Electronic Deliverables to Be Provided to the Agency

*Design plans for review (PDF) and opinion of cost.

*Specifications (Word)

F. Specify What Agency Furnished Services and Information Is to Be Provided

*CAD and/or GIS files showing existing utilities.

*Coordination with Franchise and City Utility Departments.

II. Any Other Electronic Files to Be Provided

III. Methods to Electronically Exchange Data

Email or SharePoint

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format

Exhibit D

Prime Consultant Cost Computations

See attached Exhibit "D"

EXHIBIT D - Consultant Fee Determination Summary



Project: Ellensburg - Brick Rd Sidewalk Extension
Client: City of Ellensburg

Hourly Costs Plus Fixed Fee Estimate

<u>Classification</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Principal	3.00	117.79	\$353
Sr. Associate	16.00	76.00	\$1,216
Sr. Associate	10.00	79.16	\$792
Sr. Engineer / Mgr	112.00	61.00	\$6,832
Sr. Engineer / Mgr	15.00	72.76	\$1,091
Lead Engineer / Mgr	184.00	58.00	\$10,672
Civil Designer II	286.00	40.00	\$11,440
Civil Designer II	4.00	42.15	\$169
Technician III	186.00	39.00	\$7,254
Sr Planner/Cultural Resources Manager	2.00	50.42	\$101
Lead Planner/Manager	24.00	48.95	\$1,175
Accountant	16.00	43.00	\$688
Cultural Resources Specialist II	36.00	39.13	\$1,409
Cultural Resources Specialist II	10.00	39.59	\$396
Total Direct Salary Costs	904.00		\$43,588
Overhead @		182.52%	\$79,555
Fixed Fee @		29.85%	\$13,011
Total Labor Costs			\$136,154

Reimbursables

<u>Expenses</u>	<u>Amount</u>
Reproduction - Reimbursed	\$50.00
Total Expenses	\$50.00

<u>In-House Costs</u>	<u>Qty</u>	<u>Rate</u>	<u>Amount</u>
Mileage - \$.625	400	\$0.625	\$250.00
Total In-House Costs			\$250.00

Subconsultants

<u>Subconsultants</u>	<u>Cost</u>	<u>Markup</u>	<u>Amount</u>
Aspect Consulting LLC	\$5,820.00	1.00	\$5,820.00
Osborn Consulting, Inc.	\$34,728.00	1.00	\$34,728.00
OverSite LLC	\$14,130.00	1.00	\$14,130.00
Total Subconsultants	\$54,678.00		\$54,678.00

CONTRACT TOTAL	\$191,131.00
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Rates shown reflect the typical compensation rate of employees assigned to the billing category listed. Each category may have multiple employees assigned to that billing category and each employee may have a different hourly rate of pay. Employee compensation is subject to adjustment in June of each calendar year.

Prepared By: Russell D Craven

Date: September 13, 2022



**Washington State
Department of Transportation**

Development Division
Contract Services Office
PO Box 47408
Olympia, WA 98504-7408
7345 Linderson Way SW
Tumwater, WA 98501-6504

TTY: 1-800-833-6388
www.wsdot.wa.gov

July 20, 2022

Perteet, Inc.
2707 Colby Avenue, Suite 900
Everett, WA 98201

Subject: Acceptance FYE 2021 ICR – Risk Assessment Review

Dear Denice Moan:

Based on Washington State Department of Transportation's (WSDOT) Risk Assessment review of your Indirect Cost Rate (ICR), we have accepted your proposed FYE 2021 ICR of 182.52% of direct labor (rate includes 0.10% Facilities Capital Cost of Money). This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with your firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at **(360) 705-7019** or via email consultantrates@wsdot.wa.gov.

Regards;

A handwritten signature in blue ink, reading "Erik K. Jonson".

ERIK K. JONSON
Contract Services Manager

EKJ:ah

Exhibit E

Sub-consultant Cost Computations

If no sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI “Sub-Contracting” of this AGREEMENT. The following subconsultants will provide services under this AGREEMENT:

Aspect Consulting, LLC
Osborn Consulting, Inc.
OverSite, LLC

EXHIBIT E - ASPECT

Table 1 - Cost Estimate for City of Ellensburg - Brick Road Improvements

	Estimated Hours				Estimated Costs			
	Nick Szot, Associate	Will Guyton, Project 1	Mirka Ramsey, Coordinator 3	Jordan Sanford, Coordinator 2	Labor	Other Direct Charges (ODC)	Subs	Total Cost
Direct Hourly Rate	56.74	38.95	37.50	32.69				
Overhead 217.70%	123.52	84.79	81.64	71.17				
Profit 29.85%	16.94	11.63	11.19	9.76				
All-Inclusive Billing Rate	\$ 197.20	\$ 135.37	\$ 130.33	\$ 113.61				
Task 1 - Geotechnical Engineering								
Exploration Phase	4	10			\$ 2,143	\$ 110	\$ 690	\$ 2,943
Analysis and Reporting	8	6	2	2	\$ 2,878			\$ 2,878
Total Hours	12	16	2	2	\$ 5,020	\$ 110	\$ 690	\$ 5,820

July 7, 2022

Aspect Consulting, LLC
350 Madison Avenue N
Bainbridge Island, WA 98110

Subject: Acceptance FYE 2021 ICR – CPA Report

Dear Trish Klimek:

We have accepted your firms FYE 2021 Indirect Cost Rate (ICR) of 217.70% of direct labor (rate includes 0.15% Facilities Capital Cost of Money) based on the “Independent CPA Report,” prepared by BPM, LLP. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with the firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at **(360) 705-7019** or via email consultantrates@wsdot.wa.gov.

Regards;



ERIK K. JONSON
Contract Services Manager

EKJ:ah

9/29/2022
EXHIBIT E - OSBORN

Osborn Consulting, Inc. - Ellensburg Brick Road Improvements

		Osborn Consulting			
		Hours	Expenses ¹	Mileage ¹	Fee
Project Tasks				\$0.625	
Task 9 - Storm Drainage Design					
9.1 Conceptual Design	-				
Prepare for and Attend Two virtual meetings	4				
One Site Visit	16			350	
Develop one draft & final concept sketch	20				
9.2 Design Calculations	-				
Hydrologic calculations	12				
Swale sizing	18				
Develop Summary of Drainage Design	20				
9.3 60% Drainage PS&E	-				
Plan Sheets and drainage CAD base	44				
Two sets of plan sheet redlines	8				
Cost Estimate	14				
List of Special Provisions	4				
Comment Responses	4				
9.4 Final Drainage PS&E	-				
Plan Sheets and drainage CAD base	32				
Two sets of plan sheet redlines	8				
Cost Estimate	14				
Special Provisions	14				
Comment Responses	4				
9.5 Ad-Ready Drainage PS&E	-				
Final comments and coordination	4				
Total Hours		240	\$ -	\$ 218.75	
1. A mark-up of 5% is applied to Osborn's expenses and mileage for site visits.		DIRECT LABOR COST			\$ 11,646
		OVERHEAD (166.37%)			\$ 19,376
		FEE (29.85%)			\$ 3,476
		EXPENSES			\$ 230
		TOTAL FEE ESTIMATE			\$ 34,728



**Washington State
Department of Transportation**

Development Division
Contract Services Office
PO Box 47408
Olympia, WA 98504-7408
7345 Linderson Way SW
Tumwater, WA 98501-6504

TTY: 1-800-833-6388
www.wsdot.wa.gov

July 12, 2022

Osborn Consulting Inc.
1800 112th Ave NE Ste 220E
Bellevue, WA 98004

Subject: Acceptance FYE 2021 ICR – Risk Assessment Review

Dear Afsoun Mehrabkhani:

Based on Washington State Department of Transportation's (WSDOT) Risk Assessment review and the economic hardship approved by our WSDOT Audit Office of your Indirect Cost Rate (ICR), we have accepted your proposed FYE 2021 ICR of 166.37%. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with your firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at **(360) 705-7019** or via email consultantrates@wsdot.wa.gov.

Regards;

ERIK K. JONSON
Contract Services Manager

Jul 13, 2022

EKJ:mya

EXHIBIT E - OVERSITE



OverSite LLC
 6 First Street, Suite 14
 Wenatchee, WA 98801
 P: 206.250.6655
 E: joshua@oversite.tech

Cost Plus Fixed Fee

Breakdown		OverSite	
Client:		Project number	Date of Issue
Perteet / City of Ellensburg		OS22-053	09.06.2022
Project:			
Brick Road Improvements			
ROW & Topo			

	Estimated Hours	Estimated Costs		
	Joshua Velazquez			
	PLS			
Direct Hourly Rate	\$77.13			
Overhead 110.00%	\$84.84			
Profit 29.85%	\$23.02			
All-Inclusive Billing Rate	\$185.00	Labor	Other Direct Charges	Total Cost
Travel			254.83	
Boundary Research (PLS)	4	\$740.00		
Establish Control (PLS)	6	\$1,110.00		
Tie Monuments (PLS)	14	\$2,590.00		
Aerial Data Acquisition & Prep (PLS)	6	\$1,110.00		
Conventional Data Acquisition (PLS)	16	\$2,960.00		
Data Processing (PLS)	6	\$1,110.00		
Drafting & Modeling (PLS)	20	\$3,700.00		
QA QC (PLS)	3	\$555.00		
Total Hours	75	\$13,875.00	\$254.83	\$14,129.83

February 9, 2022

Joshua Velazquez, Owner
OverSite, LLC
6 1st Street
Wenatchee, WA 98801-2247

- Re: OverSite, LLC
Safe Harbor Indirect Cost Rate

Dear Mr. Velazquez:

Washington State has received approval from our local Federal Highway Administration (FHWA) Division to continue administering the “safe harbor” indirect cost rate program on engineering and design related service contracts, as well as for Local Public Agency projects.

We have completed our risk assessment for OverSite, LLC. We conducted our assessment based on the documentation provided by the firm. The reviewed data included, but was not limited to, a description of the company, basis of accounting, accounting system and the basis of indirect costs. Based on our review, your firm is eligible to use the Safe Harbor rate. You have opted to use the Safe Harbor rate, rather than provide a FAR-compliant rate at this time.

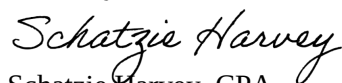
We are issuing the Safe Harbor Indirect Cost Rate of 110% of direct labor with a field rate, where applicable, of 80% of direct labor for OverSite. The Safe Harbor rate is effective on February 9, 2022.

OverSite has agreed to improve Internal Controls and timekeeping processes to be able to develop an Indirect Cost Rate Schedule in the future in accordance with the Federal Acquisition Regulations (FAR), Subpart 31. The WSDOT Internal Audit Office has provided guidance and information related to FARs and the AASHTO Audit Guide. You may use the Safe Harbor Rate of 110%, or 80% for field office situations, for agreements entered prior to February 9, 2025. For agreements entered after this date, please contact the WSDOT Consultant Services Office (CSO) or our office for guidance.

The Safe Harbor Rate will not be subject to audit. Please coordinate with CSO or your Local Programs contact if you have questions about when to apply the Safe Harbor rate to your agreement.

If you have any questions, please contact Steve McKerney or me at (360)705-7003.

Sincerely,



Schatzie Harvey, CPA
Agreement Compliance Audit Manager

cc: Steve McKerney, Director of Internal Audit
Larry Schofield, MS 47323
File

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *(Title of Modal Operating Administration)*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
[Include Modal Operating Administration specific program requirements.]
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Modal Operating Administration specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *(Title of Modal Operating Administration)* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *(Title of Modal Operating Administration)*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *(Title of Modal Operating Administration)* may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *(Title of Modal Operating Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Exhibit G

Certification Documents

- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of City of Ellensburg
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters -
Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit G-4 Certificate of Current Cost or Pricing Data

Agreement Number: 21-130

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the duly authorized representative of the firm of Perteet, Inc. whose address is 2302 W. Dolarway Rd., #1, Ellensburg, WA 98926

and that neither the above firm nor I have:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Perteet, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number: 21-130

Exhibit G-1(b) Certification of CITY OF ELLENSBURG

I hereby certify that I am the:

☒

☐ Other

of the _____, and
or its representative has not been required, directly or indirectly as an express or implied condition in connection
with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration
of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the _____
and the Federal Highway Administration, U.S. Department of Transportation, in connection with this
AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and
Federal laws, both criminal and civil.

Signature

Date

Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Perteet, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00, for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

Perteet, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of Brick Rd. Sidewalk Extension are accurate, complete, and current as of September 13, 2022.

Firm: Perteet, Inc.

Title

Date of Execution***:

***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

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Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

Exhibit I

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Agreement Number: 21-130

Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will met with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Approve Lodging Tax Banner Project Recommendation and Budget Adjustment

Submitted by: Nicole Klauss City Manager Department

Recommended Action or Motion: Approve the Lodging Tax Advisory Commission (LTAC) recommendation to fund the banner project with lodging tax dollars consistent with the provisions of Chapter 67.28 RCW and approve the necessary budget adjustments.

Background/Summary: The City of Ellensburg and Central Washington University are working to replace the banners around the City. The current banners that are still hanging are in poor condition and many are missing. The City plans to replace hardware and all 100 double-sided banners at one time and will be paying a professional with banner experience to do the installation. The project will be purchasing higher quality banners, updated designs that will show better on the banners, as well as new hardware that is expected to work better with the wind.

The City currently has \$10,000 allocated to the project. At their October 4 meeting, the Lodging Tax Advisory Committee approved spending an additional \$20,000 from Lodging Tax Advisory Committee funds to be used toward the project so the replacement of all the banners can be completed this calendar year. There are costs savings to ordering the materials for all 100 banners versus doing some now and some next year.

Central Washington University is contributing additional funds that will be paid to the City for the project.

Previous Council Action: N/A

Analysis: N/A

Financial Impact: The 2022 Lodging Tax Fund budget included \$10,000 for signage. Additional budget authority of up to \$50,000 is needed to accommodate this project. The Lodging Tax

Advisory Commission approved spending an additional \$20,000 toward the project. The Lodging Tax Fund contains adequate fund balance to accommodate these additional expenditures. The total project cost is approximately \$45,323.52. The City's total contribution would be \$30,000. Central Washington University has committed \$10,000 already and will contribute the remaining balance required for the banner purchase, to be paid to the City.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Award Bid Call 2022-18 Distribution Transformers

Submitted by: Paul Meyer Public Works & Utilities

Recommended Action or Motion: Staff recommends City Council award Bid Call 2022-18 Distribution Transformer Bid Schedules "A" and "C" to General Pacific, Inc. (Howard) the lowest responsive and responsible bidder, in the amount of \$543,080.75 including sales tax. In addition, staff recommends City Council award Bid Call 2022-18 Distribution Transformer Bid Schedule "B" to WEG Transformers, LLC, the lowest responsive and responsible bidder, in the amount of \$81,948.23 including sales tax.

Background/Summary: The Public Works and Utilities – Light Division routinely publishes a bid for distribution transformers. The transformers are used for capital construction projects and to replenish inventory.

The bid included three (3) separate bid schedules. Schedule "A" is for 1-Phase Pad-Mount Transformers, Schedule "B" is for 3-Phase Pad-Mount Transformers and Schedule "C" is for Overhead Outdoor Pole-Mount Transformers. The bid was advertised and placed on the City website with staff receiving two bids. General Pacific, Inc., bid on all three Schedules "A", "B" and "C". WEG Transformers USA, LLC only bid on Schedule "B". All bids were evaluated with consideration taken for both their initial cost and future costs as well. The future costs represent a value placed on the electrical losses, which occur within the core and windings of each unit. Therefore, a low loss unit, which consumes less electricity over its expected 30-year life, is usually the best investment.

The City specified that all transformers contain less than 1ppm of PCBs with the appropriate "No PCB" label affixed as prescribed by EPA regulations.

Previous Council Action: Council approved the Purchase of Distribution Transformers at its April 3, 2022 meeting, and Awarded Bid Call 2020-09

Distribution Transformers at its July 20, 2022 meeting.

Analysis:

General Pacific, Inc., (Howard) had the lowest responsive bid evaluated for a 30-year life for both Schedules "A" and "C" with a bid of \$294,932.55 and \$248,148.20 respectively, including sales tax, for a total bid award of \$543,080.75. WEG Transformers USA, LLC, had the lowest responsive bid evaluated for a 30-year life for Schedule "B" with a bid of \$81,948.23 including sales tax.

Financial Impact:

Budget authority for purchase of the Distribution Transformer will be included in the 2023/24 budget.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Project Acceptance – Bid Call No. 2020-35 - Helena Avenue Complete Streets Improvements Project

Submitted by: Josh Mattson Public Works & Utilities

Recommended Action or Motion: Accept Bid Call 2020-35 as complete and approve the supplemental budget appropriation in the Arterial Street Fund Budget.

Background/Summary: Work on the Helena Avenue Complete Streets Improvements Project has been completed. Council is now being requested to accept Bid Call 2020-35 as complete.

The project included the completion of sidewalk gaps and an asphalt overlay on Helena Avenue from Water Street to Airport Road. Three new fire hydrants and a new bus shelter were also installed. The project also included new traffic lane lines, pavement markings & sign revisions to add a bicycle lane on Helena Avenue from Water Street east to the end of the street.

The City of Ellensburg was successful in securing funding for the sidewalk portion of the Helena Avenue Complete Streets Improvements Project, through a 2019 Complete Streets Award from the Washington State Transportation Improvement Board (TIB).

The project had two bid schedules:

- Schedule "A": Helena Avenue frontage and street improvements including curb/gutter, pedestrian crossing improvements, sidewalk, stormwater improvements, tree plantings, buffer strip, asphalt surface grinding, asphalt paving, pavement markings, and signage.
- Schedule "B": Water Utility Improvements including installation of three new fire hydrants.

City staff designed, prepared bid specifications, and provided construction contract administration for this project.

Previous Council Action:

- April 15, 2019 Regular Council Meeting - Council authorized the City Manager to execute the Transportation Improvement Board's (TIB) Grant Agreement and authorized the Finance Director to execute the necessary budget amendments.
- June 17, 2019 Regular Council Meeting - Council approved resolution 2019-15 to adopt the City of Ellensburg's Six-Year Transportation Improvement plan for the years 2020-2025 which included the secured 2019 TIB Complete Streets Award funds for the Helena Avenue Improvements project.
- December 20, 2021 Regular Meeting - Council awarded Bid Call 2020-35.

Analysis:

The original contract bid amount for the project was \$1,004,033.63, and the final project cost was \$1,072,392.46. This extra cost is primarily a result of Schedule A standard asphalt cost price adjustments and construction material overruns to address saturated soils and unsuitable subgrade materials.

Financial Impact:

Additional expenditure authority in the amount of \$68,358.83 is needed in the 2022 Arterial Street Fund budget for the additional work. Adequate funds exist in the Arterial Street budget ending fund balance.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Official Newspaper Contract Bid Award

Submitted by: Beth Leader City Clerk

Recommended Action or Motion: Award the bid for the City's official newspaper contract to the Daily Record.

Background/Summary: The City issued Bid Call 2022-19 for the City's official newspaper contract, for a one-year term, commencing November 1, 2022. Per the bid specification, bidders must represent a newspaper of general circulation within the city limits and must be able to provide publication of legal notices within two working days of notification by the City. The rates charged for publication of legal notices shall not exceed the national advertising rate extended by the newspaper to all general advertisers and advertising agencies in its published rate card.

Previous Council Action: None

Analysis: The bid deadline was September 29, 2022. One bid was received from the Daily Record in the amount of \$9.00 per column inch. The bid complies with the number of days from notification by the City for publication of legal notices of two working days.

Financial Impact: The bid amount is a slight increase from last year and will be incorporated in the 2023/2024 budget.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Department of Commerce Capital Agreement with City of Ellensburg through America Rescue Plan Act State and Local Fiscal Recovery Funds - Connecting Housing to Infrastructure Program (CHIP)

Submitted by: Jamey Ayling Community Development

Recommended Action or Motion: Authorize the Mayor's Signature on CHIP Fund Agreement.

Background/Summary: The State of Washington has seen unprecedented growth over the past few decades and has recently been pursuing several options for combatting the challenges of keeping up with the demand for new housing units and the resultant housing affordability crisis. The Department of Commerce offered up 17.5 million dollars in infrastructure funding to boost affordable housing development. The \$17.5 million funded 26 total projects in 11 different counties. The City of Ellensburg worked with Habitat for Humanity to jointly apply for CHIP funds for the Stuart Meadows project requesting \$395,000 for infrastructure funding.

On April 26, 2022, Commerce informed the City that its grant proposal was selected and would be funded. Contract documents were prepared outlining the scope of work for the Stuart Meadows project and are attached.

Previous Council Action: N/A

Analysis: The Stuart Meadows project is partially funded with City affordable housing sales tax funds and surplussed City property. The additional grant funds for this project will support a lower cost for the units constructed in the project. The \$395,000 received will be used to construct stormwater collection and treatment facilities required for the housing development. By receiving grant funds, the additional \$395,000 will be factored in and spread over 18 units, which equates to an approximate \$22,000 per unit savings. This savings is

another step in making the houses affordable.

Financial Impact:

The grant will be administered within the Community Development Department. Expenditures, and offsetting revenues, will be budgeted for 2022 and 2023. The City will incur some administrative expenditures on behalf of the grant, which will be absorbed within existing positions, and positions proposed in the Preliminary 2023/2024 Biennial Budget.

Attachments:

[CHIP Ellensburg Stuart Meadows Contract](#)



Capital Agreement with

City of Ellensburg

through

America Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds -

Connecting Housing to Infrastructure Program (CHIP)

Purpose:

To support the construction of affordable housing by paying for utility infrastructure improvements at the Stuart Meadows development.

Start date: July 1, 2021

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**Washington State Department of Commerce
Local Government Division
Community Assistance & Research Unit
ARPA State and Local Fiscal Recovery Funds Grant**

1. Grantee City of Ellensburg 501 North Anderson Street Ellensburg, WA 98926		2. Project Name and Address Stuart Meadows 113 West Bender Road Ellensburg, WA 98926	
3. Grantee Representative Jamey Ayling Planning Manager (509)925-8653 aylingj@ci.ellensburg.wa.		4. COMMERCE Representative Eric Guida CHIP Program Manager (360)725-3044 eric.guida@commerce.wa.gov PO Box 42525 1011 Plum Street SE Olympia, WA 98504-2525	
5. Grant Amount \$395,000	6. Funding Source Federal: ☒ State: ☐ Other: ☐ N/A: ☐		7. Start Date July 1, 2021
8. End Date June 30, 2023			
9. Federal Funds (as applicable) \$395,000		Federal Agency US Dept. Treasury	
ALN (CFDA #): 21.027			
10. SWV # 0008367-00	11. UBI # 192-000-016	12. DUNS # 60041985	13. UNIQUE ENTITY ID #
14. Grant Purpose The outcome of this performance-based Grant Agreement is to undertake the construction of utility infrastructure improvements as referenced in Attachment A – Scope of Work for the Stuart Meadows project.			
COMMERCE, defined as the Department of Commerce and Grantee acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Certification of Availability of Funds to Complete the Project, Attachment “C” – Certification of the Payment and Reporting of Prevailing Wages,			
FOR GRANTEE _____ Nancy Lillquist, Mayor _____ Date APPROVED AS TO FORM ONLY _____ Name _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director, Local Government Division _____ Date APPROVED AS TO FORM ONLY  _____ Sandra Adix Assistant Attorney General <u>March 31, 2022</u> Date	

DECLARATIONS

CLIENT INFORMATION

GRANTEE Name: City of Ellensburg
Grant Number: 22-96720-212

PROJECT INFORMATION

Project Name: Stuart Meadows
Project Address: 113 West Bender Road
Project City, State Zip Code: Ellensburg, WA
98926

GRANT INFORMATION

Grant Amount:	\$395,000
Appropriation Number:	2021 Washington State Capital Budget SSB 1080, Section 1074
Re-appropriation Number (if applicable):	
Grant End Date:	June 30, 2023, if funds are not re-appropriated. Grant End Date may be extended contingent on reappropriation
Biennium:	2021-2023
Biennium Close Date:	June 30, 2023
Earliest Date for Reimbursement:	March 3, 2021
Time of Performance:	In accordance with Special Terms and Conditions Number 4

FUNDING INFORMATION

Federal Funding:	Sec. 602 Coronavirus State Fiscal Recovery Funds of Title VI of Social Security Act as added by American Rescue Plan Act of 2021 (ARPA or "Act"), Title IX, Subtitle M, Sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq.
Federal Award Agency:	US Department of Treasury
Amount of Federal Funds Obligated by this Action:	\$395,000

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

Extension of Grant Upon Reappropriation.

Notwithstanding General Term and Condition No. 4, the End Date of this Grant **may be extended upon written notice to Grantee from Commerce** for a period of time consistent with the effective date of any re-appropriation of funds, and/or with terms reflecting new Federal requirements for ARPA funds, if any. In Commerce's sole discretion, after review of any funding re-appropriation terms and applicable Federal law or guidance, a contract amendment in accordance with General Term and Condition No. 4 may be required to extend the End Date.

Last revision 11/23/2021

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

1. AUTHORITY

Funding for this Grant has been provided in the 2021-2023 biennial state Capital Budget, SSB 1080, pursuant to Federal grants to Washington State under the American Rescue Plan Act of 2021 (ARPA or "Act"), sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq. The parties anticipate that funding under this Grant that is unexpended in the 2021-23 state biennium may be re-appropriated in future biennia, subject to Federal requirements.

2. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Identification Number (FAIN): SLRF0002

Total amount of the federal award: \$395,000

Federal Awarding Agency: US Department of Treasury

Research & Development (R&D): award will not be used for R&D

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

"This project was supported by grant awarded by the US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the America Rescue Plan Act, State and Local Fiscal Recovery Funds, Washington State Department of Commerce."

3. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

4. PERIOD OF PERFORMANCE, COSTS INCURRED, REIMBURSEMENT

a) Period of Performance. The initial period of performance for this award begins on the date hereof and ends on June 30, 2023. If unexpended funds under this Grant are re-appropriated, the period of performance (Contract End Date) will be extended to not later than October 30, 2026.

b) Costs Incurred Period. As set forth in Treasury's implementing regulations, Grantee may use funds awarded under ARPA to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024. Pursuant to Federal rules, a cost shall be considered to have been incurred if the Grantee has incurred an obligation with respect to such cost by December 31, 2024. All change orders for which reimbursement is requested must be executed on or before December 31, 2024.

c) Reimbursement Period. All requests for reimbursement of eligible costs incurred between March 3, 2021 and December 31, 2024 payable from ARPA funds must be submitted to COMMERCE by the **earlier of** October 30, 2026 or 30 days prior to the Contract End Date.

5. COMPENSATION

COMMERCE shall pay an amount not to exceed the total contract amount listed on the contract Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

6. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the GRANTEE for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The GRANTEE can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Grants Management System (CMS), which is available through the Secure Access Washington (SAW) portal. The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Grant Number listed on the contract Face Sheet.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or if work is not completed or Grant terminated, within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Additional Special Terms and Conditions set forth in the Declarations page above.

Each request for payment must be accompanied by:

- a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE.
- Any documentation of costs, and prevailing wage as per section 8 of the Special Terms and Conditions and Attachment C, CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES.
- A reportable expenses form as detailed in Section 7 of Special Terms and Conditions, SUBCONTRACTOR DATA COLLECTION.

COMMERCE will pay GRANTEE upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE **not more often than monthly**.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

Withholding

At its sole discretion, COMMERCE may withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

7. SUBCONTRACTOR DATA COLLECTION

Grantee will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

8. COMMERCIAL PREVAILING WAGE FOR UTILITY CONNECTIONS

Any utility connections from the exterior of the building to the main sewer and water lines or stormwater facilities must be paid commercial prevailing wage. See General Term and Condition #30 for documentation.

9. HISTORICAL OR CULTURAL RESOURCES, HUMAN REMAINS

CHIP projects are subject to the requirements of Washington State Governor's Executive Order (GEO) 21-02 "Archaeological and Cultural Resources". CHIP Grantees will cooperate with Commerce to fulfill the requirements of GEO-21-02. Commerce will delegate consultation authority to the grantee by letter, and each project must complete the EZ-1 Form to comply with the [GEO 21-02](#). In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Grantee or subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, the Grantee shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe's cultural staff or committee.

10. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

1. Submit to COMMERCE the reporting package specified in Uniform Guidance 2 CFR 200, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to the [Federal Audit Clearinghouse](#).
<https://facides.census.gov/Account/Login.aspx>

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

11. DEBARMENT

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE. Grantees should review section 14 of the Special Terms and Conditions for information on documenting that any subcontractors are not on the federal debarment list.
- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.

The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

12. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

13. COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS

- A. Grantee agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Grantee also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Grantee shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS

- B. Federal regulations applicable to this award include, but are not necessarily limited to the following:
- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
 - x. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR [§ 200.216](#).
- C. Statutes and regulations prohibiting discrimination applicable to this award include, but are not necessarily limited to the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
 - vi.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

14. FEDERAL EXCLUSION

These terms add to the terms in Section 12 Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion — Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Grantee also agrees to access the Federal Exclusion List at www.sam.gov and provide Federal Exclusion documentation to Commerce and to keep a copy on file with the Grantee's project records.

15. REGISTRATION WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM)

By signing this Grant, the Grantee accepts the requirements stated in 48 CFR 52.204-7 to register with the System for Award Management at the [SAM website \(https://www.sam.gov\)](https://www.sam.gov). To register in SAM, a valid Unique Entity Identifier (UEI) is required. The Grantee is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Grantee must remain registered in the SAM database after the initial registration. The Grantee is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Grantee shall provide evidence documenting registration and renewal of SAM registration to Commerce.

In the event of the Grantee's noncompliance or refusal to comply with the requirement stated above, Commerce reserves the right to suspend payment until the Grantee cures this noncompliance.

16. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Grant Agreement period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Grant Agreement accordingly.

17. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this Grant Agreement to assure affordability when the CHIP grant program contributed to the project, unless monitored by another funder. The funding for this program, [SB 5651 (section 1032), laws of 2021] requires that projects serve and benefit low-income households, and requires affordability for at least 25 years. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this Grant Agreement.

18. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this Grant Agreement, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the

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original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.

- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture provision).

19. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture Provision).

20. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

21. FRAUD AND OTHER LOSS REPORTING

Grantee shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Grant Agreement immediately or as soon as practicable to the COMMERCE Representative identified on the Face Sheet.

22. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages

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1. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate contract with the Grantee. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Special Terms and Conditions. Administrative services shared by other programs shall be assigned to this Grant based on an allocation plan that reflects allowable administrative costs that support services provided under each Grant administered by the Grantee. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

3. ALLOWABLE COSTS

Costs allowable under this Grant are actual expenditures according to an approved budget up to the maximum amount stated on the Grant Award or Amendment Face Sheet.

4. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

5. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

7. APPROVAL

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

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8. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE. For the purpose of the CHIP contracts, which require a city, county or public utility sponsor of the affordable housing project, Commerce preapproves the grantee to assign this contract to their affordable housing partner. In this case, all requirements and contract terms flow to the assignee's subcontractors, specifically section 11, certification regarding debarment, and section 40, subcontracting, of the General Terms and Conditions. After assignment, all references to Grantee shall mean Grantee's assignee.

9. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

10. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

1. Submit to COMMERCE the reporting package specified in Uniform Guidance 2 CFR 200, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to the [Federal Audit Clearinghouse](https://facides.census.gov/Account/Login.aspx).
<https://facides.census.gov/Account/Login.aspx>

11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this contract, the Grantee shall attach an explanation to this contract.

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- C. The Grantee agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - ii. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

12. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - 1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
 - 2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
 - 3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

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- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

14. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

15. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Commerce program administering this contract, including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

16. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

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17. DISALLOWED COSTS

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

18. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Grant number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

19. DUPLICATE PAYMENT

The Grantee certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

20. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

21. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of, or resulting from, the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subcontractor's performance or failure to perform the contract. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

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22. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

23. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

24. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

25. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

26. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.

27. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

28. PAY EQUITY

The Grantee agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Grantee may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

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(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Grantee is not in compliance with this provision.

29. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

30. PREVAILING WAGE LAW

The Grantee certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Grantee shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

31. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR 200 for all purchases funded by this contract.

All recipients of funds under this Contract, including Contractor and subrecipients or subcontractors of any tier, must follow the procurement standards in 2 CFR §§ 200.318 through 200.327, including ensuring that the procurement method used for the contracts are appropriate based on the dollar amount and conditions specified in 2 CFR § 200.320.

The Grantee's procurement system should include but not necessarily be limited to, the following:

- A. General procurement standards 2 CFR [§ 200.318](#). A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Competition 2 CFR [§ 200.319](#). Procedures that ensure all procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).
- C. Methods of procurement to be followed 2 CFR [§ 200.320](#).
- D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms 2 CFR [§ 200.321](#).
- E. Domestic preferences for procurements 2 CFR [§ 200.322](#).

32. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

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33. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

34. RECAPTURE

In the event that the Grantee fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this contract.

35. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Grantee shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

36. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

37. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

38. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

39. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

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40. SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

41. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

42. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

43. TERMINATION FOR CAUSE

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Grantee shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Grantee or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Grantee: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

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44. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

45. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Grantee shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee, under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Grantee and in which COMMERCE has or may acquire an interest.

46. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of

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this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subcontractors.

47. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

48. WORK HOURS AND SAFETY STANDARDS

The Grant Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Grant Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

SCOPE OF WORK

Funds awarded under this grant will be used for \$395,000 in capital expenditures for the Stuart Meadows project, an 18-unit single family home project in a community land trust, with 15 affordable units. The location of the project is: 113 West Bender Road, Ellensburg, WA 98926. Project activities will include and be limited to the construction of the following utility improvements:

- Stormwater utility improvements: A requirement for this project is to install 350 feet of new 12" storm drain pipe to manage the storm water from the installation of the road and sidewalk. All storm water will be treated with an onsite storm detention pond. All impervious materials must lead to the stormwater pond and are part of the total scope of work to meet the City standards. The total cost for this improvement is \$395,000.

This project is expected to be complete by December 1, 2024.

The "Copyright Provisions", Section 16 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

Based on the criteria within the state capital budget, SSB 1080 Sec 1074, (Laws of 2021), and criteria developed by Commerce to ensure the terms of the appropriation are met, all grants must meet the following criteria:

- Applicant must be a city, county or public utility district, applying in coordination with the developer of a multi-unit affordable housing project, located within a jurisdiction that imposed a sales and use tax under RCW 82.14.530(1)(a)(ii), 82.14.530(1)(b)(i)(B), 82.14.540, or 84.52.105.
- The utility project must serve new multi-unit affordable¹ housing projects that serve and benefit low-income households.² If the project is a mixed-income project, the affordable portion of the development must be at least 25%.
- The affordable housing project should be part of a program that will monitor affordability for a minimum of 25 years, such as the Housing Trust Fund, low-income housing tax credits, housing authority, or a city monitoring process. A covenant and/or note and deed of trust may be required as part of securitization to ensure affordability.

¹ "Affordable housing" has the same meaning as in RCW 43.185A.010, and means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income. In the context of homeownership, the definition from the [Housing Trust Fund Handbook](#) applies (Section 701.7): "affordability occurs when a household's monthly housing costs are generally no more than 38 percent of monthly household income and total debt is no more than 45 percent of monthly household income. Housing costs include mortgage principal, interest, property taxes, homeowner insurance, homeowner association fees, and land lease fees, as applicable. Total debt includes other debt and utilities."

² "Low-income household" has the same definition as in RCW 43.185.010(6), and means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located.

CERTIFICATION PERFORMANCE MEASURE – SCOPE OF WORK

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE as of the date and year written below.

Nancy Lillquist, Mayor

DATE

How this project meets criteria for APRA SLFRF Projects

This project aligns to the Expenditure Category 3 of ARPA SLRF, services to Disproportionately Impacted Communities, Housing Support: Affordable Housing EC 2.15,³ Under ARPA's SLFRF guidance, funding for this grant falls under the category of responding to "*Public Health and Economic Impacts*" of the COVID-19 public health emergency. Within that category of eligible actions, this program is intended to "*Building Stronger Communities through Investments in Housing and Neighborhoods*" by serving those communities that were hardest hit by the pandemic through investments in affordable housing development. Eligible services include: *Affordable housing development to increase supply of affordable and high quality living units*. Supporting the development of affordable housing is important to address a limited supply of housing, some of which is inadequate, or of poor quality.⁴ The Interim Final Rule supports this finding by stating that "both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began" including "low income communities, people of color, and Tribal communities."⁵

³ <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

⁴ See specific language at printed pages 26795 and 26796 of the [Interim Final Rule](#) to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under ARPA).

⁵ Ibid, page 26787.

CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE ENTIRE PROJECT

Type of Funding	Source Description and purpose	Amount
CHIP Grant	Washington State Department of Commerce	[[Original Contract Amount]]
<i>Other Grants</i>		
Grant #1		
Grant #2		\$
Total Other Grants		\$0.00
<i>Other Loans</i>		
Loan #1		\$
Loan #2		\$
Total Loans		\$0.00
<i>Other Local Revenue</i>		
Source #1		\$
Total Local Revenue		\$0.00
<i>Other Funds</i>		
Source #1		\$
Source #2		\$
Total Other Funds		\$0.00
Total Project Funding		\$0.00

CERTIFICATION PERFORMANCE MEASURE - AVAILABILITY OF FUNDS

The GRANTEE by its signature, certifies that project funding from sources other than those provided by this Grant Agreement has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

Nancy Lillquist, Mayor

DATE

CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, including but not limited to the filing of the “Statement of Intent to Pay Prevailing Wages” and “Affidavit of Wages Paid” as required by RCW 39.12.040. See section 8 of the Special Terms and Conditions and section 30 of the General Terms and Conditions.

Before invoices are paid, the “awarding agency” must provide documentation of the “intent to pay commercial prevailing wages”. Before the final funds are paid from the state, an “affidavit of wages paid” from L&I must also be provided. The GRANTEE or assignee, shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE’s review upon request.

CERTIFICATION PERFORMANCE MEASURE – PREVAILING WAGES

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE and their subcontractors as of the date and year written below.

Nancy Lillquist, Mayor

DATE



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Amendment 1 to Interlocal Cooperation Agreement with NoaNet

Submitted by: Ben Faubion Information Technology

Recommended Action or Motion: Authorize the Mayor to sign Amendment 1 to the Interlocal Cooperation Agreement with NoaNet and approve the necessary budget adjustments.

Background/Summary: On June 15, 2015, the City and NoaNet entered into a Master Services Agreement for wholesale telecommunications services. On December 4, 2017, the City entered into a Interlocal Cooperation Agreement with NoaNet for cooperative services to support telecommunications services. Before the agreement expired December 21, 2021, the City signed a new Interlocal Cooperative Agreement with NoaNet December 20, 2021. The current Interlocal Agreement expires December 31, 2023.

On July 26, 2021, the Department of Commerce Washington Broadband Office (WSBO) selected the City of Ellensburg Telecom Utilities project "City of Ellensburg Fiber Extension and Fixed Wireless Broadband Project" to be included in the WSBO's application for funding through the National Telecommunications and Information Administration (NTIA).

On July 20, 2022, the City of Ellensburg Telecom Utility received an award letter for \$437,573 for a grant from the WSBO. The WSBO's application has been funded through National Telecommunications and Information Administration (NTIA)-Broadband Infrastructure Program.

On August 19, 2022, the City of Ellensburg Telecom Utility received an additional \$109,393 award from the WSBO's Match Grant Program to cover changes in projected costs to complete the project due to cost increases for materials and construction.

The City of Ellensburg Telecom Utility received an award from the WSBO for \$437,573 and a matching grant amount of \$109,393 for total grant funding in the amount of \$546,966 for the City of Ellensburg Fiber Extension and Fixed Wireless Broadband Project.

Previous Council Action: The City signed a new Interlocal Cooperative Agreement with NoaNet December 20, 2021.

Analysis: The City Water Utility has long struggled with monitoring the City wells outside the City limits. The Water Department requested the Telecom Utility look for unique opportunities to connect the City wells with reliable and modern fiber optic communications. The City of Ellensburg Fiber Extension and Fixed Wireless Broadband Project will connect three very important City wells located in the Thorp region. Additionally, the project will provide open access middle mile fiber and wireless service in the area to unserved and underserved customers city's open access network through collaboration and contracting with local providers.

The City of Ellensburg received a Scope of Work from NoaNet to perform Administration, Engineering, and Implementation of the NTIA Broadband Infrastructure Program grant and Department of Commerce WSBO Matching Grant. In preparation for completing the grant contract with the Department of Commerce, the City Telecom Utility is seeking approval of an amendment to the Interlocal Agreement to begin necessary work and provide budget authority.

Staff will return to Council at a later date once the City of Ellensburg Telecom Utility receives an executable contract for the NTIA broadband Infrastructure Program Grant and Department of Commerce WSBO Matching Grant.

Financial Impact: The total cost for the NoaNet Scope of Work will be covered by grants. Grant agreements are in development and NoaNet will assist with compiling the necessary grant scope of work. The expected expenses of the NoaNet Scope of Work are \$32,500 for the NTIA Broadband Infrastructure Program and \$85,990.16 for the WSBO Matching Grant totaling \$118,490.16.

Attachments:

Interlocal Agreement Ellensburg Amendment 1 Exhibit D
NoaNet-City Interlocal Agreement (12-20-21)

AMENDMENT 1 TO THE INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF ELLENSBURG AND THE NORTHWEST OPEN ACCESS NETWORK

This AMENDMENT 1 to the Interlocal Cooperation Agreement effective December 20, 2021 ("Agreement") is made and entered into effective the ____ day of _____, 2022 between the City of Ellensburg ("City"), a Washington municipal corporation, and Northwest Open Access Network ("NOANET"), a nonprofit mutual corporation of the state of Washington. The City and NOANET are sometimes referred to herein collectively as "Parties."

RECITALS

WHEREAS, the Washington Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington ("RCW"), permits public entities to cooperate with one another on the basis of mutual advantage to make the most efficient use of their powers, thereby providing services and facilities in a manner that accords best with geographic, economic, population, and other factors influencing the needs and development of local communities, and allows public agencies to enter into agreements with one another for joint cooperative action; and

WHEREAS, NOANET is a Washington nonprofit mutual cooperation formed by Public Utility Districts in the State of Washington with the mission to bring high-speed telecommunications services to unserved and underserved communities; and

WHEREAS, the City has the authority to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the City's limits; and

WHEREAS, on December 20, 2021, the Parties entered into a Interlocal Cooperation Agreement for cooperative services to support telecommunications services; and

WHEREAS, NOANET desires to assist the City with all programs possible to support the City's telecommunications efforts, including the City's expansion project for its fiberoptic network funded through a grant from the U.S. Department of Commerce - National Telecommunications and Information Administration's ("NTIA") Broadband Infrastructure Program ("BIP"), hereafter referred to as "the Project"; and

WHEREAS, NOANET has proposed a Scope of Work in support of the Project, as set forth below;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

AMENDMENT 1

A. Section 1 of the Agreement is hereby amended as follows:

1. **Purpose and Scope.** The purpose and scope of this Agreement is to provide for NOANET's assistance with broadband planning, network operations, network planning, construction management, network engineering and any other services of need that NOANET provides and the City deems needed as more fully described in the attached Scopes of Work (the "Services), attached hereto and incorporated herein as Exhibits A, B, C and D, as well as establishing the related obligations of the Parties. IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

B. Except as specifically amended herein, all other terms and conditions of the Agreement remain in full force and effect.

By: _____
Mayor, City of Ellensburg

By: _____
Craig Nelsen
Chief Executive Officer, NoaNet

Attest:

City Clerk

EXHIBIT “D”
SCOPE OF WORK
Qualifications and Scope of Services
for
Engineering, Outside Plant Construction Management, and Grant Management

SCOPE OF SERVICES

The Scope of Services provided for and offered by NoaNet are outlined as specific scopes below. In some cases, the scope of service can be provided on an individual basis or as a collective group. These Scope of Services are designed to provide end-to-end Engineering, Furnish, and Installation services for all aerial and underground plant installations from long haul to local loop and service drops installations. As NoaNet is not a licensed contractor in the State of Washington, any public works necessary to be performed as a scope of work will be provided by a licensed subcontractor.

ENGINEERING, NETWORK OPERATIONS, AND CONSTRUCTION MANAGEMENT SCOPES:

In coordination with our Network Coordinated Services platform, the NoaNet Network Engineering, Operations, and Outside Plant teams combine industry leaders and managers in Engineering and Consulting. They have produced, designed, engineered, permitted, contracted, and managed hundreds of telecommunications facilities, long haul, middle mile, local loop, and lateral extension projects and networks in the state of Washington. With the PUD telecom statute, RCW 54.16.330, this highly capable team delivers robust facility and engineering solutions to deploy wholesale telecommunications needs across the state further. The team is structured through internal, prime, and sub-contracting relationships to create innovative solutions, practical designs, and expert implementations with precise project coordination.

Engineering, Design, and Outside Plant Construction projects require an engineering team with qualified staff that spans a wide range of disciplines. This would include the capabilities to evaluate and provide insight into existing facilities, design and implement a new network, and know current and future technology trends to plan for today's and tomorrow's subscriber needs. In addition, this requires its engineering team to understand and maintain infrastructure records accurately.

NoaNet's Engineering, Operations, OSP, and GIS/CAD are currently intertwined in many projects for new fiber and wireless buildouts. NoaNet has completed thousands of miles of underground and overhead EF&I fiber installations, a multitude of fiber to the presence, and statewide /regional fiber network builds for various projects, including both entirely new fiber networks and new fiber builds to connect existing fiber segments to form new fiber networks. These deployments have incorporated voice, high-speed data, and RF or IPTV video services. NoaNet has also done the ground up design implementation and testing of several Private LTE systems. Providing lower cost broadband services in areas where fiber is not an economically feasible solution.

NETWORK ENGINEERING

Scope NE1: Network Design & Planning

NoaNet Engineers provide network design assistance to build a new network or redesign an existing one. Our senior security engineers help you define the optimal network solution that is secured and assured.

We collaborate with your team to recommend industry best practices and assist in creating specific network and software configurations that support an infrastructure that is flexible, scalable, and secure. We accomplish discussing many options with you such as:

- Network Architecture
 - Fiber (FTTX, Middle-mile, etc.)
 - Wireless (PTP microwave, Private LTE, WiFi etc.)
 - Hybrid fiber and wireless
- Network Detailed Design
- Security Design
- Design Review and Verification
- Migration Planning
- Test Planning
- Integration Planning
- Migration Workshops/Training

Scope NE2: Network Management

We provide several options to ensure your network is operating securely and at peak efficiency. Our professional services consultants are available to identify potential bottlenecks or hotspots in the IP network and benchmark the current health and utilization of the route infrastructure, peering points, and routing policies while providing trending data that can be used for future capacity planning and analysis. A number of these optimization services include:

- Network Health Check
- Security Assessment and Risk Mitigation
- Routing Policy Optimization
- Class of Service/QoS Design
- BGP Peering Analysis
- MPLS Implementations
- WAN Optimization and Acceleration
- Managed LAN/WAN, VoIP/IPT Solutions
- Hosting Applications
- New Feature Rollout
- New Technology Networking
- Product Refresh

OUTSIDE PLANT MANAGEMENT

Scope OSP1: Facility General Design and Engineering

NoaNet will perform all the necessary Design and Engineering functions to prepare the route for construction. Engineering is the process of locating proposed construction routes and preparing drawings and tabulations to show the locations and quantities of construction units required.

A construction drawing has been produced in the field by an engineer and depicts the proposed construction route from a topographical survey of the route

The designer(s) shall perform, collect, document, and map the following:

- Measurements along the route;
- Above ground features such as road name or number, road width, danger trees, rights-of-way, etc.;
- Poles, guys, anchors, etc.;
- Lakes, ponds, streams, etc.; and
- Approximate location of any obstruction that may be encountered during the actual construction of the project,
- Draft maps showing available executed or planned rights-of-way easements;
- Reports or maps on environmentally sensitive areas;
- Acquire Route and pole numbering sequences, compete Pole Attachment Application;
- Determine station installation procedures;
- Establish aerial clearances according to NEC and NESC;
- Cable manufacturer's sag and tension data against pole span;
- Draft Pipeline and Railroad Crossing Permits;
- Draft Washington State Department of Transportation Crossing Permit and develop Traffic Control Plan;
- Prepare, Deliver, Execute, and Record Easement with Property Owner of associated sites

Scope OSP2: Develop Outside Plant Assembly Units, Construction Drawings

The general underground running line and aerial plant design of the engineered route should be translated by the staker(s) into a specific design in sufficient detail to enable the plant's construction. To facilitate this, a standard "assembly unit" will be devised for most major outside plant components. By specifying the appropriate type, quantity, and location of standard and nonstandard assembly units on the construction drawings, the staker(s) depicts the complete physical outside plant contemplated in the designed route. The detailed descriptions of all units are included in the associated work order; underground running line and aerial plant assembly units are given in the work order. Where standard assembly units are insufficient to provide for unique construction requirements, the staker(s) will create detailed "nonstandard assembly units" to meet

those requirements. Upon completion of the Assembly Units customer will have a detailed set of construction drawings that will enable successful construction of the designed route.

Scope OSP3: Staking and Construction Management

Staking is the activity performed in the field to determine the type of construction recommended at a given control point to the next control point. The aerial and underground cable route and outside plant assembly units are recorded on the construction drawings developed by the staker(s). Construction Management is the activity performed by Resident and Inspectors qualified to effectively manage and assure the quality of the construction drawings, specifications, and contractor expectations.

The staking technician will begin staking by checking the status of easements, by marking control points on the LD maps, and by making a reconnaissance of the proposed construction areas checking for the items listed below:

- Terrain;
- Location of establishments;
- Natural control points;
- Appropriate locations of poles, anchors, terminals, etc.;
- Location of the first attachment on the subscriber's building, the station protector and/or network interface device location and the most effective ground electrode available; and
- R/W clearing and trimming units.

Control points are those points or areas along a proposed construction route where circumstances demand special consideration by the staking technician in specifying appropriate construction units. Examples of control points are:

- Street, alley, and highway intersections;
- Street, alley, and property lines;
- Rivers, streams, gullies, drainage ditches, and canals;
- Ridges and depressions;
- Angles and corners in highways, streets, and roads;
- Private driveways, field entrances, and fence corners;
- Railroad R/W;
- Pole lines of other utilities;
- Junctions between cable and wire;
- Junctions with branch cables;
- Cable terminal locations;
- Trees and brush;
- Restricted R/W;
- Rock outcropping;
- Changes in grade; and
- Areas identified as environmentally sensitive.

The information to be included on the construction drawings is necessary to prepare the plans and specifications and that which is needed to construct the outside plant. The construction drawings should be prepared so that they may be used as permanent plant records. The cable route should be selected to minimize property damage. The location of the proposed poles should be selected to minimize possible damage from vehicular traffic and allow for easy maintenance access. Highway crossings should be discussed with the department of transportation authorities and any necessary permits obtained.

Construction Management will be responsible for the staking coordination between the construction prints and the contractor. The CM team will be comprised of Residents and Inspectors based on the crew size of the project. The teams will proceed along the route, marking, understanding, and detailing the following information:

- Location and type of the aerial enclosures and poles;
- Pole numbers;
- Span lengths and cable sag;
- The lengths of aerial service wires in meters (or feet) from aerial enclosures to subscriber's premises;
- Pairs, gauge, and type of cable or wire;
- Number of optical fibers and type of fiber optic cable;
- All miscellaneous construction units for the plant installation, such as grounds, etc.
- Markers should be used to show the location of the following:
 - Proposed pole and anchor locations;
 - Proposed miscellaneous units; and
 - Proposed street, road, and/or highway crossing locations.
- The cable route and pole number should be marked on the markers to be legible at the time of construction.
- The Underground cable Markers should be used to show the location of the following:
 - Length and type of construction;
 - Location of all Hand Holes, Vaults and Pull Points; and
 - Proposed Fiber Marker locations
- All transitions from Aerial to Underground plant.

Construction Management Residents are the lead field representatives for the engineering team in charge of the route/region. Their responsibilities include:

- Provide direction and help Inspectors
- Print and Review plans and specification requirements, RUS Standards for buried and aerial plant construction, and in affected areas, the archeological treatment plans, and Best Management Practices for construction to comply with the Environmental Assessment
- Conduct Periodic safety sessions with personnel and subcontractors
- Captures construction data to provide for daily and weekly reports

- Inspect construction materials, material handling procedures, and equipment before construction, reject defective materials and equipment, and correct improper handling procedures
- Coordinate with Joint use (trench and poles) entities
- Test constructed facilities for continuity
- Obtain and disseminate appropriate permits

Construction Management Inspectors report to the Residents and support the crews utilized by the contractor to perform the work

- Print and Review plans and specification requirements, RUS Standards for buried and aerial plant construction, and in affected areas, the archeological treatment plans, and Best Management Practices for construction to comply with the Environmental Assessment
- Inspect construction crews for compliance with plans and specifications, report variances to Resident
- Record as-built data on staking sheets and record cable sequential
- Verify cleanup is satisfactory
- Communicate Construction requirements, questions, and variations to Resident
- Field observations for such activities as splicing, environmental adherence, underground dirt work, aerial installations, facility transitions, and fiber testing and conduit proofing.
- Participate in periodic safety training sessions

Scope OSP4: Final Inventory Construction Drawings

Final inventory construction drawings are usually made after construction by correcting the initial construction drawings. The contractor must provide to the owner completed construction drawings that are updated and modified to capture an "as-built" set of drawings during actual construction. The corrected construction drawings are then prepared in final form as permanent plant records.

The "as-built" or final inventory construction drawings should provide the following information in complete detail:

- An inventory of all outside plant units installed; and
- The physical location of the aerial and underground facilities

These construction drawings should give a record of the number of materials and their location in the field to provide the customer with a basis for a reliable schematic with which to locate the cable either for troubleshooting, upgrading, or coordinating with other utilities and construction activities that might occur in the future.

Scope OSP5: Easement and Consent Acquisition

NoaNet shall include all labor and cost required to research title to obtain the vesting deed and recorded easement of the county and/or city in which the work is to occur.

- NoaNet shall prepare a project introduction letter and Consent or Easement document (as applicable) for each Customer
- For easement acquisitions, NoaNet shall gather all relevant property data, prepare a project funding estimate to determine the easement value, and prepare a Summary Statement
- Where Easements exist, NoaNet shall prepare a Consent to Use of Easement in lieu of and Easement
- NoaNet shall work with each Customer to resolve any issues and negotiate the acquisition towards a successful close
- NoaNet shall record signed consents and easements at the County and/or City Auditor's office
- NoaNet shall prepare closed acquisition files and transmit them to NoaNet;
- Hardcopy file for each parcel transmitted
- Electronic files in PDF format with all parcel acquisition files transmitted
- It is assumed that; NoaNet will provide detailed construction drawings, specifications on the site, and the appropriate subscriber consent and permit forms

Scope OSP6: Department of Transportation (DOT), County and City Permits

NoaNet to provide the engineering required to design and submit permit drawings to extend services within DOT, County, and City Right of Ways. A drawing exhibit will be provided with the permit and prepared per DOT, County, and City requirements.

Scope OSP7: Make Ready Data Collection and Utility Application

NoaNet shall perform all the requirements to prepare and submit pole applications with the local utility or telephone pole Customer. Should the local Joint Use Utility require structural load calculations, NoaNet engineers will work closely with professional engineering staff to fully support the application requirements.

Scope OSP8: Geo-Spatial tracking and mapping of fiber plant

NoaNet will leverage its GIS mapping software to track and map existing and newly constructed fiber optic cable systems. Compensation will be derived from the end-to-end fiber footages, splice points with hand holes, pole data attachments, and per splice connection. Services include but are not limited to implementing the current system into GIS mapping software, adding newly constructed routes and deployments, or combining both. Long term management of fiber plant would consist of

- NoaNet will maintain resource data related to the fiber infrastructure inventory information,
- Maintain visual end-to-end fiber network topology associated with GIS-based data,
- Manage fiber route data and splicing documentation,

- Feature fiber fault locating and troubleshooting ability by integrating field determined OTDR data leveraged against internal GIS span lengths.

Scope OSP9: Fiber Optic Facilities Management

NoaNet shall provide all support and management staff necessary to provide safe, efficient, cost-effective facilities and infrastructure management, planning, design, construction, and development services to maintain the outside plant fiber optic facilities and associated apparatus. After a detailed review of the current facilities, NoaNet will create a project team, plan, and workflow to continually manage, track, repair, restore, budget, upgrade, and complete internal process requirements to effectively maintain the outside plant system. The overall scope and requirements will be a coordinated development project between Customer and NoaNet to create a management structure, workflow, and process and procedures that ensure services are rendered per agreed-upon guidelines.

GRANT COORDINATION AND PLANNING

NoaNet consulting services will perform the necessary requirements of grant administration for each state and federal grant award as required and administered by the grant program. These grants include but are not limited to federal grants such as NTIA and USDA, as well as state grants from the Washington Department of Commerce such as the PWB and WSBO. As the grant administrative requirements differ from grant to grant, any unforeseen requirements maybe included in individual task orders as required by the district. NoaNet will participate with the city to coordinate and communicate with participating telecommunications providers to establish service provider agreements compliant with grant requirements. The Service Provider Agreements approved by the city will obligate the participating telecommunications providers to provide sufficient services to meet the requirements of the grant.

Project Plan

OVERVIEW

NoaNet will perform all the necessary functions of Grant Administration, Engineering, and Implementation of the existing awarded grants as outlined in requirements of their respective grant contracts. The below overview are the expected expenses associated of each existing awarded grant program as outlined in the grant application and budget. Actual expenses will be managed by rate sheet included.

NTIA BIP	\$32,500.00
Dept. of Commerce, WSBO Matching Grant	\$85,990.16
Total	\$118,490.16

PROJECT PLAN

NoaNet will perform all the necessary functions of the Project Plan as required by the City, this project plan will be developed upon award by the city of the respective grant applications and will follow the requirements of the contracts between the city and awarding agency. The primary categories of the project plan are Route Development, Permitting, Request for Proposal Development Construction/Installation, Construction Management, Network Engineering, Grant Management, and Project Close-Out.

Section 1 – Project Plan Categories

NoaNet, (“Contractor”) via Amendment to the existing interlocal cooperative agreement for providing project and engineering services, consistent with the provisions of **Chapter 39.34 RCW** and as encouraged by 2 CFR 200.318(e), will perform all the necessary functions of the Project Plan as required by the City, this project plan will be developed upon award by the city of the respective grant Applications, contracts, and scope of work, and will follow the applicable requirements established or referenced in the NOFO, explanatory statements or rules from NISC, Washington State Department of Commerce, and contracts between the city and awarding agency and subject to the specific requirements of Section 2.

The primary categories of the project plan are Route Development, Permitting, Request for Proposal Development Construction/Installation, Construction Management, Network Engineering, Grant Management, and Project Close-Out.

Section 2 – Requirements

1. Federal regulations applicable to this award include, but are not necessarily limited to the following:
 - A. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 CFR § 200 Part 180, subpart B) that the award is subject to 2 CFR § 200 Part 180.
 - B. Government wide Requirements for Drug-Free Workplace, 2 CFR § 200 Part 182.
 - C. New Restrictions on Lobbying, 2 CFR § 200 Part 418.
 - D. Generally applicable federal environmental laws and regulations.
 - E. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR § 200.216.
2. Statutes and regulations prohibiting discrimination applicable to this award include, but are not necessarily limited to the following:
 - A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.), which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- B. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- C. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- D. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- E. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

3. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Pursuant to 2 CFR § 200.321, the Contractor must take all necessary affirmative steps (as described in 2 CFR § 200.321) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

4. DEBARMENT

- A. The Contractor, defined as the primary participant and its principals, certifies by signing this Amendment that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this Amendment, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this Amendment had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this Amendment, the Contractor shall attach an explanation to this Amendment.

- C. The Contractor agrees by signing this Amendment that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the City.
- D. The Contractor further agrees by signing this Amendment that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier Contractor certifies, by signing this agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier Contractor is unable to certify to any of the statements in this Amendment, such contractor shall attach an explanation to this Amendment.

- 5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, currently available online at [eCFR :: 22 CFR Part 513 Subpart A -- General](#)

6. FEDERAL EXCLUSION

These terms add to the terms in Section 12 Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion — Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Contractor also agrees to access the Federal Exclusion List at www.sam.gov and provide Federal Exclusion documentation to Commerce and to keep a copy on file with the Contractor's project records.

7. BYRD ANTI-LOBBYING AMENDMENT. AS AMENDED (31 U.S.C. § 1352).

Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

8. PUBLICATIONS

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Amendment, shall contain the following statements:

“This project was supported by grant 53-08-I2298 awarded by the US Department of Commerce, National Institute of Standards and Technology (NIST). Points of view in this document are those of the author and do not necessarily represent the official position or policies of the NIST. Grant funds are administered by the National Telecommunications and Information Administration (NTIA) Broadband Infrastructure Program Funds, Washington State Department of Commerce.”

Rate Sheet

Engineering, Permitting and Project Management:

	Per Hour
Director	\$264.00
Sr. Manager / Sr. Engineer	\$236.00
Manager / Engineer	\$180.00
Field Technician / Designer	\$162.00
Project Manager / Consultant	\$171.00
Sr. Specialist	\$190.00
Sr. RoW Agent	\$190.00
Environmental Agent / Biologist	\$190.00
Administrative Support/ Coordinator	\$97.00
GIS Drafter Technician	\$116.00
GIS Drafter Analyst	\$88.00

Construction Management:

	Per Hour
Foreman	\$175.00
Resident	\$155.00
Inspector	\$125.00

Reimbursables:

Permit and Application Expenses	Cost plus 10%
Per Diem (daily)	\$175.00
Hotel (\$200 cap)	Cost plus 10%
Airline Flight	Cost plus 10%
Material Fees	Cost plus 10%
Mileage	Included in Per Diem

Miscellaneous Services:

Sub-Contractor Invoices (engineering, etc)	Cost plus 15%
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INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement ("Agreement") is made and entered into effective the 20th day of December, 2021 between the City of Ellensburg ("City") and Northwest Open Access Network ("NOANET"). The City and NOANET are sometimes referred to herein collectively as "Parties".

RECITALS

WHEREAS, the Washington Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington ("RCW"), permits public entities to cooperate with one another on the basis of mutual advantage to make the most efficient use of their powers, thereby providing services and facilities in a manner that accords best with geographic, economic, population, and other factors influencing the needs and development of local communities, and allows public agencies to enter into agreements with one another for joint cooperative action; and

WHEREAS, NOANET is a Washington nonprofit mutual cooperation formed by Public Utility Districts in the State of Washington with the mission to bring high-speed telecommunications services to unserved and underserved communities; and

WHEREAS, the City has the authority to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the City's limits; and

WHEREAS, the City wishes to obtain the services of NOANET for Broadband Planning, Network Operations Services, ; and

WHEREAS, NOANET desires to assist the City with all programs possible to support the city's telecommunications efforts.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. **Purpose and Scope.** The purpose and scope of this Agreement is to provide for NOANET's assistance with broadband planning, network operations, network planning, construction management, network engineering and any other services of need that NOANET provides and the City deems needed as more fully described in the attached Scopes of Work (the "Services"), attached hereto and incorporated herein as Exhibits A, B and C, as well as establishing the related obligations of the Parties.

2. **Services.** NOANET shall provide the City with the services described in the Scope of Work Tasks (the "Services"). The City shall cooperate with and provide such information as may be necessary to aid NOANET's performance of the Services.

3. **Period of Performance.** Performance of the Services shall commence upon mutual execution of this Agreement by the Parties, and the Services shall be completed on or before December 31, 2023, unless terminated sooner or extended, as provided herein.

4. **Compensation.** The City shall pay NOANET for the Services on a time and materials basis according to the fee schedule identified in the Scope of Work with a not to exceed amount described therein.

5. **Billing and Payment Procedures.** NOANET shall submit monthly invoices to the City during the term of the agreement and upon acceptance by the City of all the Services. Each invoice will indicate the time and materials that are the basis for the charge(s) on the invoice. The City shall pay the amount invoiced and due within thirty (30) days after billing.

6. **Property Ownership and Disposition.** The Parties shall retain their respective ownership of all of their respective properties. This Agreement does not contemplate joint ownership of property and, therefore, does not contain provisions regarding disposition of property owned by either Party.

7. **Indemnity.** Subject to the limitation of liability provisions set forth in Section 8 below, each Party shall, at its sole expense, indemnify, defend, save, and hold harmless the other Party, its officers, agents, members, and employees from all actual or potential claims or losses, including attorneys' fees and costs, and damages or claims for damages to property or persons, suffered by anyone whomsoever to the extent caused by any negligent or willful act of or omission of the indemnifying Party, its officers, agents, employees, or subcontractors, excluding damages caused by the negligence of the indemnified Party, its officers, agents, employees, or subcontractors.

This indemnification includes, without limitation, any liability for injury to the person or property of either Party, its agents, officers, employees, or invitees. Both Parties specifically waive any immunity provided by Title 51 RCW, Washington's Industrial Insurance Act. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

8. **Limitation on Liability.** Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other Party for any consequential, incidental, indirect, liquidated, or special damages or lost revenue or lost profits arising out of this Agreement or the performance or nonperformance of any provision of this Agreement.

9. **Relationship of the Parties.** This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon either Party. No agent, employee, or representative of a Party shall be deemed to be an agent, employee, or representative of the other Party.

10. **Party Representatives and Notices.** The representative for each Party shall be responsible for and shall be the contact person for all communications relating to the performance of this Agreement. All notices, requests, demands and other communications given by one Party to the other Party in connection with this Agreement will be in writing and will

be deemed to have been duly given (a) on the date of successful transmission of the entire notice in the case of e-mail transmission; (b) when delivered personally or delivered by a recognized courier service that provides a receipt of delivery; or (c) three (3) days after being deposited as certified or registered mail, postage prepaid, into the United States mail, to the Party representative at the addresses or email addresses identified below

The City's representative under this Agreement shall be:

Ben Faubion, IT & Telecom Manager
501 N. Anderson St., Ellensburg, WA 98926
Telephone: 509-899-5841
Email: faubionb@ci.ellensburg.wa.us

NOANET's representative under this Agreement shall be:

Chris Walker, Senior Executive Director, Infrastructure Strategy
422 W Riverside, Ave. Suite 408, Spokane, WA 99201
Telephone: 208.699.1031
Email: cwalker@noanet.net

11. **Termination.** Except as otherwise provided in this Agreement, either Party may terminate this Agreement upon thirty (30) days written notice. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

12. **Confidentiality.** If the receiving Party receives a request from a third party for materials provided by the other Party that are marked Confidential, the receiving Party shall promptly notify the disclosing Party in writing of such request, and if the receiving Party in good faith believes it is obligated to disclose the requested Confidential Information, the disclosing Party shall be given prompt opportunity to seek judicial protection of such Confidential Information. If, in the absence of receiving notice of a protective order or waiver within ten (10) business days of the date of sending the notice of the request, the receiving Party is required to disclose any Confidential Information after applying all relevant exemptions from disclosure allowed under law, the receiving Party may make such disclosure.

13. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Washington. Each Party hereto, in its performance of this Agreement, agrees to comply with all applicable local, state, and federal laws and ordinances. The Kittitas County Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Agreement.

14. **Assignment and No Third Party Rights.** Neither Party may assign its rights or delegate its duties under this Agreement. This Agreement shall not be construed to create rights in or grant remedies to any third party as a beneficiary of this Agreement.

15. **Entire Agreement; Amendments.** This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings among the Parties with respect thereto. This Agreement may be amended only by an agreement in writing signed by the Parties.

16. **Mutual Negotiation and Construction.** This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly construed for or against either Party.

17. **Headings.** The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

18. **Severability.** Should any part, term, or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected, and the same shall continue in full force and effect.

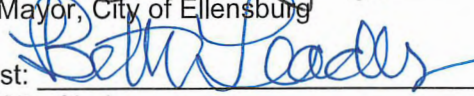
19. **Survivability.** All provisions of this Agreement regarding indemnification, representations, warranties, confidentiality, and any other provisions that by their nature are intended to survive termination of this Agreement shall survive after its termination or expiration.

20. **Authorization.** Each Party hereby represents and warrants to the other that it is duly authorized to enter into and carry out the terms of this Agreement.

21. **Counterparts.** This Agreement may be executed in counterparts, which together shall constitute a single agreement.

22. **Filing.** This Agreement shall be filed with the Kittitas County Auditor, or, alternatively, listed by subject on each or either party's web site or other electronically retrievable public source pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

By: 
Mayor, City of Ellensburg
Attest: 
City Clerk

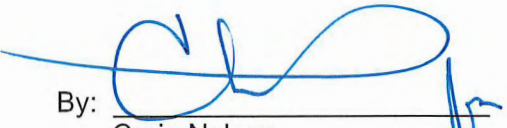
By: 
Craig Nelsen
Chief Executive Officer, NoaNet

EXHIBIT "A"
SCOPE OF WORK
BROADBAND FEASIBILITY STUDY

Approach and Proposed Schedule

Broadband access to local communities is an incredible investment and a significant initiative that requires long-term commitment and capital contribution. NoaNet's Community Broadband Solutions program is well positioned to help the City of Ellensburg evaluate the feasibility and build upon the work already being done by the city with their downtown pilot and the CenterFuse study to formulate a strategic direction of broadband network expansion effort.

Through conducting a demand aggregation study to determine areas that are served and unserved, documenting existing services, affordability of existing services, and where there is high demand and need for additional investment, as well as infrastructure gaps that could potentially be bridged through strategic deployment efforts.

Following the determination of overall need and demand, in coordination with other area stakeholders, private ISPs and public organizations, current and planned efforts will be mapped and any additional areas of need will be identified.

Demand Aggregation and Current Broadband Landscape:

- Lead a team of stakeholders in a collaborative manner to understand the current broadband landscape and efforts underway,
- document the current broadband demand, affordability, and where gaps exist through the Demand Aggregation platform,
- identify service and market conditions, including infrastructure already deployed in the community
- evaluate gaps in backbone and potential areas to develop into shovel ready project(s) for future grant funding,
- explore ways to support digital literacy improvements,
- and impacts on commercial, healthcare, work-from home and education sectors, as well as how population movement will impact the UGA.
- Explore potential partnerships that could benefit broadband access in the area.

Through every step of this process, NoaNet will remain engaged with city leadership to ensure smooth communication, understanding and support for the project. In addition to a comprehensive understanding of the current landscape of broadband services and mapping all known planned deployments, NoaNet will also work with the city on developing an ongoing vision for future network expansion with all available collaborators.

The relationships NoaNet have formed in every county in Washington State over the past 20 years position us to share two decades broadband experience and trust with publicly owned wholesale broadband districts; sharing best practices, lessons learned, and business operations strategies to help the city form a viable strategic plan.

The Road to Broadband is a challenging one but partnering with NoaNet will provide you more than a reference study. We will remain an engaged and viable partner for executing on the data found. This is a significant strength and differentiator that NoaNet brings to the table to work with your team

to address not only your broadband planning efforts but can remain a key partner in your continued deployment. We are not primarily a consulting firm that pumps out long documents without real-life experience- we are a public benefit broadband network provider in your state and in your community, who leverages our knowledge to help our neighbors plan for broadband deployments that will help their community thrive.



The Survey

The COS service Zones platform comes with built-in survey functionality, but also uses IP address lookup to determine what providers the survey takers are using today. The survey will give information on what they are currently paying, what advertised speeds they are subscribing to and how satisfied they are with the speed, reliability and price of their current connections.

In the survey the responder will be presented with several proposed broadband service packages with pricing, tailored for their customer type (e.g. residential or business). The customer is then asked to choose the offer they would be most likely to sign up to and also how likely they would be to sign up.

The respondents' choice of service package and their likeliness to sign up, paired with what they are currently paying for their service and how they feel about their provider will be used to identify the correct price point for highest likelihood to success. Up-take statistics from other COS Service Zones projects across the US will also be used as an indication on what could be expected at specific price levels. This is important because when we survey the residents and businesses in the State of Washington we need to know if they are served or not, but we also need to understand their appetite for service levels and what costs are appropriate for the area.

The survey also gives the opportunity for everyone to speak their mind on what they would be looking for in a broadband network build-out and if they would be willing to support the effort by signing up as a neighborhood "Champion". This will be an effective mechanism to build Broadband Action

Committees and garner community support.

The Speed Test

COS System has a speed testing system that is incorporated into the survey. Respondents are automatically asked to take the speed test after completing the survey. This data will then be tied to the geographical location which enables the COS platform to build heatmaps of where speeds are high or low. It will also highlight where the FCC broadband definition of 25/3 Mbit/s is met or not. It can also overlay the results of the test by census block group id. The key features of the COS Speed Test Platform compared to other commercially available offerings is that it is trying to simulate the speed at actual use.

In the COS Speed test local neutral test nodes will be placed in the network close to where the speed test takers are. Often speed test are designed to feel where the customer is coming from and then sends them to a test node that will present a favorable result. In the example below a person subscribing to an "up to" 250 Mbit plan with Xfinity (Comcast) in Blacksburg, VA will by speedtest.net (provided by Ookla) will be testing against a Comcast server in Richmond, VA and not the closest server. In other cases, the speed test server could be placed in a totally wrong location, even another country, which could present a result that is worse than the actual case.

In addition to using neutral local test nodes, the COS Speed Test is based on the transfer of actual data to perform the test. The customer's client is actually performing the work online that includes receiving and sending data, trying to simulate a real use case. This will give the most accurate description on the experienced speed for the end user. To make a comparison, some speed tests are designed to show good results in the test scenario, just like Volkswagen, in the well-known "Diesel gate" scandal had custom built software controlling engine settings when it could feel the car was in a lab testing environment to show better results than during real life use.

The Reasoning Behind this Approach:

NoaNet feels there are some recognizable and identifiable issues that have prevented broadband deployment in many areas of the Kittitas County. Although the following analysis may not be all inclusive, with further discussion and review, we feel if the city works with NoaNet as its strategic partner we can work together to identify and resolve many of these challenges through our Innovative Road to Broadband approach to community broadband studies.

A major issue that plagues rural broadband development nationwide is lack of funding, and a major reason for lack of funding are the FCC mapping conclusions in rural areas. This program has created an unfair and unclear representation of unserved and underserved areas within our local communities, including your area. We feel it is imperative that we utilize consumer-focused studies to analyze the broadband landscape within the proposed service area to determine if the needs for residential and commercial use of broadband are being met adequately and affordably with feedback from the end-users, not the national telecom companies.

NoaNet will implement a demand aggregation tool to map data of unserved and underserved households and businesses, the speeds they are receiving per provider, as well as develop an understanding of current network capacities through end-user speed-test data. This tool is customizable, and we can tailor the questions asked to specifically meet the needs of broadband funding opportunities. This tool will help the city understand what the consumer values from their provider, cost of services thresholds the market will support, and gain invaluable feedback directly from the community as to what they are experiencing with their home and business Internet services.

In order to spread the word about this demand aggregation effort- we utilize Broadband Champions, the local engaged stakeholders, to help encourage folks to participate. We have found that it is much more effective for friends to ask friends and colleagues to take the survey than an outsider consultant. This collaborative study and operationalization of data collected will give the city the data necessary to offset the inaccurate data claiming areas are served and support the locally known fact that there are service needs. We have had funding opportunities challenged, and the data collected through this tool was able to refute claims and secure funding because it was from the customer and on a house-by-house level. Mapping and operationalizing this data will allow the area leadership to identify areas most in need and apply for federal and state funding to support broadband infrastructure deployment.

Second, broadband deployment is expensive and currently the financial capital necessary to construct infrastructure necessary to deliver. NoaNet staff will work with area stakeholders to identify existing infrastructure, map needed GIS data to identify areas that would benefit from additional infrastructure investment based on the demand aggregation results, and data obtained from public and private entities on current and planned development.

Third, utilizing the information obtained through the demand aggregation study, local market analysis, and the information collected by CenterFuse's previously completed study, we will create visualizations of the end-user reported use data, speed test data, opinions of current services available, and even reported cost-of-services thresholds and desired Internet-based services reported by the community. We will also map the current broadband infrastructure in the project area, current ISP service territories, backhaul routes and other data deemed necessary to execute on a successful broadband deployment project. This will prepare the city to not only execute on this defined

deployment area but prepare for continued expansion as needed in the future.

Each of these requirements will be studied as part of our proposed scope of work. We will deliver a report on best practices to accomplish each important activity of broadband deployment that will include examples of other communities who have successfully deployed a community broadband network, and the feasibility of the city taking each approach. Our goal is not for the city have a document that lets them know that they need broadband infrastructure investment, that's a waste of time and money. We will create a Road to Broadband that will help this partnership determine a path forward for how to solve the gaps that exist and make the decisions needed to bring those plans to fruition to benefit the public of Kittitas County.

Project Team

This project will require coordinated efforts from staff from NoaNet's Community Outreach, Construction (Outside Plant), GIS and Engineering teams who will all work in coordination with stakeholders. There will be no sub-contractors utilized for this scope of work.

Below is a brief description of the team's role within NoaNet, and the associated staff therein, and a brief description of their previous experience and educational background to highlight what unique skills that will be leveraged to serve the scope of your project.

Project Management

Your project's main point of contact at NoaNet is your project manager. This person will oversee every aspect of the project, ensuring seamless communications, timely deliverables, budget management, and will give you a single point of contact if anyone in your organization has a question or request. Chris Walker will be the designated project manager for this proposed scope.

Associated Staff:

Chris Walker, Telecommunications Director



Chris has been with NoaNet since 2001 and after years managing our Network Operations Center and Network Engineering teams, he currently serves as the Telecommunications Director chartered to oversee network growth and expansion, strategic planning, capital development of outside plants, GIS, community outreach, professional services and competitive procurement. He was the executive director for the NoaNet Broadband Technology Opportunity Program (BTOP) construction buildout and sets the architectural direction of the network facilities throughout the state. Chris's vision for the State of Washington is to encourage public and private partnerships and investment to establish connected communities throughout all of our rural and tribal areas. Chris and his team focus their efforts entirely in Washington State, ensuring our public benefit activities are focused and efficient to benefit our communities with broadband access.

Demand Aggregation, Marketing and Community Outreach

The NoaNet Community Outreach and Demand Aggregation team works in coordination with our Network Coordinated Services platform and combines years of experience in assisting public agencies, local governments, municipal networks, and future network operators in the development of world class telecommunications and broadband service delivery solutions to support economic development in our local communities. We develop broadband planning studies through the evaluation of the local economic conditions to ensure a viable broadband business solution is developed before the agency begins any further development of infrastructure.

Associated Staff:

Claire Ward, Marketing and Communications Manager



Claire has been with NoaNet since 2015 in community outreach, communications development, and marketing strategy capacities. She has been instrumental in outreach strategy development, community engagement and municipal network marketing support services, as well as launching and managing our Demand Aggregation platform. Prior to NoaNet, Claire worked for various coffee franchises at management levels to develop training and marketing sales strategies as well as facilitate general operations. She holds a Bachelor of Science from Washington State University, a Master of Arts in

Counseling Psychology from The Seattle School and has continued her education in Marketing Strategy at the University of Washington.

Outside Plant, Construction and GIS

NoaNet's Outside Plant team is structured through internal, prime and sub-contracting relationships to create innovative solutions, practical designs, and expert implementations with precise project coordination. This includes the capabilities to evaluate and provide insight into existing facilities, to design and implement a new network, and know current and future technology trends to plan for today's and tomorrow's subscriber needs. For this project proposal, NoaNet will leverage our internal staff only.

NoaNet's Engineering, Operations, OSP and GIS/CAD are intertwined in many projects for new fiber build outs. NoaNet has completed over a thousand miles of underground and overhead EF&I fiber installations, over 300 FTTP and statewide /regional fiber network builds for various projects including both entirely new fiber networks and new fiber builds to connect existing fiber segments to form new fiber networks. These deployments have incorporated many services from voice, high- speed data, LTE, and RF or IPTV video.

Associated Staff:

Rob Goede, OSP Manager

Rob joined the NoaNet team in 2020 as their Outside Plant Manager based in Spokane, WA. Rob manages all areas of outside plant design and engineering standards along with quality control and all outside plant operations throughout the company. Rob has 20+ years' experience in telecommunications starting his career with Lucent technologies, Grande Communications then moving to Qwest /CenturyLink Communications for the past 15 years. Rob has many years' experience in outside plant construction, splicing and engineering.

design layout both aerial and underground along with operations to include easements, joint use, permitting, right of way for both state and local entities. Rob has detailed knowledge with fiber builds to include cell, MDU, SFH and fiber to the business. Rob previously served in the United States Marine Corps.

Stephanie Austin, OSP Project Manager

Stephanie joined the NoaNet team in August 2011 with 10+ years in the telecommunication industry as a Network Planning and Traffic Engineer. As an Outside Plant Project Manager, Stephanie ensures projects are delivered with the highest quality, within budget by organizing, managing and utilizing all available resources for the project, and tracking project tasks against the detailed project plan and providing detailed progress reports. Stephanie also possesses experience with Contract Management and Compliance. She takes pride in ensuring all work is done in compliance with the contract requirements and the Washington State RCWs.

Nick Ulrich, GIS Administrator

Nick joined NoaNet in 2016 as a GIS Technician. Nick was hired on to maintain the OSP Insight fiber optic data management for NoaNet, along with handling of any other GIS or mapping related requirements. He is a trained FTTx design technician and helps with fiber construction plans, automated GPS pole data gathering, and rights of way permitting. Prior to NoaNet, he graduated from Eastern Washington University and has experience working in the utility/construction field.

Network Engineering

The NoaNet Network Engineering team, in coordination with our Network Coordinated Services platform, combines industry leaders and managers in Engineering and Consulting who have produced, designed and engineered hundreds of telecommunications facilities, long haul, middle mile, local loop, and lateral extension projects and networks in the state of Washington. This highly capable team delivers robust facility and engineering solutions to further deploy wholesale telecommunications needs across the state.

Associated Staff:

John Smith, Chief Technology Officer

John brings with him over 25 years of experience in telecommunications and business management. Prior to joining NoaNet, John led one of the largest publicly owned Fiber-To-The- Premises (FTTP) buildouts in the country. The FTTP network included the delivery of Internet, Video and Phone services to primarily rural communities. He has worked in a diversity of areas including network engineering, outside plant engineering, application planning and development, regulatory compliance, IT, SCADA and business process management. John received his B.S. in Electrical Engineering from Florida State University.

David Black, Senior Network and Optical Engineer

David has been with NoaNet since incorporation in 2000 and worked on the network design before NoaNet incorporated. David has been involved with the design, implementation, turn up, and operations of almost every technology used on the network. Currently David is responsible for the maintenance, reliability, upgrades, and customer experience on all services both external and internal customers on the DWDM and other optical platforms. David also looks at how new technologies will impact and improve NoaNet's network services. Prior to NoaNet David worked for two engineering consulting companies, US West (now Century Link) and served in the US Marine Corps in various management and leadership roles working in Air Traffic Control communications. He has a Bachelor of Science Degree in Electrical Engineering.

Greg Berry, Senior Network Engineer

Greg has been with NoaNet since 2013 and his responsibilities at NoaNet include project management, MPLS network architecture, microwave systems design, and network automation. Prior to NoaNet, Greg worked in Alaska on public safety communication networks where he integrated technologies to create a statewide highly available mission critical two-way radio system. Greg has a bachelor's degree in Electrical Engineering from University of Alaska Fairbanks and has over 10 years of telecommunications experience.

City of Ellensburg Broadband Strategic Planning Project Timeline

Task	Notes	Initiate	Complete	Hours allotted
Project Kickoff Meeting with Stakeholders (On Site)	Review Strategic Plan Objectives Assign Roles and Responsibilities Develop Workplan and Timeline	8/2021	8/2021	COM- 12 PD-8
Champion Development	Discovery Kickoff Champion Session (Virtual) Develop Demand Aggregation Portal Backend/Survey	8/2021	9/2021	COM-5
Demand Aggregation Go Live (Budgeted at 2 months)	Launch Marketing Campaign Develop Mailers/Other Outreach Strategy Social Media Outreach Phone/Email/Social support as needed Host monthly virtual group sessions with champions and community leaders Min. Once a week update with City staff (virtual)	9/2021	11/2021	COM-40 PD-3
Perform Local Market Analysis	Review Existing Infrastructure and Map data collected Identify GAP areas that could benefit from backbone investment	9/2021	10/2021	PD-3 GIS-8
Analyze Demand Aggregation Data and Formulate Conclusions	Identify areas of high need	12/2021	12/2021	GIS-5 PD-5 COM-5
Model Broadband Infrastructure Expansion Projects in Pilot Area	Physical Plant and Network Evaluation on site Fiber Optic Buildout to support DA Data Business Case Evaluation and Planning *If DA Supports these steps	2/2022	3/2022	No Time Allotted No Time Allotted
Recommend Action Plan	Analyze and Interpret Survey Data Project Findings Analysis Paper Presentation of Conclusions Draft Presentation Final Presentation- On site	1/2022	1/2022	COM-25 PD-16
Facilitate Adoption of Metrics and Follow-up	Review Strategic Plan Objectives for further Broadband Development Keep up to date on current funding opportunities aligned with project objectives	Ongoing	Ongoing	COM PD

Anticipated Costs

Rates	Hourly	Allotted	Total
Community Outreach Manager (COM)	\$130	87	\$11,310
Engineering & GIS (GIS)	\$160	13	\$2,080
Project Director (PD)	\$195	35	\$6,825

Total Staff: \$20,215

Other Costs	Rate	Allotted
Monthly Portal	\$2,000	\$4,000
Portal Setup	\$5,000.00	\$5,000
Airfare	at cost	\$0
Car Rental	at cost	\$0
Per Diem	\$82	\$492
Hotel	at cost	\$800
Misc. Shipping, Consumables, etc.	at cost	\$2,000

Total Reimburables: \$12,292

TOTAL: \$32,507

EXHIBIT "B"
SCOPE OF WORK
NETWORK DEVELOPMENT SERVICES

1. **Purpose and Scope.** The purpose and scope of this Exhibit B is to permit the City to use the contract executed between NoaNet and a Contractor for design and construction of fiber optic facilities and to specify the terms and conditions under which the City and NoaNet will undertake any network extension within the city limits and UGA.

2. **City Obligations.** During the term of this Amendment, the City agrees to continue to provide NoaNet the services set forth in the original Interlocal Cooperative Agreement effective December 4, 2017 and those items outlined in the Scope of Work Exhibit A to that Agreement. The City agrees to provide NoaNet a monthly report on subscribers of the Project Area.

3. **NoaNet Obligations.** During the term of this Amendment, NoaNet agrees to provide the City the services set forth in the original Agreement, and further agrees to provide planning and design services for fiber optic network development.

In order to support the Passive Optical Network (PON) system will provide the following network management systems and project management services in exchange for the compensation schedule listed to be paid for by the City:

1. PON Engineering, Furnish, and Install: NoaNet will provide the Engineering, Furnish, and Install of the PON Access Management System. This system provides a complete element management solution for configuration, maintenance, and troubleshooting of core, distribution and optical network terminals. This system will be managed by NoaNet, and configuration maintenance and upkeep by Network Operations Center (NOC) Analysts.

2. PON Server Support Service: Access Management System: NoaNet will provide two redundant virtual servers to support the PON Access Management System, and operation and maintain the OS required for installation and all subsequent licenses and software subscription.

4. **Compensation.** As compensation for the services provided City and NoaNet agree to compensate each other for any and all expenses associated with Exhibit B . Any changes in compensation set forth in Exhibit B shall be mutually agreed to in writing.

Role	Cost Per Hour
Community Outreach / Project Manager	\$135
OSP, GIS, Engineer Tech	\$160
Director	\$205
Travel	\$0.85/mile
Per Diem	\$92
Airfare/Hotel/Car Rental	At cost

Any work requested by the City in addition of this SOW or any additional work resulting from factors outside the control of NoaNet will be documented and approved by the City in a written amendment to this scope of work.

5. **Termination Due to Change in Facilities or Funding.** If the facilities or funds upon which either Party relied to establish this Scope of Work are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such facilities or funding, either Party may terminate this Scope of Work by providing at least thirty (30) calendar days' written notice to the other Party. The termination shall be effective on the date specified in the notice of termination.

Either party may terminate this Scope of Work for any reason by providing sixty (60) calendar days' written notice to the other Party. If either Party fails to comply with the terms and conditions of this Scope of Work, the other Party may pursue such remedies as are legally available, including, but not limited to, the immediate termination of this Scope of Work.

EXHIBIT "C"
SCOPE OF WORK
NETWORK OPERATIONS SERVICES

1. **Purpose and Scope.** The purpose and scope of this Exhibit C is to permit the City to use NoaNet its selected Contractor for Network Operations Management of fiber optic facilities and to specify the terms and conditions under which the City and NoaNet will undertake any network operations extensions within the city limits and UGA.

2. **City Obligations.** During the term of this Amendment, the City agrees to continue to provide NoaNet the services set forth in the original Interlocal Cooperative Agreement. The City agrees to provide NoaNet a monthly report on subscribers of the Pilot Project Area.

3. **NoaNet Obligations.** During the term of this Amendment, NoaNet agrees to provide the City the services set forth in the original Agreement, and further agrees to provide network operations support services.

In order to support the Passive Optical Network (PON) system and management of the Pilot Project NoaNet will provide the following network management systems and project management services in exchange for the compensation schedule listed to be paid for by the City:

1. PON Engineering, Furnish, and Install: NoaNet will provide the Engineering, Furnish, and Install of the PON Access Management System. This system provides a complete element management solution for configuration, maintenance, and troubleshooting of core, distribution and optical network terminals. This system will be managed by NoaNet, and configuration maintenance and upkeep by Network Operations Center (NOC) Analysts.

2. PON Server Support Service: Access Management System: NoaNet will provide two redundant virtual servers to support the PON Access Management System, and operation and maintain the OS required for installation and all subsequent licenses and software subscription.

NoaNet will provide to the City Network Coordinated Services (NCS) Support for Next Business Day Services as outlined below:

- Live call taking 7x24x365 with access through a toll-free number;
- Supply and operate technical support tools to perform network management;
- Manage and maintain network and system software products;
- Quality test and implement network support software;

- Backup and restore operational systems;
- Supply trained operations staff to provide and maintain operations standards and procedures;
- Trouble ticket access for network problem reporting, ticket status and shared information;
- Provisioning support for new subscribers.

3. **Smart Hands Support.** The NoaNet Field Operations, Engineering, and Outside Plant teams provide for technician and engineering dispatch services for emergency and scheduled infrastructure and equipment repairs, testing, and installation. A dispatch service allows for a technician to attend to an issue or perform a task that relates to any equipment, cable, or facilities directly related to the services associated with the Network Operations Center and Engineering Services solution.

4. **Compensation.** As compensation for the services provided pursuant to paragraph 2 and 3, the City and NoaNet agree to compensate each other for any and all expenses associated with Exhibit A to Amendment 1. Any changes in compensation set forth in Exhibit A to Amendment 1 shall be mutually agreed to in writing.

City will provide to NoaNet \$25.00 monthly for every subscriber of the Fiber Internet Product. Any additional devices the City requires included in the NCS Support System will be invoiced per the following Schedule:

	Set-up	Monthly
Network Operations and Maintenance		
Management Fee		\$1,500
Core/Distribution Node		\$76
Carrier Edge		\$30
Business Gateway		\$6
Residential Gateway		\$2.50

Any work requested by the City in addition of this SOW or any additional work resulting from factors outside the control of NoaNet will be documented and approved by the City in a written amendment to this scope of work.

At the time of this SOW, the quantities of devices are as follows:

Title	Type	Qty
Core Node	Nokia PON (1) Juniper Router (1) Cisco Aggregation Switch (1)	3
Carrier Edge		0
Business Gateway	Calix ONT (5) Nokia ONT (13)	18
Residential Gateway		

Title	Notes	Price
Next Business Day (NBD) Dispatch	Includes first two hours, additional hours at \$90.00	\$270.00
4-hour Response Dispatch	Includes first two hours, additional hours at \$90.00	\$375.00
4-hour Response Dispatch, After Hours, Unit	Includes first two hours, additional hours at \$150.00	\$560.00

6. **Termination Due to Change in Facilities or Funding.** If the facilities or funds upon which either Party relied to establish this Scope of Work are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such facilities or funding, either Party may terminate this Scope of Work by providing at least thirty (30) calendar days' written notice to the other Party. The termination shall be effective on the date specified in the notice of termination.

Either party may terminate this Scope of Work by providing sixty (60) calendar days' written notice to the other Party. If either Party fails to comply with the terms and conditions of this Scope of Work, the other Party may pursue such remedies as are legally available, including, but not limited to, the immediate termination of this Scope of Work.

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: Air Force ROTC POW/MIA 24 Hr. Senior Vigil

Contact Person: Kendra Sterkel Phone Number: (509) 963-2314

Banner Hang Dates (Monday-Sunday): 7 November 2022 to 13 November 2022

☐ 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.

Provide an Example of Your Banner in the Box Below (Please fill in writing and logos)

[POW/MIA]	AIR FORCE ROTC	[Clip Art]
[Logo]	24 HOUR SENIOR VIGIL	[of Lit]
[Here]		[Candle]

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

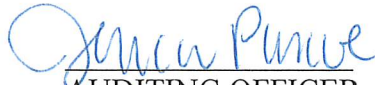
For more information please contact CWU Student Union Operations & Scheduling Center at 509-963-1321 or 509-963-1641.

City of Ellensburg approved by: _____ Date: _____

Disapproval/Reasons: _____

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

10/11/22
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 **17th DAY OF OCTOBER 2022**. THE COUNCIL, BY A VOTE, HAS APPROVED FOR PAYMENT THE VOUCHERS INCLUDED IN THE ABOVE LIST AND FURTHER DESCRIBED AS FOLLOWS:

Claims Fund				Total Amounts
Check #'s	159231	TO	159399	\$ 859,205.55
EFT #'s	5775	TO	5806	\$ 1,266,875.87

Payroll Fund				Total Amounts
Check #'s	95809	TO	95814	\$ 5,213.68
Direct Deposits	69908	TO	70120	\$ 392,160.63

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

ATTEST: _____
CITY CLERK



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Public Hearing (Legislative) to consider first reading of Ordinance 4898 (First Reading), for a new Cable Television Franchise Agreement Between the City and Spectrum Pacific West, LLC, an Indirect Subsidiary of Charter Communications, Inc.

Submitted by: Terry Weiner City Attorney Department

Recommended Action or Motion: Conduct first reading of Ordinance 4898 regarding the Cable Franchise Agreement with Charter Communications, Inc.

Background/Summary: The City granted a 15-year right to construct, maintain, and operate a cable television system to Continental Cablevision in 1997. The cable television franchise was later transferred to a subsidiary of Charter Communications. The agreement was only renewed for five years in 2014, and was transferred to Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc. in 2019. The franchise expired on December 31, 2018, but the parties have continued to operate under the agreement during negotiations for a new franchise agreement.

Previous Council Action: None.

Analysis: Prior to commencing negotiations, the City retained attorney Dan Cohen, a specialist in cable franchise negotiations, to conduct a franchise fee audit, which did not reveal any significant discrepancies in Charter's payments to the City. Mr. Cohen also reviewed the then-existing franchise agreement and continued to represent the City through the negotiations over the next four years, which were protracted, in part, because of multiple changes in Charter's negotiation team. There were several difficult issues both parties negotiated for, which required exchange and consideration of numerous draft proposals and counterproposals.

The new franchise agreement includes a more expansive definition of "franchise fees" than in the expired agreement. In

addition, it will re-establish Charter's Public, Educational, and Government (PEG) capital grant to the City (the City's PEG channel is known as "ECTV"), which was eliminated from the last agreement when the City established a cable utility tax and CWU decided it no longer needed its own PEG channel. In addition to the one-time PEG grant by Charter of \$64,812, Charter will also collect \$.03 per subscriber per month to remit to the City as an additional PEG capital contribution. Based on the current subscriber base (a bit more than 2,300 as of June 2022), this would amount to approximately \$830/year.

A significant negotiation issue was the City's desire to have its PEG channel converted by Charter from a standard definition (SD) signal to a high definition (HD) signal. As part of the settlement of the franchise agreement, Charter has agreed to the HD conversion in exchange for the City paying Charter's equipment conversion costs of \$10,542.87. The HD upgrade will greatly enhance ECTV's broadcast quality.

In exchange for these changes, the City is granting Charter a 15-year term to recover their current and future investments in the cable system.

Financial Impact:

The PEG capital contributions will be accounted for in the 2023-24 budget. There will be sufficient balance in the City's ECTV operations and maintenance fund for payment of the HD conversion costs.

Attachments:

[Ordinance 4898 \(First Reading\)-Charter Cable Television Franchise Agreement](#)
[City of Ellensburg - Charter Final Franchise Agreement](#)

ORDINANCE NO. 4898

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO CABLE TELEVISION, RENEWING A NONEXCLUSIVE AND REVOCABLE FRANCHISE WITH SPECTRUM PACIFIC WEST, LLC, AN INDIRECT SUBSIDIARY OF CHARTER COMMUNICATIONS, INC. (HEREINAFTER REFERRED TO AS “CHARTER”), PURSUANT TO STATE AND FEDERAL LAW, AND CHAPTER 11.43 OF THE ELLENSBURG CITY CODE, THROUGH ADOPTION OF A NEW FRANCHISE AGREEMENT; AND REPEALING CHAPTER 11.08 OF THE ELLENSBURG CITY CODE RELATING TO THE FRANCHISE PREVIOUSLY GRANTED TO KING VIDEOCABLE COMPANY DBA CONTINENTAL CABLEVISION.

WHEREAS, by Ordinance No. 4112, the City of Ellensburg (“City”) granted a ten-year franchise to King Videocable Company dba Continental Cablevision to operate and maintain a cable television system in the City (“Franchise”); and

WHEREAS, City Council Resolution 1997-25 transferred the Franchise from King Videocable Company D/B/A Continental Cablevision to TCI Cablevision of Vermont; and

WHEREAS, City Council Resolution 1998-16 transferred the Franchise from TCI Cablevision of Vermont to Falcon Communications, L.P (“Falcon”); and

WHEREAS, City Council Resolution 1999-24 authorized the transfer of control of Falcon Communications, L.P. to Charter Communications, Inc. (“Charter”); and

WHEREAS, Falcon transferred the Franchise to Spectrum Pacific West, LLC, both of which are owned by or under the control of Charter Communications, Inc.; and

WHEREAS, the City undertook a franchise fee audit in 2018 of Charter’s franchise fee payments to the City, following which, pursuant to the direction of the City Council, City staff commenced informal negotiations with Charter for purposes of renewing the City’s Franchise with Charter through adoption of a new franchise agreement; and

WHEREAS, City staff has negotiated a proposed new franchise agreement with Charter to enable Charter to continue to provide cable service in and throughout the City; and

WHEREAS, the City is a “franchising authority” in accordance with Title VI of the Cable Act (see 47 U.S.C. §522(10)) and Washington State law; and

WHEREAS, the City has considered the future cable-related needs and interests of the community, has considered the financial, technical and legal qualifications of Charter, and has determined that Charter’s Cable System is adequate; and

WHEREAS, Charter has substantially complied with the material terms of the existing Franchise and with applicable law; and

WHEREAS, Charter's service, including signal quality, response to consumer complaints, and billing practices has been reasonable in light of community needs;

WHEREAS, the City has determined that the renewal or continuation of service through adoption of a new, nonexclusive cable franchise to Charter is consistent with the public interest; and

WHEREAS, the City and Charter have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions; and

WHEREAS, the City wishes to grant Charter a nonexclusive franchise to construct, install, maintain, extend and operate a cable telecommunications system in the franchise area as designated in this Franchise;

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington does hereby ordain:

Section 1. Repeal of Prior Franchise Ordinance. Ordinance No. 4662, which granted a cable franchise to Falcon Video Communications, L.P., locally known as Charter Communications, is hereby repealed in its entirety.

Section 2. Franchise Granted. Pursuant to applicable law, the City of Ellensburg hereby grants a nonexclusive franchise to Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc., according to the terms and conditions set forth in Exhibit A attached hereto and incorporated herein by this reference as if set forth in full.

Section 3. Franchise Agreement Term and Effective Date. Subject to the provisions therein, the term of the franchise shall be for a period of fifteen (15) years from the effective date of the Franchise, as defined in Exhibit A, and shall grant Charter the right, privilege and authority to construct, maintain, operate, and repair a cable system to provide cable services in, on, across, over, along, under, upon, through and below the public rights-of-way of the City of Ellensburg, all as provided in Exhibit A.

Section 4. Acceptance. As required by ECC 11.43.030(H), the Franchise granted by Section 2 of this ordinance shall be void and of no effect unless Charter files with the City Clerk written acceptance of the Franchise and all of its terms and conditions within thirty (30) days after the Effective Date of this ordinance and in a form satisfactory to the City Attorney.

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

Section 6. Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

Section 7. 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.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 7th day of November, 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. ***** is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. ***** was published as required by law.

BETH LEADER

CABLE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF ELLENSBURG
AND
SPECTRUM PACIFIC WEST, LLC

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CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed to be effective as of the ____ day of November, 2022 (the “Effective Date”), by and between the City of Ellensburg, located in Kittitas County, Washington (hereinafter referred to as the “City”) and Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc. (hereinafter referred to as “Charter”).

WHEREAS, pursuant to Title VI of the Communications Act of 1934, *as amended*, and the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”), the City is authorized to grant and renew franchises to construct, operate and maintain Cable Systems utilizing Public Rights-of-Way and properties within the City’s jurisdiction; and

WHEREAS, Charter’s most recent cable franchise agreement with the City is dated January 31, 2014; and

WHEREAS, Charter has requested that the City renew Charter’s franchise to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid Public Rights-of-Way; and

WHEREAS, the aforesaid Public Rights-of-Way used by Charter are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said Public Rights-of-Way is a valuable property right; and

WHEREAS, the City desires to protect and manage the aforesaid Public Rights-of-Way, establish standards of Subscriber service, receive Franchise Fees for Charter’s use of the City’s Public Rights-of-Way as provided by federal law, provide for the use of public, educational and governmental channels, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

WHEREAS, the City held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator’s past performance and identifying the City’s future cable-related community needs; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that Charter has the technical ability, financial condition, and character to operate and maintain a Cable System, and its plans for operating such system are adequate and feasible; and

WHEREAS, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Charter’s non-exclusive franchise according to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Charter agree as follows:

SECTION 1

DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

(a) Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Charter, but does not include affiliated entities that are not involved with the use, management, operation, construction, repair and/or maintenance of the Cable System.

(b) Basic Service - The service tier that includes at least the retransmission of local broadcast television signals and, to the extent required by applicable law, any Public, Educational and Governmental ("PEG") access channel.

(c) Cable Act - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming, and which is provided to multiple Subscribers within the City. Such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; and (5) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Channel - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

(g) Complaint - Any written communication by a Subscriber expressing dissatisfaction with any aspect of Charter's operation of its Cable System that is within Charter's control and requires a corrective measure on the part of Charter, delivered to Charter pursuant to the instructions for filing a written unresolved complaint as set forth in the FCC annual notice provided to Subscribers by Charter and posted to Charter's corporate website.

(h) Communications Act - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) Competing Video Provider - A provider of commercial video services in the City, which provider has facilities located wholly or partly in the Public Rights-of-Way (without regard to the technology used to deliver such services), but which is not a “cable operator” as such term is defined in the Cable Act.

(j) Drop - The connection between a home or building and the Cable System.

(k) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable System in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(l) Franchise - The right granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(m) Franchise Area – The geographic boundaries of the City and shall include any additions thereto by annexation or other legal means.

(n) Franchise Fee - The fee that Charter remits to the City for the use of the City’s Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(o) Gross Revenues - All revenue received by Charter or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Charter’s Cable System in the City to provide Cable Services as calculated in accordance with Generally Accepted Accounting Principles (“GAAP”). Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) Fees charged to Subscribers for any Cable Service tier other than Basic Service;
- (3) Fees charged for premium Cable Services;
- (4) Fees charged for video-on-demand Cable Services;
- (5) Fees charged to Subscribers for any optional, per-channel or per-program Cable Services;
- (6) Revenue from the provision of any other Cable Service;
- (7) Fees for installation, additional Outlets, relocation, disconnection, and reconnection for Cable Services;
- (8) Change-in-service fees for video programming;
- (9) Fees for service calls;
- (10) Service plan protection fees related to Cable Service;

- (11) Fees for payments made to customer service representatives directly;
 - (12) Fees for Leased Access Channels;
 - (13) Rental of all Cable Service equipment, including converters and remote-control devices;
 - (14) Locally-derived advertising revenues less commissions paid to third parties that are not Affiliated Entities;
 - (15) Revenues of commissions from locally-derived home shopping channels;
- and
- (16) Franchise Fees.

Gross Revenues shall not include bad debt, late payment fees related to Cable Service, program launch fees, investment income, refunded deposits, revenue from annexations prior to notice and implementation pursuant to Section 3.2(b), any taxes or fees on services furnished by Charter and imposed directly upon any Subscriber or user by the City, state, federal or other governmental unit, or any PEG fees recovered from Subscribers.

(p) Leased Access Channel - Any Channel on Charter's Cable System designated for use by any entity that is unaffiliated with Charter pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(q) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(r) Normal Operating Conditions - Those service conditions within Charter's service department which are within the control of Charter. Those conditions that are not within the control of Charter include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions or other conditions of Force Majeure as provided in Section 9.1.

(s) Outlet – An interior receptacle that connects a television set or converter box to the Cable System.

(t) Person - An individual, partnership, association, organization, corporation, trust or governmental entity.

(u) Programming - Any video carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(v) Public, Educational and Governmental (PEG) Channel - An access channel on the Cable System that provides non-commercial public, educational and/or governmental programming.

(w) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses as the same now or may thereafter exist, which are under the jurisdiction or control of the City.

(x) Service Interruption - The loss of picture or sound on one or more Channels.

(y) Standard Installation - Installations to residences and buildings that are located up to 125 feet from the point of connection to Grantee's existing distribution system.

(z) Subscriber - A person or entity who is billed for and authorized to receive Cable Services distributed by the Cable System in the Franchise Area.

SECTION 2

GRANT OF FRANCHISE

2.1 GRANT OF AUTHORITY

Pursuant to the Cable Act and the regulations of the FCC, the City hereby grants a non-exclusive and revocable Franchise to Charter. Subject to the terms and conditions contained herein, the City hereby grants to Charter the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way to provide Cable Services. Nothing in this Franchise shall be construed to prohibit Charter from offering any service over its Cable System that is not prohibited by federal or State law.

Notwithstanding this authority, Charter shall obtain all necessary generally applicable government permits for occupying or disturbing any public places and/or Public Rights-of-Way, which permits shall not be unreasonably delayed or denied. Prior to obtaining such permits, Charter shall provide the City with all reasonable information and documentation that the City requires of all users of the Public Rights-of-Way. No privilege or power of eminent domain is bestowed by this grant or by this Agreement. Charter shall not be required to obtain permits for Drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb Public Rights-of-Way surface grade or impact vehicular traffic. Subject to applicable law, Charter shall pay any and all required permit fees.

2.2 TERM OF FRANCHISE

The term of this Agreement shall be for a period of fifteen (15) years commencing on the Effective Date, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

2.3 NON-EXCLUSIVITY

(a) This Franchise granted to Charter shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other Franchises to construct, operate or maintain a Cable System.

(b) If any other provider of Cable Service (a “Competing Cable Operator”) is lawfully authorized by the City to provide Cable Service using facilities located wholly or partly in the Public Rights-of-Way and if such authorization includes a material term or terms that are more favorable or less burdensome to the Competing Cable Operator than this Agreement is to Charter, or does not include a material term that is in this Franchise, then the City shall, within sixty (60) days following the City’s receipt of a written request from Charter describing such material term or terms, agree to amend this Agreement to ensure that such material term or terms are no less favorable or more burdensome to Charter than those imposed on the Competing Cable Operator. Such amendment(s) shall be approved by both the City and Charter. If the parties are unable to reach agreement on such amendment(s) within this sixty (60) day period, then Charter shall have the right and may choose to have this Franchise with the City be deemed expired ninety (90) days after separate written notice to the City. Nothing in this Franchise shall impair the right of Charter and the City to terminate this Franchise and negotiate a renewal of this Franchise. Nothing in this Section 2.3(b) shall be deemed a waiver of any remedies available to Charter or the City under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

(c) If the City is legally allowed at any time during the term of this Franchise to require of or negotiate with a Competing Video Provider with respect to any material term or terms that are required of Charter under this Franchise, then Sections 2.3(b), 6.1(b) and 7.5 shall apply to such Competing Video Provider with respect to such material term or terms that are included, or not included, in the authorization between such Competing Video Provider and the City.

(d) If the City chooses to offer commercial video service at any time using facilities located wholly or partly in the Public Rights-of-Way, the parties agree that the City is allowed by law and has the ability and authority to impose upon itself the material terms included in this Agreement, and therefore the City shall be subject to the same material terms as required of Charter pursuant to this Agreement, and Sections 2.3(b), 6.1(b) and 7.5 shall apply to such material terms.

(e) The City shall provide Charter with written notice within thirty (30) days of receiving any application to use the Public Rights-of-Way from a Competing Cable Operator or a Competing Video Provider to which Section 2.3(c) applies, and provide written notice at least thirty (30) days in advance of the City’s public consideration of offering service as set forth in Section 2.3(d).

2.4 NO WAIVER OF RIGHTS

No course of dealing between the City and Charter, nor any delay on the part of either party in exercising any rights hereunder, shall operate as a waiver of any such rights or acquiescence in the actions of the other party in contravention of such rights, except to the extent expressly waived by such party.

2.5 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state, and generally applicable and non-discriminatory local laws and regulations. This Franchise is further subject to all applicable ordinances and resolutions of the City, to the extent not inconsistent with the terms of this Franchise or applicable law. Without waiving any of its police powers, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City ordinance or regulation, this Agreement shall control.

SECTION 3 **SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

3.1 TECHNICAL REQUIREMENT

(a) Charter's Cable System shall provide or offer Cable Services to all Subscribers throughout the City, subject to Section 3.2(a). The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards and the Cable Act. The Cable System shall meet or exceed applicable technical performance standards of the FCC, the National Electrical Safety Code and generally applicable laws, ordinances and construction standards of the City.

(b) Charter shall provide adequate standby power at the Cable System headend and on its Cable System to the extent consistent with Charter's normal operating standards. Standby power must activate automatically upon the failure of commercial utility power.

3.2 AREA TO BE SERVED

(a) Charter shall make Cable Service distributed over the Cable System available to every residence within the Franchise Area where there is a minimum density of at least thirty (30) residences per linear strand mile of aerial cable as measured from Charter's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service (the "Service Area"). The Cable Service will be provided at Charter's published rate for standard installations if such residence is a Standard Installation. Notwithstanding the foregoing, Charter shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where the minimum density requirement is not met. Charter shall not be obligated to provide service to any area where it is technically infeasible to do so. Charter at its discretion may make Cable Service available to businesses within the Service Area.

(b) In the event the City modifies the Franchise Area by annexation or any other means, the City shall publish notice in a newspaper of general circulation in the Franchise Area, and shall provide written notice to Charter pursuant to Section 9.3. In the event Charter is provided with written notice of the annexation by the City, Charter shall begin to collect Franchise Fees from Subscribers in any annexed area within ninety (90) days of such notice, or upon the effective date of the annexation, whichever occurs later. The City agrees to provide Charter address files (or parcel numbers if no address is assigned at the time notice is provided by the City), and maps in digital format if so requested.

(c) In areas where Charter provides Cable Service in accordance with the terms of this Franchise, the City has the authority to require Charter to place wires and/or equipment

underground in any new developments, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Charter shall be underground in those areas of the City where the wires and/or equipment of all similarly situated entities are underground; provided, however, that such underground locations are capable of accommodating Charter's facilities without technical degradation of the Cable System's signal quality. Charter shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals. In the event that public or private funds are made available to the City to pay for such project, the City shall reimburse Charter to the same extent that it reimburses other similarly situated entities that are required to place their wires and/or equipment underground. In the event that Charter is required to place existing aerial plant underground, Charter reserves its right to pass those costs through to Subscribers if, and to the extent, allowed by applicable law.

3.3 CABLE SYSTEM SPECIFICATIONS

(a) As of the Effective Date of this Agreement, the Cable System has been upgraded to 860 MHz with a capability of no fewer than one hundred fifty (150) video Channels in either high definition (HD) and standard definition (SD). The Cable System shall be capable of transmitting digital television services and signals and shall meet or exceed the technical performance standards of the FCC.

(b) Charter shall construct and maintain its Cable System using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

3.4 TECHNICAL STANDARDS

(a) Charter shall be responsible for ensuring that its Cable System is designed, installed and operated in a manner that fully complies with applicable FCC technical standards, Subpart K, 47 C.F.R. §§ 76.601-76.617, as amended.

(b) The rights and obligations of the City and Charter under this Section shall at all times be subject to applicable federal law and FCC regulation.

3.5 EMERGENCY ALERT SYSTEM

Charter shall comply with the Emergency Alert System requirements of the FCC.

3.6 REPAIRS AND RESTORATION

(a) Whenever Charter or any of its agents, including any contractor, takes up or disturbs any pavement, sidewalk or other improvement of any Public Right-of-Way, the same shall be replaced and the surface restored in a reasonably comparable condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. If Charter fails to repair, replace or otherwise correct a Public Right-of-Way following ten (10) days' written notice by the City, the City may complete any repair, replacement, restoration or other correction

and invoice Charter for the reasonable cost of such repair, replacement, restoration or other correction and be reimbursed for the same.

(b) Whenever Charter or any agent, including any contractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures and improvements in and along the routes authorized by the City. If required for the proper installation, operation and maintenance of such equipment, cable, or wires Charter shall promptly repair and restore any public property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) Charter's operation, construction, repair, and maintenance personnel, including all agents and contractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and generally applicable local laws and regulations. Charter shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

3.7 SERVICE AREA MAPS

Upon written request, Charter shall make available for inspection by the City at a mutually convenient location a complete set of Charter service area strand maps of the City on which will be shown those areas in which its facilities exist and the location of all streets. The maps shall designate where the cable wires and other equipment are aerial and where they are underground. Charter shall permit the City to review maps within thirty (30) days after any written request by the City and after execution of an appropriate non-disclosure agreement in a timely fashion. All information provided shall be exclusive of Drops. The City agrees to treat as confidential such maps because they constitute proprietary information.

3.8 DISCONNECTION AND RELOCATION

(a) Charter shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, at no cost to the City, protect, support, temporarily disconnect, relocate in the same Public Rights-of-Way, or remove from any Public Rights-of-Way, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare. Charter shall be responsible for any costs associated with these obligations to the same extent all other users of the Public Rights-of-Way are responsible for the costs related to the relocation of their facilities.

(b) In requiring Charter to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Charter the same as, and require no more of Charter than, any other similarly situated entity, including but not limited to telephone, power and water. Charter shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

(c) If funds are available to any Person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse Charter in the same manner

in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make or support the application for such funds on behalf of Charter.

(d) Charter shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Rights-of-Way as necessary any property of Charter, provided that the expense of such is paid by any such Person benefiting from the relocation and Charter is given reasonable advance written notice to prepare for such changes. Charter may require such payment in advance. For purposes of this subsection, “reasonable advance written notice” shall be no less than ninety (90) days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

3.9 EMERGENCY REMOVAL OF EQUIPMENT

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Charter notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the City shall treat Charter the same as, and require no more of Charter than, any other similarly situated entity. Charter shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

3.10 TREE TRIMMING

Charter, or its agents, including subcontractors, shall comply with any generally applicable tree trimming ordinance of the Ellensburg City Code.

3.11 CONTINUITY OF SERVICE

Subscribers shall continue to receive Cable Service from Charter provided their financial and other obligations to Charter are honored. Subject to Force Majeure provisions in Section 9.1, Charter shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service. For the purpose of construction, routine repairing or testing of the Cable System, Charter shall use its best efforts to interrupt service only during periods of minimum use. Such periods shall, where reasonably practicable, be scheduled from midnight to 6 a.m., unless in the case of an Emergency.

3.12 PARENTAL CONTROL CAPABILITY

Charter shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

SECTION 4

CUSTOMER SERVICE STANDARDS

Charter shall comply with the customer service standards in 47 C.F.R. § 76.309 of the FCC's Rules and Regulations, as may be amended from time to time. Such standards as of the Effective Date are set forth in Exhibit A to this Agreement. The requirement of 47 U.S.C. § 76.309(c)(1)(v) is met by Charter providing, or contracting with third party agents to provide, the opportunity for customers to exchange equipment and make payments at least during Normal Business Hours within the City.

SECTION 5

REGULATION BY THE CITY

5.1 RIGHT TO INSPECT

(a) The City shall have the option, upon thirty (30) business days written notice and during Normal Business Hours, to inspect all documents, records and other pertinent information maintained by Charter which relate to the provision of Cable Services to verify compliance with the terms and conditions of this Agreement and applicable law.

(b) In addition, Charter shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Upon thirty (30) days written request to Charter, the City may inspect the Cable System in the Public Rights-of-Way at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition. The City may not conduct a physical inspection of the Cable System or open any vaults, pedestals or conduits without the express permission of Charter. The City may not inspect the Cable System on Charter's property other than for permitted work. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Charter, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within a reasonable time established by the City.

5.2 RESERVED AUTHORITY

Each party reserves any and all rights arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way, subject to Section 5.3.

5.3 POLICE POWERS

Charter's rights under this Agreement are subject to the police powers of the City to adopt and enforce generally applicable laws and regulations necessary for the safety and welfare of the public, provided such laws and regulations are reasonable and not materially in conflict with the privileges granted in this Franchise and are consistent with all federal and state laws, rules, regulations and orders.

5.4 NO LIMITATION ON TAXING OR FEE AUTHORITY

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to Franchise Fees to the extent consistent with applicable law. Nothing herein shall constitute a waiver of Charter's right to challenge the imposition of any fee as inconsistent with applicable law.

5.5 SUBSCRIBER COMPLAINT REPORTS

Within thirty (30) days of a written request, Charter shall submit to the City a report showing the number of Complaints originating from the City and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, and the dates the Complaints were resolved.

5.6 CONFIDENTIALITY

To the extent permitted under Washington law, the City shall maintain as confidential any information provided to it by Charter under the terms of this Franchise which Charter has designated in writing as confidential. In the event that the City believes at any time that it is required by law to disclose such information to a third party, the City will so notify Charter at a time prior to such disclosure that affords Charter a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

SECTION 6 **COMPENSATION TO THE CITY**

6.1 FRANCHISE FEES

(a) Charter shall pay to the City an annual amount equal to five percent (5%) of the annual Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. Charter shall not deduct or otherwise credit against the Franchise Fee any tax, including property taxes and all other taxes, fees or assessments of general applicability unless allowed by applicable law.

(b) Notwithstanding Section 2.3(b), in the event any other franchise, agreement or authorization granted by the City to a Competing Cable Operator provides for a lesser franchise fee or more favorable franchise fee calculation than this Franchise, Charter's obligation to pay a Franchise Fee under this Franchise shall be immediately reduced to an equivalent amount.

6.2 QUARTERLY PAYMENTS

Franchise Fee payments to the City under this provision shall be calculated on an annual basis and paid at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 of the following calendar year (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due,

then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the City. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, Charter shall deposit the Franchise Fee payments electronically into an account as designated by the City.

6.3 QUARTERLY REPORTS

Each Franchise Fee payment shall be accompanied by a written report containing an accurate statement of Charter's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Charter's Cable System and showing the basis for the computation of fees. Upon request, Charter shall provide a more detailed report containing line items for sources of revenue received and the amount of revenue received from each source.

6.4 FRANCHISE FEE AUDIT

(a) Not more than once every three (3) years, the City shall have the right to conduct a Franchise Fee review or audit of Charter's records reasonably related to the sources, amounts and computation of Gross Revenues. Any such Franchise Fee review or audit shall occur within forty-eight (48) months from the date the City receives such payment, after which period any such payment shall be considered final. Within forty-five (45) days of a written request, Charter shall provide the City with copies of financial records related to the Franchise Fee review or audit.

(b) In the event of an alleged underpayment, the City shall provide Charter with a written statement indicating the basis for the alleged underpayment. Charter shall have forty-five (45) days from receipt of this notice regarding an alleged underpayment to provide the City with any written objection to the results of the Franchise Fee review or audit, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the underpayment(s), if any, within thirty (30) days of Charter's objection and shall provide Charter with written notice of the determination.

(c) Any undisputed Franchise Fee payment due to the City as a result of the Franchise Fee review or audit shall be paid to the City by Charter within forty-five (45) days from the date the City notifies Charter of its final determination, or if the matter is submitted to mediation, arbitration, or litigation, within forty-five (45) days from the final disposition of such action. If any undisputed Franchise Fee underpayment is not made on or before the dates specified herein, Charter shall pay an interest charge, computed from the day in which payment was due, at the prime rate as published by the Wall Street Journal.

(d) Any entity employed by the City that performs a Franchise Fee audit or review shall not be permitted to be compensated on a success-based formula, e.g., payment based on underpayment of fees, if any.

6.5 BUNDLED SERVICES

If Cable Services subject to the Franchise Fee required under this Section 6 are provided to Subscribers in conjunction with non-Cable Services for a single aggregate price, the Franchise Fee shall be applied to the portion of the aggregate price attributed to Cable Services. It shall be the obligation of Charter to maintain its books and attribute the revenues to Cable Services consistent with GAAP and Charter shall not make such attribution to avoid Franchise Fees.

SECTION 7

PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) PROGRAMMING

7.1 PEG CHANNEL

(a) Subject to applicable law, Charter shall continue to provide to the City one (1) downstream PEG Channel on the Cable System for use by the City and/or any PEG administrator designated by the City. The City shall be responsible for the content, scheduling, administration, and all other programming aspects of the PEG Channel, and may delegate such functions, or a portion of such functions, to an appropriate designee. Charter shall not exercise any editorial control over PEG Channel programming except as permitted by applicable law.

(b) Once the Upgraded PEG Return Line is operational pursuant to Section 7.2(b), and subject to any necessary channel line-up changes, Charter shall make the PEG Channel available to Subscribers in high definition ("HD") format (the "HD PEG Channel"). The HD PEG Channel will replace the existing PEG Channel described in Section 7.1(a), and will not constitute an additional PEG Channel. Charter shall provide written notice to the City and Subscribers at least thirty (30) days prior to the PEG Channel being made available in HD format.

7.2 PEG CHANNEL RETURN LINE

(a) As of the Effective Date, Charter is transporting standard definition PEG Channel programming that originates at City Hall located at 501 N. Anderson Street, Ellensburg, WA 98926 ("City Hall") to Charter's headend using a combination of facilities belonging to the City and facilities belonging to Charter ("Existing PEG Return Line"). The demarcation point between the City's facilities and Charter's facilities is located at approximately 47.002654-120.531499 DMM ("Demarcation Point"). Charter will continue to transport the standard definition PEG Channel programming originating from City Hall on the Existing PEG Return Line until the Upgraded PEG Return Line is operational pursuant to Section 7.2(b).

(b) Within six (6) months of the Effective Date, the City shall pay to Charter a one-time fee of \$10,542.87 for costs associated with installing the necessary equipment to allow HD PEG programming that is originated by the City at City Hall to be transported to Charter's headend and transmitted over the Cable System in HD ("Upgraded PEG Return Line"). Charter shall provide the Upgraded PEG Return Line within six (6) months of receipt of such payment, subject to Section 9.1. Charter will own and maintain the equipment installed for the Upgraded PEG Return Line and the portion of the Upgraded PEG Return Line between the Demarcation Point to Charter's headend in good working order, subject to Section 7.2(c).

(c) The City is responsible for (i) all costs and equipment required to produce the PEG programming in HD and maintain same in good working order; (ii) any repair or replacement costs necessarily incurred by Charter related to the Existing Return Line or Upgraded PEG Return Line (excluding routine maintenance); (iii) all costs associated with any portions of the Existing PEG Return Line or Upgraded PEG Return Line and related equipment that are between City Hall and the Demarcation Point and owned by the City; and (iv) all costs related to modifying, moving or any further upgrades of the Upgraded PEG Return Line, such as a future relocation of City Hall.

7.3 ADDITIONAL PEG CHANNEL REQUIREMENTS

(a) Charter shall deliver the PEG Channel signal at a level of technical quality as required by FCC regulations; provided, however that Charter shall have no responsibility to improve upon or modify the signal quality of any PEG Channel content provided to Charter by any PEG Channel programmer.

(b) In the event the City or its designee does not program the PEG Channel, Charter may request the use of this PEG Channel subject to prior written approval by the City. The City shall not unreasonably withhold its approval of Charter's use of a PEG channel. If the City requests the utilization of the PEG Channel being programmed by Charter, Charter shall relinquish such use no later than ninety (90) days after receipt of written notification from the City that it requires such channel for public, educational and/or government programming.

(c) Charter shall use its best efforts to maintain channel assignment for the PEG Channel as of the Effective Date. In the event Charter deems a change in the PEG Channel assignment to be necessary, Charter shall provide the City with at least thirty (30) days' advance written notice of such change.

(d) Charter shall cooperate with the City and the applicable third party to arrange for programming description information to be included on the electronic programming guide for the PEG Channel. Costs associated with use of the electronic programming guide shall be borne by the City.

7.4 PEG CAPITAL GRANT

Within ninety (90) days of the Effective Date, Charter shall provide to the City a capital grant of \$64,812 to be used by the City to purchase the PEG access production equipment set forth in Exhibit B (or similar or supplemental equipment), and which are treated as capital costs under Generally Accepted Accounting Principles. Charter may pass through such capital grant to Subscribers in accordance with applicable law. In addition, beginning ninety (90) days after the Effective Date, Charter will begin collecting three cents (\$.03) per Subscriber per month and remitting same to City by March 31 of each year for the previous calendar year (or portion thereof), to be used by the City to purchase PEG access production replacement or supplement equipment, and which are treated as capital costs under Generally Accepted Accounting Principles. This pass-through shall be reduced or terminated at any time upon request of the City and shall terminate no later than fifteen (15) years after the Effective Date. Upon receipt of a written request from Charter, the City shall provide Charter with a complete accounting of the use of all funds for the

prior calendar year granted pursuant to this Section 7.4. Any grant funds used for non-PEG capital purposes are subject to offset from the Franchise Fee in accordance with applicable law.

7.5 PEG COMPETITIVE EQUITY

Any PEG Channel requirements set forth in any other franchise, agreement or other authorization granted to a Competing Cable Operator shall be substantially similar to the PEG Channel requirements required under this Franchise, and any provisions for PEG access facilities, format, equipment and financial or in-kind support in such other franchise, agreement or other authorization shall be substantially similar when compared to this Franchise. If an authorization granted to a Competing Cable Operator contains PEG obligations (including financial and in-kind) that are more favorable or less burdensome to the Competing Cable Operator than this Section 7 is to Charter, or does not include substantially similar PEG obligations (including financial and in-kind) to those that are in this Section 7, then the procedures of Section 2.3(b) shall apply. Any related amendment agreed to by the City and Charter will include a deduction from future Franchise Fee payments to offset the difference in amount of any financial or in-kind PEG obligations already made by Charter under this Franchise and the obligations of the Competing Cable Operator, unless otherwise agreed to by the City and Charter.

SECTION 8 **ENFORCEMENT, INSURANCE AND INDEMNIFICATION**

8.1 VIOLATIONS AND OPPORTUNITY TO CURE

(a) If the City has reason to believe that Charter violated any provision of this Agreement, it shall notify Charter in writing by certified mail of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify Charter of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Charter shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Charter must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Charter shall have promptly commenced to cure and is taking reasonable steps to cure in the reasonable judgment of the City.

(c) If the violation is material and has not been cured within the time allowed under Section 8.1(b) and, in the City's judgment, Charter has not taken reasonable steps to cure the violation, then the City may initiate an action in law or equity in a court of competent jurisdiction or revoke the Franchise in accordance with Section 8.2.

(d) No violation shall be deemed to have occurred if the violation occurs without the fault of Charter or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1.

8.2 REVOCATION

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Charter practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Charter violates, after notice and opportunity to cure as set forth in Section 8.1, one or more of the material terms or conditions of this Agreement;

(b) Prior to revocation or termination of the Franchise, the City shall give written notice to Charter of its intent to revoke the Franchise on the basis of any of the violations described in Section 8.1 (a) above. The notice shall set forth the nature of the noncompliance with reasonable specificity. Charter shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the City has not received a satisfactory response from Charter, it may then seek to revoke the Franchise at a public hearing. Charter shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the hearing, the City shall give Charter an opportunity to state its position on the matter and present evidence in accordance with the standards of a fair hearing applicable to administrative hearings in the State of Washington. After the public hearing, the City shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to Charter within ten (10) business days. The decision of the City shall be made in writing and shall be provided to Charter. Charter may appeal such determination to an appropriate court of competent jurisdiction. Notwithstanding the foregoing, nothing in this Agreement, including the enforcement provisions set forth in this Section 8.2, shall prevent Charter from filing at any time a legal action in any permissible court seeking a declaration or enforcement of Charter's rights or obligations under the Franchise. Charter may continue to operate the Cable System until all legal appeals procedures have been exhausted.

(c) Notwithstanding the above provisions, Charter reserves all of its rights under federal law or regulation.

(d) The parties agree that it is not the City's intention to subject Charter to revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the City or Subscribers within the Franchise Area.

8.3 OTHER PUBLIC HEARINGS

The City shall provide at least ten (10) days' advance written notice to Charter of any public meeting or hearing directly related to Charter or this Franchise that is not for the purposes set forth in Section 8.1 or 8.2. This notice requirement does not apply to any public meetings or hearings addressing generally applicable issues.

8.4 INSURANCE

(a) Charter shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in Washington and which has an A.M. Best rating (or equivalent) no less than A-minus VII, indemnifying the City from and against all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable System by Charter in the following amounts:

(1) Commercial General Liability Insurance in an amount no less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars General Aggregate.

(2) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) Workers' Compensation Insurance in such form and amounts as required by state law.

The City, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.4.

(b) Charter shall deliver to the City a Certificate of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, upon request by the City. Charter shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.4 and without submitting Certificates of Insurance to the City verifying that Charter has obtained such alternative insurance. Charter shall endeavor to cause its insurance carrier to notify the City thirty (30) days prior to the cancellation of such insurance policy if an equivalent policy will not be substituted.

8.5 INDEMNIFICATION

(a) Charter shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense to the extent caused by or connected with the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Charter. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, and penalties. If the City determines that it is necessary for it to employ separate counsel, in addition to that provided by Charter, the cost for such separate counsel shall be the responsibility of the City. Charter shall not indemnify the City for any claims, damages or liability to the extent resulting from acts of willful misconduct or negligence on the part of the City or its officials, officers, agents and employees.

(b) In order for the City to assert its right to be indemnified and held harmless pursuant to subsection (a) above, the City must (1) notify Charter of any claim or legal proceeding which gives rise to such right as specified in subsection (a) above within fifteen (15) days of notice of such a claim or legal proceeding; (2) afford Charter the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and (3) fully cooperate in the defense of such claim and make available to Charter all such information under its control relating thereto.

SECTION 9

MISCELLANEOUS

9.1 FORCE MAJEURE

If for any reason of Force Majeure, Charter is unable in whole or in part to carry out its obligations hereunder, Charter shall not be deemed in violation of this Agreement during the continuance of such inability. The term “force majeure” shall have the following meaning: acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or of the State of Washington or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections, riots, labor strikes; epidemics; landslides; lightning, earthquakes; hurricanes; volcanic activity; unusual storms; floods; washouts; unavailability of labor, materials or equipment; droughts; explosions; and partial or entire failure of utilities to service, maintain or monitor their poles or facilities to which Charter’s Cable System is attached.

9.2 REMOVAL OF SYSTEM

(a) Upon lawful termination or revocation of this Agreement and Charter’s exhaustion of all appeals, Charter shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the Public Rights-of-Way. If such removal is not completed within six (6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Charter’s cost.

(b) During the term of the Agreement, if Charter decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. Upon abandonment of the Cable System by Charter, the City shall have the right to either require Charter to remove the property; leave the property in place; remove the property itself and charge Charter with the costs related thereto; or transfer ownership of the property to the City’s designee provided fair market value is paid to Charter.

(c) Notwithstanding the above, Charter shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Charter from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

9.3 NOTICES

Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express. Every notice or payment to be served upon or made to the City shall be sent to:

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

With a copy to:

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

The City may specify any change of address in writing to Charter. Every notice to be served upon Charter shall be sent to:

Attn: Director, Government Relations
Charter Communications
222 NE Park Plaza Drive, Ste 231
Vancouver, WA 98684

With a copy to:

Attn: Vice President, Government Affairs
Charter Communications
601 Massachusetts Ave NW, Ste 400W
Washington, DC 20001

Charter may specify any changes of address in writing to the City. Each delivery to Charter or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

9.4 EQUAL EMPLOYMENT OPPORTUNITY

Charter is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment. Additionally, Charter shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

9.5 CAPTIONS

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

9.6 GOVERNING LAW; VENUE

This Agreement shall be governed and construed by and in accordance with the laws of the State of Washington and federal law. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested in the state courts of Washington, County of Kittitas, or in the United States District Court for the Eastern District of Washington.

9.7 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL

(a) Neither Charter nor its parent shall transfer or assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither Charter nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City.

(c) Neither Charter nor its parent shall sell, convey, transfer, exchange or release more than fifty percent (50%) of its equitable ownership in the Cable System without the prior written consent of the City.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Charter in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity controlling, controlled by or under common control with Charter.

(e) Charter shall make written application to the City of any transfer, as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City shall have thirty (30) days from the receipt of FCC Form 394 to notify Charter of any additional information it needs to make an informed decision on the transfer or assignment. The City shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding agreement stating that it shall be bound by all the terms and conditions contained in this Agreement, if requested in writing by the City.

9.8 ENTIRE AGREEMENT

This written instrument contains the entire agreement between the parties, supersedes all prior agreements, ordinances, or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Charter. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein. This Agreement may be amended only by the mutual consent of the City and Charter. Any amendment must be in writing and executed by the City and Charter. In the event of a conflict between this Franchise Agreement and any other local ordinance, law or regulation in effect at the time of this Agreement or thereafter, the terms and conditions of this Franchise Agreement shall control.

9.9 SEVERABILITY

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

9.10 CHANGE OF LAW

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or Charter may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Charter may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Charter, except that where such change is not waivable by the parties, this Agreement shall be deemed to be immediately amended to the extent necessary to comply with applicable law.

9.11 COMPLIANCE WITH LAWS

Subject to Sections 9.9 and 9.10 of this Agreement, Charter shall comply with all applicable federal, state and, to the extent not inconsistent with the terms of this Franchise, local laws and regulations.

9.12 THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

9.13 APPLICABILITY OF AGREEMENT

All of the provisions in this Agreement shall bind Charter, the City and their respective successors and assigns. This Agreement is authorized by Ordinance No. 4898 dated November 7, 2022 of the City Council.

WITNESS our hands and official seals to this Cable Franchise Agreement.

CITY OF ELLENSBURG

By: _____

Name: _____

Title: _____

Date: _____

SPECTRUM PACIFIC WEST, LLC

By: Charter Communications, Inc., its Manager

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

CUSTOMER SERVICE STANDARDS
CODE OF FEDERAL REGULATIONS
TITLE 47 – TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER C -- BROADCAST RADIO SERVICES
PART 76--CABLE TELEVISION SERVICE

§ 76.309 Customer Service Obligations

(a) A cable franchise authority may enforce the customer service standards set forth herein against cable operators.

(b) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable System office hours and telephone availability.

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty four (24) hours a day, seven (7) days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than twenty four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers.

(i) Refunds. Refund checks will be issued promptly, but no later than either -

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions.

(i) Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

(ii) Normal Operating Conditions. The term “normal operating conditions” means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(iii) Service Interruption. The term “service interruption” means the loss of picture or sound on one or more cable Channels.

CODE OF FEDERAL REGULATIONS
TITLE 47 – TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER C -- BROADCAST RADIO SERVICES
PART 76--CABLE TELEVISION SERVICE

§ 76.1619 Information on subscriber bills.

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days. The required response may be delivered by email, if the consumer used email to make the request or complaint directly to the cable operator, or if the consumer specifies email as the preferred delivery method in the request or complaint.

EXHIBIT B*

	Description/Model
Broadcast Server w/ Bulletin	Leightronix UltraNEXUS-HD
PTZ Cameras	Panasonic PTZ Camera with HD-SDI Output (AW-UE50KP)
PTZ Camera	Panasonic PTZ Camera with HDMI Output (AW-UE40KP)
Dias Microphone System	Shure Supercardioid Desktop Gooseneck Microphone (12") (MX412D/S)
Handheld Microphone System	Shure Dual-Channel Wireless Handheld Microphone System (BLX288/SM58)
Audio Mixer	Shure Digital IntelliMix Automatic 8-Channel Mixer
Video Switcher	Blackmagic Design ATEM 2 M/E Production Studio 4K (SWATEMPSW2ME4K)
Video Hub	Blackmagic Videohub CleanSwitch 12x12
Editing Computer + Software	Apple 24" iMac with M1 Chip (Mid 2021, Silver) (Z12Q000NR)
Hard Drive Storage	G-RAID 12TB 2-Bay Thunderbolt 3 RAID Array (2 x 6TB)(0G05753-1)
Field Use: Community Producer Cameras	Sony PXW-Z190 4K 3-CMOS 1/3" Sensor XDCAM Camcorder
Field Use: Wireless Body Pack Microphone	Sennheiser EW 112P G4
Field Use: Shotgun Microphone	Sennheiser MKE 600
Field Use: Light Kit, including Stand & Battery	TBD

*PEG access production equipment (or similar or supplemental equipment) to be purchased by the City.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Ordinance 4897 (Second Reading and Adoption) for Electric, Natural Gas, Stormwater, Sewer, and Water Utility Rates and Plant Investment Fees 2023-2025

Submitted by: Ryan Lyyski Public Works & Utilities

Recommended Action or Motion: Staff recommends Council consider second reading and adoption of Ordinance 4897.

Background/Summary: To continue providing quality service, maintaining the reliability of utility systems, and equitably cover the costs associated with significant infrastructure upgrades, FCS Group was retained to complete a Water, Wastewater, Electric, & Natural Gas Rate Study. Staff also prepared the 2023-2024 proposed budget that drives the need for rate increases in the Stormwater utility. The consultant and staff presented recommendations to both the Utility Advisory Committee and Council on the proposed rate modifications for the electric, natural gas, sewer, stormwater, and water utilities.

The Ellensburg City Code Chapter 9.30.030 (B) provides, "It is intended that all utility rates be based on cost-of-service principles. Subsidies between rate schedules shall be avoided except for low-income senior citizen, low-income disabled citizen and nonprofit agency serving the disadvantaged rate schedules."

FCS Group completed a Cost of Service Analysis (COSA) for the Water, Wastewater, & Electric utilities in 2018 and for the Natural Gas utility in 2022. The rate studies presented as part of the 2019-20 budgeting process incorporated the capital and maintenance needs for the utilities and put together a phased-in approach to bring the various customer classes into cost of service over six (6) years. Due to the COVID pandemic, no rate increases were adopted as part of the 2021-22 budget development.

Previous Council Action: Council was provided a presentation from the FCS Group on

the Cost of Service work that was completed for the electric, natural gas, sewer, and water utilities at its September 19, 2022 meeting. Council was also provided a presentation from the City's stormwater utility on proposed utility rate increases at the September 19, 2022 meeting. Council held first reading of proposed Ordinance 4897 at its October 3, 2022 meeting.

Analysis:

Staff again contracted with the FCS Group to review the rate structure and financial needs of the electric, natural gas, sewer, and water utilities over the last year. FCS's findings were presented to Council and the UAC as noted. The findings confirm the need for utility rate increases in the utilities. Progress has been made in equitable rates since 2018 when the last COSA was completed and most of the classes of service are at or close to being within the acceptable range. The proposed ordinance includes a rate structure over the next three years that will provide adequate funding for the utilities and meet necessary debt service coverage requirements.

The City's stormwater utility is also in need of rate increases to meet debt service coverage requirements. The proposed 2023-2024 budget has been developed based on the rates needed to meet these requirements.

The Utility Advisory Committee considered presentations on the proposed rate increases for electric, natural gas, sewer and water at its July 21, 2022, meeting and stormwater at its September 15, 2022, meeting. The UAC forwarded a favorable recommendation to City Council for adoption of the proposed rate structures.

The proposed ordinance will also bring the Plant Investment Fees (PIF) for sewer and water into alignment with FCS recommendations.

Non-Profit City utilities are self-supporting and must cover the cost of services they provide to the public. It is the City's responsibility to deliver reliable utility services to customers, while maintaining systems and preparing for future growth. Planning for infrastructure to ensure the City utilities have sufficient capacity to meet future demand is critical for growth.

Not all customers have equal impact on utilities, some

customers have extremely high demands on resources and utility systems, some have very low demands.

Analyzing costs associated with operating each utility and which customer class utilizes the services allows the contractor to perform an in-depth Cost of Service Analysis (COSA). This process looks at actual historical utility cost data and attributes the costs to the customer responsible for them. By identifying customer class specific costs then allows the City to propose rates in an equitable way, that will align those revenues with their respective expenses.

Revenue sources (Rate Revenue, Debt Service, Grants) are analyzed to minimize the impact to proposed rate adjustments.

See Table #1

A Plant Investment Fee (PIF) represents a pro-rated share of the system capacity cost. PIFs are not used for operational or maintenance purposes. PIF revenue is used to fund projects that add capacity to our system. If Plant Investment Fees cover less than their cost of system expansion, utility rates would need to increase to pay for future system growth. PIFs create equity for system capacity while not adding an additional burden to current customers.

See Table #2

The primary driver for Stormwater fee increases is the \$5,000,000 bond that was sold for the Reecer Creek floodplain work north of Dolarway Road. The increase is needed to cover bond payment and debt service requirements. Stormwater rates are calculated based on an equivalent residential unit (ERU). A rate increase of \$3/month per ERU is proposed for 2023, and an additional \$1/month per ERU in 2024.

Financial Impact:

Ordinance 4897 includes the rate structures that have been recommended by the UAC and presented to Council. The budgets developed by staff and currently being considered by City Manager include the proposed rate structures within

respective revenues for each utility.

**Note the Wastewater rates have been rounded to better integrate with our utility billing system parameters.

Attachments:

[Agenda Report Tables](#)

[4897-Utility Rate Increase - Second Reading](#)

[09.19.2022 Ellensburg Rate Study Presentation](#)

[09-19-22 Storm Utility Rate Increase Presentation](#)

Table #1

System Rate Increase	Annual Increase		
	2023	2024	2025
Water	5.75%	5.75%	5.50%
Wastewater	9.00%	9.00%	9.00%
Electric	-	4.00%	-
Natural Gas	6.25%	6.25%	3.75%

Utility	Average Residential Monthly Bill			
	Existing	2023	2024	2025
Water	\$ 43.71	\$ 46.22	\$ 48.89	\$ 51.59
Wastewater	37.55	40.76	44.25	48.04
Electric	90.64	90.64	94.93	94.93
Natural Gas	50.00	53.27	56.34	58.17
Total	\$ 221.90	\$ 230.90	\$ 244.41	\$ 252.73
\$ Change		\$ 9.00	\$ 13.51	\$ 8.32

Notes:

1. Water rates assume 5/8" meter & 12.47 Ccf
2. Electric rates assume 850 kWh
3. Natural gas rates are distribution only & assume 56 Ccf

Table #2

Meter Size	Water			Wastewater		
	Existing	Proposed	\$ Variance	Existing	Proposed	\$ Variance
5/8" or 3/4"	\$ 3,600	\$ 6,160	\$ 2,560	\$ 2,550	\$ 5,680	\$ 3,130
1"	6,012	10,267	4,255	4,259	9,467	5,208
1 1/2"	11,988	20,533	8,545	8,492	18,933	10,441
2"	19,188	32,853	13,665	13,592	30,293	16,701
3"	36,000	65,707	29,707	25,500	60,587	35,087
4"	60,012	102,667	42,655	42,509	94,667	52,158
6"	119,988	205,333	85,345	84,992	189,333	104,341
8"	191,988	328,533	136,545	135,992	302,933	166,941

ORDINANCE NO. 4897

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO TITLE 9 “UTILITIES” AND AMENDING SECTIONS 9.91.100, 9.91.200, 9.91.300, 9.91.400, 9.92.300, 9.92.400 AND 9.100.110 OF THE ELLENSBURG CITY CODE.

WHEREAS, the electric, natural gas, stormwater, sewer and water utilities have compiled draft 2023-2024 budgets, including capital construction plans; and

WHEREAS, the electric, natural gas, sewer and water utilities have completed Cost of Service Analysis with an outside firm The FCS Group; and

WHEREAS, the electric, natural gas, stormwater, sewer and water utilities have identified six year capital improvement plans in which large infrastructure replacement projects will require funding from ratepayer revenue; and

WHEREAS, bond covenants for existing revenue bonds require that the City utility revenues meet bond parity requirements for electric, stormwater, sewer and water utilities,

WHEREAS, the cost of service analysis and proposed rate increases for electric, natural gas, sewer and water were presented to the Utility Advisory Committee at its July 21, 2022, which recommended that City Council adopt the proposed rates; and

WHEREAS, the stormwater revenue requirement and need was presented to the Utility Advisory Committee at its September 15, 2022 meeting, which recommended that City Council adopt the proposed rates; and

WHEREAS, the City Council received a presentation on the Cost of Service Analysis for electric, natural gas, sewer and water as well as proposed revenue requirement for the stormwater utility at Council’s September 19, 2022 meeting; and

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

Section 1. Section 9.91.100 of the Ellensburg City Code, as last amended by Section 6 of Ordinance 4844, is hereby amended to read as follows:

9.91.100 Electric utility rate schedules.

Effective Date: ~~4/1/2020~~ 1/1/2023

A. Residential E-100.

1. Availability. This electricity service rate schedule is available within the service area of the city to single-family dwellings and multiple-family dwellings through a separate meter for each

living unit. This rate schedule is not available for electric energy resale purposes, or where any part of the use is for purposes other than above stated.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC at a nominal potential of 120, 120-208, or 120-240 volts single phase.

3. Rate. The rate shall be composed of a consumption charge plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0737 per kWh	<u>All usage at \$0.0737 per kWh</u>	<u>All usage at \$0.0772 per kWh</u>	<u>All usage at \$0.0772 per kWh</u>
Customer Charge:	\$0.9205 per day	<u>\$0.9205 per day</u>	<u>\$0.9640 per day</u>	<u>\$0.9640 per day</u>

B. Residential Distributed Generation E-115.

1. Availability. This electricity net metering service rate schedule is available within the service area of the city to single-family dwellings and multifamily dwellings through a separate net meter for each generation system. This rate schedule is not available for electric energy resale purposes.

2. Character of Service. Energy delivered and energy received under this schedule shall be 60-cycle AC at a nominal potential of 120, 120-208, or 120-240 volts single phase.

3. Energy Banking. If energy received by the utility from the customer exceeds energy delivered by the utility to the customer on a monthly basis, the excess generation shall be accrued in an energy bank to be used in future billing periods. At the end of April each year, any remaining excess energy banked shall be purchased from the customer by the utility at the net wholesale power cost from the customer generator and a new net metering year starts over.

4. Rate. The rate shall be composed of a delivered energy charge, plus a received energy credit up to the monthly consumption plus a daily customer charge computed as follows for each net meter servicing the premises:

<u>Effective Date</u>		<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All delivered energy at \$0.0737 per kWh	<u>All delivered energy at \$0.0737 kWh</u>	<u>All delivered energy at \$0.0772 kWh</u>	<u>All delivered energy at \$0.0772 kWh</u>	<u>All delivered energy at \$0.0772 kWh</u>
Consumption Credits:	All received energy up to the monthly delivered energy at \$0.0737 per kWh	<u>All received energy up to the monthly delivered energy at \$0.0737 kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0772 kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0772 kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0772 kWh</u>
Customer Charge:	\$1.1014 per day	<u>\$1.1014 per day</u>	<u>\$1.1535 per day</u>	<u>\$1.1535 per day</u>	<u>\$1.1535 per day</u>

C. Low-Income Senior Citizen/Low-Income Disabled Citizen E-130.

1. Availability. This rate is available for residential service to individuals who meet the definition of low-income senior citizen or low-income disabled citizen, who do not reside in federally subsidized housing and who agree to participate in energy conservation programs that are available at no charge. The rates established by this section will be published by the public works and utilities department on the city's website, and be made available from the city's finance department.

Failure to participate in an available energy conservation program after receipt of a utility discount shall constitute a basis for denial by the city of continued participation in the utility discount program until such conservation measures are installed. The customer may submit a written request, on a form provided by the city, identifying the reasons they should be exempt from participation in available conservation programs, which request is subject to approval or denial by the public works and utilities director.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC at a nominal potential of 120, 120-208, or 120-240 volts single phase.

D. General Service Single Phase Demand E-200.

1. Availability. This electricity service rate is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules

and whose electrical panel size is equal to or greater than 600 amps single phase at 120-240 volts or equivalent panel size for other voltages.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) single phase.

3. Rate. The rate shall be composed of a consumption charge plus a monthly demand charge plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0524 per kWh	<u>All usage at \$0.0524 per kWh</u>	<u>All usage at \$0.0534 per kWh</u>	<u>All usage at \$0.0534 per kWh</u>
Demand Charge:	All demand at \$6.30 per kW	<u>All demand at \$6.30 per kW</u>	<u>All demand at \$6.43 per kW</u>	<u>All demand at \$6.43 per kW</u>
Customer Charge:	\$1.8740 per day	<u>\$1.8740 per day</u>	<u>\$1.9115 per day</u>	<u>\$1.9115 per day</u>

4. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed.

5. Based on a customer's anticipated lagging reactive load, metering for power factor may be required. When required by the public works and utilities department, demand charges will be adjusted to correct for average power factors lower than 97 percent by dividing the metered monthly peak demand by the monthly average power factor and then multiplying the quotient by 97 percent.

E. General Service Three Phase Demand E-201.

1. Availability. This electricity service rate is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules and whose electrical panel size is equal to or greater than 400 amps three phase at 120-208 volts or equivalent panel size for other voltages.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) three phase.

3. Rate. The rate shall be composed of a consumption charge plus a monthly demand charge plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0524 per kWh	<u>All usage at \$0.0524 per kWh</u>	<u>All usage at \$0.0534 per kWh</u>	<u>All usage at \$0.0534 per kWh</u>
Demand Charge:	All demand at \$6.30 per kW	<u>All demand at \$6.30 per kW</u>	<u>All demand at \$6.43 per kW</u>	<u>All demand at \$6.43 per kW</u>
Customer Charge:	\$3.7808 per day	<u>\$3.7808 per day</u>	<u>\$3.8564 per day</u>	<u>\$3.8564 per day</u>

4. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed.

5. Based on a customer's anticipated lagging reactive load, metering for power factor may be required. When required by the public works and utilities department, demand charges will be adjusted to correct for average power factors lower than 97 percent by dividing the metered monthly peak demand by the monthly average power factor and then multiplying the quotient by 97 percent.

F. General Service Single Phase Distributed Generation E-202.

1. Availability. This net metered electricity rate is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules and whose electrical panel size is equal to or greater than 600 amps single phase at 120-240 volts or equivalent panel size for other voltages.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) single phase.

3. Energy Banking. If energy received by the utility from the customer exceeds energy delivered by the utility to the customer on a monthly basis, the excess generation shall be accrued in an energy bank to be used in future billing periods. At the end of April each year, any remaining excess energy banked shall be purchased from the customer by the utility at the net wholesale power cost from the customer generator and a new net metering year starts over.

4. Rate. The rate shall be composed of a delivered energy charge, plus a received energy credit up to the monthly consumption, plus a monthly demand charge, plus a daily customer charge computed as follows for each net meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0524 per kWh (Delivered energy)	<u>All usage at</u> <u>\$0.0524 per kWh</u> (Delivered energy)	<u>All usage at</u> <u>\$0.0534 per kWh</u> (Delivered energy)	<u>All usage at</u> <u>\$0.0534 per kWh</u> (Delivered energy)
Consumption Credits:	All received energy up to the monthly delivered energy at \$0.0524 per kWh	<u>All received energy up to the monthly delivered energy at \$0.0524 per kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0534 per kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0534 per kWh</u>
Demand Charge:	All demand at \$6.30 per kW	<u>All demand at</u> <u>\$6.30 per kW</u>	<u>All demand at</u> <u>\$6.43 per kW</u>	<u>All demand at</u> <u>\$6.43 per kW</u>
Customer Charge:	\$2.5315 per day	<u>\$2.5315 per day</u>	<u>\$2.5821 per day</u>	<u>\$2.5821 per day</u>

5. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed.

6. Based on a customer's anticipated lagging reactive load, metering for power factor may be required. When required by the public works and utilities department, demand charges will be adjusted to correct for average power factors lower than 97 percent by dividing the metered monthly peak demand by the monthly average power factor and then multiplying the quotient by 97 percent.

G. General Service Three Phase Distributed Generation E-206.

1. Availability. This net metered electricity rate is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules and whose electrical panel size is equal to or greater than 400 amps three phase at 120-240 volts or equivalent panel size for other voltages.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) three phase.

3. Energy Banking. If energy received by the utility from the customer exceeds energy delivered by the utility to the customer on a monthly basis, the excess generation shall be accrued in an energy bank to be used in future billing periods. At the end of April each year, any remaining excess energy banked shall be purchased from the customer by the utility at the net wholesale power cost from the customer generator and a new net metering year starts over.

4. Rate. The rate shall be composed of a delivered energy charge, plus a received energy credit up to the monthly consumption, plus a monthly demand charge, plus a daily customer charge computed as follows for each net meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0524 per kWh (Delivered energy)	<u>All usage at \$0.0524 per kWh (Delivered energy)</u>	<u>All usage at \$0.0534 per kWh (Delivered energy)</u>	<u>All usage at \$0.0534 per kWh (Delivered energy)</u>
Consumption Credits:	All received energy up to the monthly delivered energy at \$0.0524 per kWh	<u>All received energy up to the monthly delivered energy at \$0.0524 per kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0534 per kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0534 per kWh</u>
Demand Charge:	All demand at \$6.30 per kW	<u>All demand at \$6.30 per kW</u>	<u>All demand at \$6.43 per kW</u>	<u>All demand at \$6.43 per kW</u>
Customer Charge:	\$4.4383 per day	<u>\$4.4383 per day</u>	<u>\$4.5271 per day</u>	<u>\$4.5271 per day</u>

5. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed.

6. Based on a customer's anticipated lagging reactive load, metering for power factor may be required. When required by the public works and utilities department, demand charges will be adjusted to correct for average power factors lower than 97 percent by dividing the metered monthly peak demand by the monthly average power factor and then multiplying the quotient by 97 percent.

H. General Service Single Phase E-210.

1. Availability. This electricity service rate is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules

and whose electrical panel size is less than 600 amps at 120-240 volts or equivalent panel size for other voltages.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) single phase.

3. Rate. The rate shall be composed of a consumption charge plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0731 per kWh	<u>All usage at \$0.0731 per kWh</u>	<u>All usage at \$0.0746 per kWh</u>	<u>All usage at \$0.0746 per kWh</u>
Customer Charge:	\$0.9863 per day	<u>\$0.9863 per day</u>	<u>\$1.0060 per day</u>	<u>\$1.0060 per day</u>

4. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed.

I. General Service Three Phase E-211.

1. Availability. This electricity service rate is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules and whose electrical panel size is less than 400 amps three phase at 120-208 volts or equivalent panel size for other voltages.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) three phase.

3. Rate. The rate shall be composed of a consumption charge plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0731 per kWh	<u>All usage at \$0.0731 per kWh</u>	<u>All usage at \$0.0746 per kWh</u>	<u>All usage at \$0.0746 per kWh</u>
Customer Charge:	\$1.7425 per day	<u>\$1.7425 per day</u>	<u>\$1.7774 per day</u>	<u>\$1.7774 per day</u>

4. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed.

J. General Service Single Phase Distributed Generation E-212.

1. Availability. This net metered electricity service rate is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules and whose electrical panel size is less than 600 amps single phase at 120-240 volts or equivalent panel size for other voltages.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) single phase.

3. Energy Banking. If energy received by the utility from the customer exceeds energy delivered by the utility to the customer on a monthly basis, the excess generation shall be accrued in an energy bank to be used in future billing periods. At the end of April each year, any remaining excess energy banked shall be purchased from the customer by the utility at the net wholesale power cost from the customer generator and a new net metering year starts over.

4. Rate. The rate shall be composed of a delivered energy charge, plus a received energy credit up to the monthly consumption, plus a daily customer charge computed as follows for each net meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0731 per kWh (Delivered energy)	<u>All usage at \$0.0731 per kWh (Delivered energy)</u>	<u>All usage at \$0.0746 per kWh (Delivered energy)</u>	<u>All usage at \$0.0746 per kWh (Delivered energy)</u>
Consumption Credits:	All received energy up to the monthly delivered energy at \$0.0731 per kWh	<u>All received energy up to the monthly delivered energy at \$0.0731 per kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0746 per kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0746 per kWh</u>
Customer Charge:	\$1.6438 per day	<u>\$1.6438 per day</u>	<u>\$1.6767 per day</u>	<u>\$1.6767 per day</u>

K. General Service Three Phase Distributed Generation E-213.

1. Availability. This net metered electricity service rate is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules and whose electrical panel size is less than 400 amps three phase at 120-240 volts or equivalent panel size for other voltages.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) three phase.

3. Energy Banking. If energy received by the utility from the customer exceeds energy delivered by the utility to the customer on a monthly basis, the excess generation shall be accrued in an energy bank to be used in future billing periods. At the end of April each year, any remaining excess energy banked shall be purchased from the customer by the utility at the net wholesale power cost from the customer generator and a new net metering year starts over.

4. Rate. The rate shall be composed of a delivered energy charge, plus a received energy credit up to the monthly consumption, plus a daily customer charge computed as follows for each net meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0731 per kWh (Delivered energy)	<u>All usage at \$0.0731 per kWh (Delivered energy)</u>	<u>All usage at \$0.0746 per kWh (Delivered energy)</u>	<u>All usage at \$0.0746 per kWh (Delivered energy)</u>
Consumption Credits:	All received energy up to the monthly delivered energy at \$0.0731 per kWh	<u>All received energy up to the monthly delivered energy at \$0.0731 per kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0746 per kWh</u>	<u>All received energy up to the monthly delivered energy at \$0.0746 per kWh</u>
Customer Charge:	\$2.4000 per day	<u>\$2.4000 per day</u>	<u>\$2.4480 per day</u>	<u>\$2.4480 per day</u>

L. Security Lighting E-300.

1. Availability. This electricity service rate schedule is available for existing security light customers within the service area of the city for photoelectric controlled dusk to dawn external lighting service primarily served by property owned by the customer. No new installations will be made for service under this schedule.

2. Character of Service. Service shall be unmetered, 60-cycle, 120-240-volt alternating current.

3. Rate.

<u>Effective Date</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
Light Only:	\$0.7810 per day	<u>\$0.7810 per day</u>	<u>\$0.8122 per day</u>	<u>\$0.8122 per day</u>
Light with Pole:	\$0.8525 per day	<u>\$0.8525 per day</u>	<u>\$0.8866 per day</u>	<u>\$0.8866 per day</u>

4. General Conditions.

- a. The city reserves the right to eliminate service under this schedule or to reduce the wattage of the luminaire.
- b. Normal lamp, control replacements and maintenance work shall be made by the city during regular business hours only.
- c. It shall be the responsibility of the customer to notify the city of lamp failure. No credits or adjustment of charges will be made during time of such failures, unless the city shall be unable to repair the defects when requested.
- d. The city reserves the right to restrict installations of lighting equipment to poles on which suitable space is available and to make such installations only where they will not interfere with any other equipment owned by the city or its customers.

M. Municipal E-500.

1. Availability. This electricity service rate schedule is available for water pumping, sewage treatment and pumping, municipal buildings and other municipal purposes.
2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts single phase or other voltage and polyphase service available.
3. Rate. The rate shall be composed of a consumption charge plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0696 per kWh	<u>All usage at \$0.0696 per kWh</u>	<u>All usage at \$0.0724 per kWh</u>	<u>All usage at \$0.0724 per kWh</u>
Customer Charge:	Single Phase – \$2.4658 per day	<u>\$2.4658 per day</u>	<u>\$2.5644 per day</u>	<u>\$2.5644 per day</u>

Three Phase – \$2.4658 per	<u>\$2.4658 per</u>	<u>\$2.5644 per</u>	<u>\$2.5644 per</u>
day	<u>day</u>	<u>day</u>	<u>day</u>

N. Large Customer/Contractual E-600.

1. Availability. This electric rate is available to large electric customers within the limits of the service area of the city whose requirements exceed or are estimated to exceed 15,000 MWh (megawatt hours) per year. The city will provide firm electric supply under this schedule; provided, that:

- a. Adequate electric supply exists in the city’s distribution system;
- b. Adequate capacity exists in the city’s distribution system; and
- c. The customer has executed a long-term large customer power sales agreement with the city for service under this schedule.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 12,470 volts, three phase.

3. Rate. The rates under this schedule will be covered by individual contract between the city and the customer.

O. Nonprofit Agency Serving the Disadvantaged E-700.

1. Availability. This electricity service rate is available within the service area of the city to all nonprofit agencies serving the disadvantaged. The rates established by this section will be published by the public works and utilities department on the city’s website, and be made available from the city’s finance department.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) single or three phase.

3. *Repealed by Ord. 4844.*

4. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed.

P. Primary Service City-Owned Transformer E-204.

1. Availability. This electricity service rate schedule is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior

citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules, and are metered on the primary side of a city-owned secondary transformer.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 120-240 volts (or other voltage) three phase.

3. Rate. The rate shall be composed of a consumption charge discounted one percent below the E-201 rate plus a monthly demand charge discounted one percent below the E-220 rate plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0515 per kWh	<u>All usage at \$0.0515 per kWh</u>	<u>All usage at \$0.0574 per kWh</u>	<u>All usage at \$0.0574 per kWh</u>
Demand Charge:	All demand at \$6.00 per kW	<u>All demand at \$6.00 per kW</u>	<u>All demand at \$6.69 per kW</u>	<u>All demand at \$6.69 per kW</u>
Customer Charge:	\$3.7808 per day	<u>\$3.7808 per day</u>	<u>\$4.2156 per day</u>	<u>\$4.2156 per day</u>

4. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed. The point of ownership change shall be identified in a one-line drawing of the service installation in accordance with the public works and utilities department records.

5. Based on a customer's anticipated lagging reactive load, metering for power factor may be required. When required by the public works and utilities department, demand charges will be adjusted to correct for average power factors lower than 97 percent by dividing the metered monthly peak demand by the monthly average power factor then multiplying the quotient by 97 percent.

Q. Primary Service Customer-Owned Transformer E-205.

1. Availability. This electricity service rate schedule is available within the service area of the city to all customers who do not qualify for service under the residential, low-income senior citizen/low-income disabled citizen, municipal, security lighting or large customer/contractual rate schedules, and are metered on the primary side of a customer-owned secondary transformer.

2. Character of Service. Energy delivered under this schedule shall be 60-cycle AC, 12,470 volts three phase.

3. Rate. The rate shall be composed of a consumption charge plus a monthly demand charge plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All usage at \$0.0474 per kWh	<u>All usage at \$0.0474 per kWh</u>	<u>All usage at \$0.0493 per kWh</u>	<u>All usage at \$0.0493 per kWh</u>
Demand Charge:	All demand at \$5.30 per kW	<u>All demand at \$5.30 per kW</u>	<u>All demand at \$5.51 per kW</u>	<u>All demand at \$5.51 per kW</u>
Customer Charge:	\$3.7808 per day	<u>\$3.7808 per day</u>	<u>\$3.9320 per day</u>	<u>\$3.9320 per day</u>

4. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed. The point of ownership change shall be identified in a one-line drawing of the service installation in accordance with the public works and utilities department records.

5. Based on a customer's anticipated lagging reactive load, metering for power factor may be required. When required by the public works and utilities department, demand charges will be adjusted to correct for average power factors lower than 97 percent by dividing the metered monthly peak demand by the monthly average power factor then multiplying the quotient by 97 percent.

R. Renewable Energy E-800.

1. Availability. This voluntary renewable electricity service rate is available within the service area of the city to all electric customers; provided, however, that the amount of renewable energy available under this rate is limited to the generation output of the city's Community Renewable Energy Park systems. Energy will be sold in 100 kWh per month blocks. Customers will still pay all charges per their appropriate rate class in addition to the voluntary upgrade charge per 100 kWh block of renewable energy purchased.

2. Character of Service. Renewable energy delivered under this schedule shall be the same as the customers' present service and rate class.

3. Rate. The rate is a voluntary renewable energy product upgrade charge for consumption in addition to the standard applicable rate class consumption the customer is receiving service under. Charges are computed as follows for each meter receiving this renewable energy product servicing the premises:

Consumption	100 kWh blocks at
Charge:	\$0.030 per kWh

4. Delivery Point. The above rates are based upon the supply of service to the entire premises through a single delivery and metering point and at one voltage and phase. Separate supply for the same customer at other voltages or phases or at other points of consumption will be separately metered and billed.

S. Renewable Energy System Contribution E-801.

1. Availability. This voluntary renewable energy system contribution rate is available within the service area of the city to all customers.

2. Character of Service. Customers can elect to make fixed contributions of \$3.00 per month per unit. Customers can purchase any number of units of contribution which will be included in their monthly utility billing, and may opt out at any time.

3. Rate. The rate is a voluntary renewable energy system contribution only. No renewable energy is delivered by participating in the rate.

Charge:	Renewable energy system contribution unit at \$3.00 per month
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[Ord. 4844 § 6, 2019; Ord. 4817 § 1, 2018; Ord. 4804 §§ 1, 2, 5, 2018; Ord. 4787 § 1, 2018; Ord. 4764 § 2, 2017; Ord. 4759 § 1, 2016; Ord. 4733 § 1, 2016; Ord. 4706 §§ 2, 3, 2015; Ord. 4684 § 7, 2014; Ord. 4639 § 2, 2013; Ord. 4633 § 2, 2013; Ord. 4626 § 2, 2012; Ord. 4606 § 1, 2011; Ord. 4555 § 7, 2009; Ord. 4508 § 1, 2007; Ord. 4503 § 2, 2007.]

Section 2. Section 9.91.200 of the Ellensburg City Code, as last amended by Section 7 of Ordinance 4844, is hereby amended to read as follows:

9.91.200 Gas utility rate schedules.

A. Residential G-100.

1. Availability. This rate schedule is available within the service area of the gas utility to single-family dwellings and multiple-family dwellings through a separate meter for each living unit. This rate schedule is not available for gas resale purposes, or where any part of the use is for purposes other than above stated.

2. Character of Service. Service shall be through a single meter at a single point of delivery. Multiple meters used for delivery to the same customer shall not be combined for billing purposes.

3. Rate. The rate shall be composed of a consumption charge plus a daily customer charge computed as follows for each meter servicing the premises:

~~Effective 4/1/2019:~~

~~Consumption Charge: All Ccf at \$0.5196 per Ccf plus the purchased gas cost adjustment~~

~~Customer Charge: \$0.5769 per day~~

~~Effective 1/1/2020:~~

~~Consumption Charge: All Ccf at \$0.5794 per Ccf plus the purchased gas cost adjustment~~

~~Customer Charge: \$0.5769 per day~~

Effective 1/1/2023:

<u>Effective Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
<u>Consumption Charge:</u>	<u>All Ccf at \$0.5794 per Ccf plus the purchased gas cost adjustment</u>	<u>All Ccf at \$0.6174 per Ccf plus the purchased gas cost adjustment</u>	<u>All Ccf at \$0.6530 per Ccf plus the purchased gas cost adjustment</u>	<u>All Ccf at \$0.6742 per Ccf plus the purchased gas cost adjustment</u>
<u>Customer Charge:</u>	<u>\$0.5769 per day</u>	<u>\$0.6147 per day</u>	<u>\$0.6501 per day</u>	<u>\$0.6712 per day</u>

B. Low-Income Senior Citizen/Low-Income Disabled Citizen G-130.

1. Availability. This rate is available for residential service to individuals who meet the definition of low-income senior citizen or low-income disabled citizen, who do not reside in federally subsidized housing and who agree to participate in energy conservation programs that are available at no charge. The rates established by this section will be published by the public works and utilities department on the city's website, and be made available from the city's finance department.

Failure to participate in an available energy conservation program after receipt of a utility discount shall constitute a basis for denial by the city of continued participation in the utility discount program until such conservation measures are installed. The customer may submit a written request, on a form provided by the city, identifying the reasons they should be exempt from participation in available conservation programs, which request is subject to approval or denial by the public works and utilities director.

2. Character of Service. Service shall be through a single meter at a single point of delivery. Multiple meters used for delivery to the same customer shall not be combined for billing purposes.

C. Commercial and Industrial G-200.

1. Availability. This rate schedule is available to commercial, small volume industrial and municipal customers for all purposes except for resale. Commercial and small industrial users shall either possess a current city business license or present proof of engaging in commercial or industrial activity.

2. Character of Service. Service shall be through a single meter at a single point of delivery. Multiple meters used for delivery to the same customer shall not be combined for billing purposes.

D. Rate. The rate shall be composed of a consumption charge plus a daily customer charge based on meter size and computed as follows for each meter servicing the premises:

<u>Effective</u> <u>Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All Ccf at \$0.3113 per Ccf plus the purchased gas cost adjustment	<u>All Ccf at \$0.3308 per Ccf plus the purchased gas cost adjustment</u>	<u>All Ccf at \$0.3515 per Ccf plus the purchased gas cost adjustment</u>	<u>All Ccf at \$0.3647 per Ccf plus the purchased gas cost adjustment</u>
Customer Charge:	275 cu. ft. and less \$0.5769 per day	<u>\$0.6130 per day</u>	<u>\$0.6513 per day</u>	<u>\$0.6757 per day</u>
	415/425 cu. ft. \$0.6914 per day	<u>\$0.7346 per day</u>	<u>\$0.7805 per day</u>	<u>\$0.8098 per day</u>

750/800 cu. ft.	\$1.3820 per day	<u>\$1.4684 per day</u>	<u>\$1.5602 per day</u>	<u>\$1.6188 per day</u>
1,000 cu. ft. and higher	\$2.7658 per day	<u>\$2.9387 per day</u>	<u>\$3.1224 per day</u>	<u>\$3.2396 per day</u>

E. Interruptible Industrial G-220.

1. Availability. Service of natural gas by the city is available to industrial customers whose requirements are estimated to exceed 100,000 therms per year and who have adequate standby facilities which are alternately fueled to accept curtailment of their natural gas supply under this schedule. The city will provide natural gas under this schedule; provided, that:

- a. Adequate gas volumes for such service are available;
- b. Adequate capacity exists in the city's distribution system; and
- c. The customer has executed a long-term interruptible natural gas service agreement with the city for service under this schedule.

2. Character of Service. This service applies to customers who would otherwise use propane and who have installed standby capacity to use propane in equipment listed in their service agreement. All service rendered under this rate is to be supplied at one point of delivery and single metered and billed.

Service rendered under this schedule shall be subject to curtailment by the city when in the city manager's or his designee's sole judgment such curtailment is necessary or such interruption or curtailment has been requested of the city by its supplier(s). Service under this schedule shall have a lower priority than service under any other gas utility rate schedule offered by the city including schedule G-300. The city shall not be liable in damages for or on account of any curtailment of service.

3. Rate. The rates under this rate schedule will be covered by individual contract between the city and the customer.

4. Restrictions. In no event shall the city sell natural gas to the customer at a price less than the city's wholesale price plus any taxes based on gross revenues.

F. Institutional Service G-300.

1. Availability. This rate schedule is available to institutional natural gas customers whose requirements are estimated to exceed 900,000 therms per year and who have adequate standby facilities to accept curtailment of their natural gas supply under this schedule. The city will

provide natural gas under this schedule; provided, that the customer has executed a long-term natural gas service agreement with the city for service under this schedule.

2. Character of Service. Service shall be through a single meter at a single point of delivery. Service is subject to interruption or curtailment at such times when, in the public works and utilities director's judgment, such interruption or curtailment is necessary to preserve the integrity of the city's system or the city has been requested to interrupt or curtail load by its supplier(s). The public works and utilities director shall consult with the city manager prior to any interruption or curtailment if circumstances allow. The city shall not be liable for damages for, or on account of, any curtailment of service. The customer may also choose to interrupt or curtail service as provided for in the service agreement.

3. Rate. The rates under this rate schedule will be covered by individual contract between the city and the customer.

G. Municipal G-400.

1. Availability. This rate schedule is available to the city for use at all municipal buildings.

2. Character of Service. Service shall be through a single meter at a single point of delivery.

3. Rate. The rate shall be composed of a consumption charge plus a daily customer charge computed as follows for each meter servicing the premises:

<u>Effective</u> <u>Date</u>	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
Consumption Charge:	All Ccf at \$0.2701 per Ccf plus the purchased gas cost adjustment	<u>All Ccf at \$0.2870 per Ccf plus the purchased gas cost adjustment</u>	<u>All Ccf at \$0.3049 per Ccf plus the purchased gas cost adjustment</u>	<u>All Ccf at \$0.3163 per Ccf plus the purchased gas cost adjustment</u>
Customer Charge:	275 cu. ft. and less	<u>\$0.5769 per day</u>	<u>\$0.6130 per day</u>	<u>\$0.6513 per day</u>
	415/425 cu. ft.	<u>\$0.9394 per day</u>	<u>\$0.9981 per day</u>	<u>\$1.0605 per day</u>
	750/800 cu. ft.	<u>\$1.8774 per day</u>	<u>\$2.1194 per day</u>	<u>\$2.1990 per day</u>

1,000 cu. ft. and higher	\$3.7562 per day	<u>\$3.9910 per day</u>	<u>\$4.2405 per day</u>	<u>\$4.3997 per day</u>
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H. Nonprofit Agency Serving the Disadvantaged G-700.

1. Availability. This rate schedule is available to nonprofit agencies serving the disadvantaged. The rates established by this section will be published by the public works and utilities department on the city's website, and be made available from the city's finance department.

2. Character of Service. Service shall be through a single meter at a single point of delivery. Multiple meters used for delivery to the same customer shall not be combined for billing purposes. [Ord. 4844 § 7, 2019; Ord. 4817 § 1, 2018; Ord. 4804 § 2, 2018; Ord. 4684 § 8, 2014; Ord. 4639 § 3, 2013; Ord. 4555 § 8, 2009; Ord. 4503 § 2, 2007.]

Section 3. Section 9.91.300 of the Ellensburg City Code, as last amended by Section 8 of Ordinance 4844, is hereby amended to read as follows:

9.91.300 Sewer utility rate schedules.

Effective Date: ~~4/1/2019~~ 1/1/2023

A. Residential Single-Family S-11.

1. Availability. This rate schedule is available to single-family dwellings having a single water service meter and churches.

2. Character of Service. Service shall be nonmetered and at a single point of receipt.

B. Residential Multifamily S-12.

1. Availability. This rate schedule is available to houses and other multiple-unit residential structures, including manufactured home parks. The residence units referred to in this schedule shall be those dwelling units contained in a single structure as the dwelling units are defined in the zoning ordinance.

2. Character of Service. Service shall be charged to and collected from each residential unit or property user having a city sewer connection for their property.

C. Low-Income Senior Citizen/Low-Income Disabled Citizen S-13.

1. Availability. This rate schedule is available for residential service to individuals who meet the definition of low-income senior citizen or low-income disabled citizen and who do not reside in federally subsidized housing. The rates established by this section will be published by the public works and utilities department on the city's website, and be made available from the city's finance department.

2. Character of Service. Service shall be nonmetered and at a single point of receipt.

D. Commercial, Industrial and General Service S-21.

1. Availability. This rate schedule is available to single and multiple services for commercial, industrial, residential units combined with commercial and/or industrial, schools, motels, hotels, trailer parks, social and fraternal facilities, governmental facilities, and other services not qualifying under other rate schedules.

2. Character of Service. Service shall be based on water usage through water or other approved meter to determine volume of sewage to be treated.

3. Rate. The rate shall be composed of a monthly volume charge and a daily customer charge.

4. Surcharges. The surcharges shall apply when effluent strength differs substantially from domestic wastes as determined by the public works and utilities director.

E. Central Washington University S-22.

1. Availability. This rate schedule is available to all Central Washington University facilities with the exception of single-family dwellings owned, leased or rented by the university.

2. Character of Service. Service shall be based on water usage through water or other approved meter to determine volume of sewage to be treated.

3. Rate. The rate shall be composed of a monthly volume charge and a daily customer charge.

4. Surcharges. The surcharges shall apply when effluent strength differs substantially from domestic wastes as determined by the public works and utilities director.

F. Multiple-Family S-23.

1. Availability. This rate schedule is available on an optional basis to single-family residences, apartment houses and other multiple-unit residential structures, including manufactured home parks.

2. Character of Service. Service shall be based on water usage through water or other approved meter to determine volume of sewage to be treated.

3. Rate. The rate shall be composed of a monthly volume charge and a daily customer charge.

4. Surcharges. The surcharges shall apply when effluent strength differs substantially from domestic wastes as determined by the public works and utilities director.

G. Municipal S-40.

1. Availability. This rate schedule is available to city-owned buildings.

2. Character of Service. Service shall be based on water usage through water or other approved meter to determine volume of sewage to be treated.

3. Rate. The rate shall be composed of a monthly volume charge and a daily customer charge.

H. High-Strength Commercial S-33.

1. Availability. This rate schedule is available, subject to city council approval, to commercial businesses with strengths differing substantially from typical commercial customers.

2. Character of Service. Service shall be based on water usage through water or other approved meter to determine volume of sewage to be treated.

3. Rate. The rates available under this schedule shall be established by contract between the city and the customer.

I. Nonprofit Agency Serving the Disadvantaged S-70.

1. Availability. This rate schedule is available to nonprofit agencies serving the disadvantaged. The rates established by this section will be published by the public works and utilities department on the city's website, and be made available from the city's finance department.

2. Character of Service. Service shall be based on water usage through water or other approved meter to determine volume of sewage to be treated.

J. Large Customer/Contractual S-80.

1. Availability. This rate schedule is available to new sewer customers whose sewer service is provided by contract authorized by the city council. The city will provide sewer service under this schedule; provided, that:

a. Adequate capacity exists in the city's wastewater collection system; and

b. Adequate capacity exists in the city's wastewater treatment plant; and

c. The customer has executed a sewer sales agreement with the city for services under this schedule.

2. Character of Service. Service shall be based on water usage through water or other approved meter to determine volume of sewage to be treated.

3. Rate. The rates available under this schedule shall be established by contract between the city and the customer.

Sewer Rate Summary

Rate Class	Rate Effective Date		Consumption Unit
	4/1/2019	1/1/2020	
S-11			
Residential Single Family	\$1.1938	\$1.2345	Flat Rate/Day
S-12			
Multifamily	\$1.1770	\$1.2171	Each/First Four Units/Day
	\$0.8821	\$0.9120	Each Additional Unit/Day
S-21			
Commercial/Industrial	\$1.2552	\$1.4058	Customer Charge/Day
	\$4.0387	\$4.5234	Per 1,000 Gallons of Water Use
	\$0.3255	\$0.3645	Per Lb BOD Surcharge > 200 mg/l
	\$0.3255	\$0.3645	Per Lb Suspended Solids > 250 mg/l
S-22			
CWU	\$1.2733	\$1.4259	Customer Charge/Day
	\$4.3070	\$4.8238	Per 1,000 Gallons of Water Use
	\$0.3301	\$0.3697	Per Lb BOD Surcharge > 200 mg/l
	\$0.3301	\$0.3697	Per Lb suspended solids > 250 mg/l
S-23			

Sewer Rate Summary

Rate Class	Rate Effective Date		Consumption Unit
	4/1/2019	1/1/2020	
Multifamily	\$1.1770	\$1.2171	Customer Charge/Day
	\$3.7873	\$3.9163	Per 1,000 Gallons of Water Use
	\$0.3301	\$0.3697	Per Lb BOD Surcharge > 200 mg/l
	\$0.3301	\$0.3697	Per Lb Suspended Solids > 250 mg/l
S-40			
Municipal	\$1.2141	\$1.2967	Customer Charge/Day
	\$4.1070	\$4.3863	Per 1,000 Gallons of Water Use
S-80			
Large Customer/Contractual	\$1.2552	\$1.4058	Customer Charge/Day
	\$4.2256	\$4.9438	Per 1,000 Gallons of Water Use
	\$0.3255	\$0.3645	Per Lb BOD Surcharge > 200 mg/l
	\$0.3255	\$0.3645	Per Lb Suspended Solids > 250 mg/l

Sewer Rate Summary

<u>Rate Class</u>	<u>Rate Effective Date</u>				<u>Consumption Unit</u>
	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>	
<u>S-11</u>					
<u>Residential Single-Family</u>	<u>\$1.2345</u>	<u>\$1.3401</u>	<u>\$1.4548</u>	<u>\$1.5793</u>	<u>Flat Rate/Day</u>
<u>S-12</u>					
<u>Multifamily</u>	<u>\$1.2171</u>	<u>\$1.3212</u>	<u>\$1.4342</u>	<u>\$1.5570</u>	<u>Each/First Four Units/Day</u>
	<u>\$0.9120</u>	<u>\$0.9900</u>	<u>\$1.0747</u>	<u>\$1.1667</u>	<u>Each Additional Unit/Day</u>
<u>S-21</u>					
<u>Commercial/Industrial</u>	<u>\$1.4058</u>	<u>\$1.5429</u>	<u>\$1.6933</u>	<u>\$1.8584</u>	<u>Customer Charge/Day</u>
	<u>\$4.52</u>	<u>\$4.96</u>	<u>\$5.45</u>	<u>\$5.98</u>	<u>Per 1,000 Gallons of Water Use</u>
	<u>\$0.3645</u>	<u>\$0.4000</u>	<u>\$0.4390</u>	<u>\$0.4818</u>	<u>Per Lb BOD Surcharge > 200 mg/l</u>
	<u>\$0.3645</u>	<u>\$0.4000</u>	<u>\$0.4390</u>	<u>\$0.4818</u>	<u>Per Lb Suspended Solids > 250 mg/l</u>
<u>S-22</u>					
<u>CWU</u>	<u>\$1.4259</u>	<u>\$1.5649</u>	<u>\$1.7175</u>	<u>\$1.8850</u>	<u>Customer Charge/Day</u>

Sewer Rate Summary

<u>Rate Class</u>	<u>Rate Effective Date</u>				<u>Consumption Unit</u>
	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>	
<u>S-23</u> <u>Multifamily</u>	<u>\$4.82</u>	<u>\$5.29</u>	<u>\$5.81</u>	<u>\$6.38</u>	<u>Per 1,000 Gallons of Water</u> <u>Use</u>
	<u>\$0.3697</u>	<u>\$0.4057</u>	<u>\$0.4453</u>	<u>\$0.4887</u>	<u>Per Lb BOD Surcharge > 200</u> <u>mg/l</u>
	<u>\$0.3697</u>	<u>\$0.4057</u>	<u>\$0.4453</u>	<u>\$0.4887</u>	<u>Per Lb suspended solids > 250</u> <u>mg/l</u>
	<u>\$1.2171</u>	<u>\$1.3212</u>	<u>\$1.4342</u>	<u>\$1.5570</u>	<u>Customer Charge/Day</u>
	<u>\$3.92</u>	<u>\$4.25</u>	<u>\$4.62</u>	<u>\$5.01</u>	<u>Per 1,000 Gallons of Water</u> <u>Use</u>
	<u>\$0.3697</u>	<u>\$0.4013</u>	<u>\$0.4356</u>	<u>\$0.4729</u>	<u>Per Lb BOD Surcharge > 200</u> <u>mg/l</u>
	<u>\$0.3697</u>	<u>\$0.4013</u>	<u>\$0.4356</u>	<u>\$0.4729</u>	<u>Per Lb Suspended Solids > 250</u> <u>mg/l</u>
<u>S-40</u> <u>Municipal</u>	<u>\$1.2967</u>	<u>\$1.4134</u>	<u>\$1.5406</u>	<u>\$1.6793</u>	<u>Customer Charge/Day</u>
	<u>\$4.39</u>	<u>\$4.78</u>	<u>\$5.21</u>	<u>\$5.68</u>	<u>Per 1,000 Gallons of Water</u> <u>Use</u>

Sewer Rate Summary

<u>Rate Class</u>	<u>Rate Effective Date</u>				<u>Consumption Unit</u>
	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>	
<u>S-80</u>					
<u>Large Customer/Contractual</u>	<u>\$1.4058</u>	<u>\$1.5429</u>	<u>\$1.6933</u>	<u>\$1.8584</u>	<u>Customer Charge/Day</u>
	<u>\$4.94</u>	<u>\$5.43</u>	<u>\$5.95</u>	<u>\$6.54</u>	<u>Per 1,000 Gallons of Water Use</u>
	<u>\$0.3645</u>	<u>\$0.4000</u>	<u>\$0.4390</u>	<u>\$0.4818</u>	<u>Per Lb BOD Surcharge > 200 mg/l</u>
	<u>\$0.3645</u>	<u>\$0.4000</u>	<u>\$0.4390</u>	<u>\$0.4818</u>	<u>Per Lb Suspended Solids > 250 mg/l</u>

[Ord. 4844 § 8, 2019; Ord. 4817 § 1, 2018; Ord. 4804 § 4, 2018; Ord. 4690 § 1, 2014; Ord. 4555 § 9, 2009; Ord. 4503 § 2, 2007.]

Section 4. Section 9.91.400 of the Ellensburg City Code, as last amended by Section 9 of Ordinance 4844, is hereby amended to read as follows:

9.91.400 Water utility rate schedules.

Effective Date: ~~4/1/2019~~ 1/1/2023

A. Residential W-110.

1. Availability. This rate schedule is available to single-family dwellings, residential seasonal sprinkling service, and churches.
2. Character of Service. Service shall be through metered delivery.
3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge based on meter size.

B. Irrigation W-111.

1. Availability. This rate schedule is available to irrigation systems served by a water meter dedicated to irrigation service.

2. Character of Service. Service shall be through metered delivery.

3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge based on meter size.

C. SF Residential Including Fire Service W-115.

1. Availability. This rate schedule is available to single-family dwellings when a single-family residential customer elects to install a fire suppression system within the structure charged from city water service. The fire suppression system must be installed by a licensed professional fire installer permitted by the Kittitas County Fire District No. 2.

2. Character of Service. Service shall be through metered delivery.

3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge based on meter size. The maximum meter size available at this rate is one inch.

D. Residential Multiple Housing W-120.

1. Availability. This rate schedule is available to buildings, grounds, and premises used for residential multiple housing purposes.

2. Character of Service. Service shall be through metered delivery.

3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge based on meter size.

E. Low-Income Senior Citizen/Low-Income Disabled Citizen W-130.

1. Availability. This rate is available for residential service to individuals who meet the definition of low-income senior citizen or low-income disabled citizen and who do not reside in federally subsidized housing.

2. Character of Service. Service shall be through a single five-eighths-inch to three-fourths-inch meter at a single point of delivery.

3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge. The rates established by this section will be published by the public works and utilities department on the city's website, and be made available from the city's finance department.

F. Commercial/Industrial W-200.

1. Availability. This rate schedule is available to commercial users, industrial users, and other customers who do not qualify under other rate schedules.

2. Character of Service. Service shall be through a metered delivery.

3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge based on meter size.

G. Private Fire Protection W-300.

1. Availability. This rate schedule is available inside the city to any water user connected to the municipal water system for the use of fire protection only.

2. Character of Service. Service shall be through a nonmetered connection and shall be separately piped within the premises for the purpose of fire protection only, and shall require installation of a detector device.

3. Rate. The daily rate shall be based on the diameter of pipe connecting the fire protection to the city main.

H. Central Washington University W-600.

1. Availability. This rate schedule is available to buildings, grounds and premises operated by Central Washington University.

2. Character of Service. Service shall be through a metered delivery.

3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge based on meter size.

I. Meter Maintenance Service W-610.

1. Availability. This rate schedule is established for those water meters of Central Washington University which are used to measure the water which is the basis for determination of the sewer charge and not for water consumption billing.

2. Character of Service. The charges are for the purpose of covering the expense of maintenance to the meters and additional labor and expense in meter reading and billing.

3. Rate. The rate shall be composed of a daily customer charge based on meter size.

J. Nonprofit Agency Serving the Disadvantaged W-700.

1. Availability. This rate schedule is available to nonprofit agencies serving the disadvantaged. The rates established by this section will be published by the public works and utilities department on the city's website, and be made available from the city's finance department.

2. Character of Service. Service shall be through a metered delivery.
3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge based on meter size.

K. Municipal W-710.

1. Availability. This rate schedule is available to buildings, grounds and premises operated by the city.
2. Character of Service. Service shall be through a metered delivery.
3. Rate. The rate shall be composed of a monthly consumption charge plus a daily customer charge based on meter size.

L. New Large Commercial/Industrial Contract W-800.

1. Availability. This rate is available to customers whose services are provided by contract authorized by the city council. The city will provide water service under this schedule; provided, that:
 - a. Adequate capacity exists in the city's water distribution system;
 - b. Adequate capacity exists in the city's water supply system; and
 - c. The customer has executed a water sales agreement with the city for service under this schedule.
2. Rate. The rates under this schedule will be covered by individual contract between the city and the customer.
3. Billing. Billing shall be made on a calendar month basis or as otherwise covered by the agreement.

Water Rate (Consumption)

Rate Class	Rate and Effective Date		Consumption Unit
	4/1/2019 (\$/1,000 gal.)	1/1/2020 (\$/1,000 gal.)	
-			
W-110			

Water Rate (Consumption)

Rate Class	Rate and Effective Date		Consumption Unit
	4/1/2019 (\$/1,000 gal.)	1/1/2020 (\$/1,000 gal.)	
Residential	\$1.81	\$1.92	First 15,000 gallons
	\$1.93	\$2.05	All over 15,000 gallons
W-111			
Irrigation	\$1.93	\$2.12	First 15,000 gallons
	\$2.06	\$2.26	All over 15,000 gallons
W-115			
Residential Fire Protection	\$1.81	\$1.92	First 15,000 gallons
	\$1.93	\$2.05	All over 15,000 gallons
W-120			
Multifamily	\$1.87	\$1.98	All consumption
W-200			
Commercial/Industrial	\$1.88	\$2.01	First 100,000 gallons
	\$1.56	\$1.67	All over 100,000 gallons
W-300 *			
Private Fire Service	\$0.2049	\$0.2099	*Dollars/day/inch diameter of connection pipe

Water Rate (Consumption)

Rate Class	Rate and Effective Date		Consumption Unit
	4/1/2019 (\$/1,000 gal.)	1/1/2020 (\$/1,000 gal.)	
W-600			
CWU	\$1.88	\$2.01	First 100,000 gallons
	\$1.56	\$1.67	All over 100,000 gallons
W-710			
Municipal	\$2.07	\$2.35	First 100,000 gallons
	\$1.71	\$1.94	All over 100,000 gallons

Water Rate (Consumption)

<u>Rate Class</u>	<u>Rate and Effective Date</u>				<u>Consumption Unit</u>
	<u>1/1/2022</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2023</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2024</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2025</u> <u>(\$/1,000 gal.)</u>	
<u>W-110</u>					
<u>Residential</u>	<u>\$1.92</u>	<u>\$2.03</u>	<u>\$2.15</u>	<u>\$2.27</u>	<u>First 15,000 gallons</u>
	<u>\$2.05</u>	<u>\$2.17</u>	<u>\$2.30</u>	<u>\$2.43</u>	<u>All over 15,000 gallons</u>

Water Rate (Consumption)

<u>Rate Class</u>	<u>Rate and Effective Date</u>				<u>Consumption Unit</u>
	<u>1/1/2022</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2023</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2024</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2025</u> <u>(\$/1,000 gal.)</u>	
<u>W-111</u>					
<u>Irrigation</u>	<u>\$2.12</u>	<u>\$2.24</u>	<u>\$2.37</u>	<u>\$2.50</u>	<u>First 15,000 gallons</u>
	<u>\$2.26</u>	<u>\$2.39</u>	<u>\$2.53</u>	<u>\$2.67</u>	<u>All over 15,000 gallons</u>
<u>W-115</u>					
<u>Residential Fire Protection</u>	<u>\$1.92</u>	<u>\$2.03</u>	<u>\$2.15</u>	<u>\$2.27</u>	<u>First 15,000 gallons</u>
	<u>\$2.05</u>	<u>\$2.17</u>	<u>\$2.30</u>	<u>\$2.43</u>	<u>All over 15,000 gallons</u>
<u>W-120</u>					
<u>Multifamily</u>	<u>\$1.98</u>	<u>\$2.09</u>	<u>\$2.21</u>	<u>\$2.33</u>	<u>All consumption</u>
<u>W-200</u>					
<u>Commercial/Industrial</u>	<u>\$2.01</u>	<u>\$2.13</u>	<u>\$2.25</u>	<u>\$2.37</u>	<u>First 100,000 gallons</u>
	<u>\$1.67</u>	<u>\$1.77</u>	<u>\$1.87</u>	<u>\$1.97</u>	<u>All over 100,000 gallons</u>
<u>W-300 *</u>					

Water Rate (Consumption)

<u>Rate Class</u>	<u>Rate and Effective Date</u>				<u>Consumption Unit</u>
	<u>1/1/2022</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2023</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2024</u> <u>(\$/1,000 gal.)</u>	<u>1/1/2025</u> <u>(\$/1,000 gal.)</u>	
<u>Private Fire Service</u>	<u>\$0.2099</u>	<u>\$0.2167</u>	<u>\$0.2237</u>	<u>\$0.2304</u>	<u>*Dollars/day/inch diameter of connection pipe</u>
<u>W-600</u>					
<u>CWU</u>	<u>\$2.01</u>	<u>\$2.13</u>	<u>\$2.25</u>	<u>\$2.37</u>	<u>First 100,000 gallons</u>
	<u>\$1.67</u>	<u>\$1.77</u>	<u>\$1.87</u>	<u>\$1.97</u>	<u>All over 100,000 gallons</u>
<u>W-710</u>					
<u>Municipal</u>	<u>\$2.35</u>	<u>\$2.49</u>	<u>\$2.63</u>	<u>\$2.77</u>	<u>First 100,000 gallons</u>
	<u>\$1.94</u>	<u>\$2.05</u>	<u>\$2.17</u>	<u>\$2.29</u>	<u>All over 100,000 gallons</u>

Water Rate (Customer Charge)

<u>Service Size</u>	<u>Daily Fixed Charge</u>	
	<u>2019</u> <u>(\$/Day)</u>	<u>2020</u> <u>(\$/Day)</u>
<u>5/8" or 3/4" Meter</u>	<u>\$0.7927</u>	<u>\$0.8482</u>
<u>1" Meter for W-115 Class Only</u>	<u>\$0.8147</u>	<u>\$0.8702</u>

Water Rate (Customer Charge)

Service Size	Daily Fixed Charge	
	2019 (\$/Day)	2020 (\$/Day)
1" or 1-1/4" Meter	\$1.9815	\$2.1202
1-1/2" Meter	\$3.9626	\$4.2401
2" Meter	\$6.3403	\$6.7841
3" Meter	\$11.8869	\$12.7190
4" Meter	\$19.8125	\$21.1992
6" Meter	\$39.6233	\$42.3972
8" Meter	\$63.3985	\$67.8365

Water Rate (Customer Charge)

<u>Service Size</u>	<u>Daily Fixed Charge and Effective Date</u>			
	<u>1/1/2022</u> <u>(\$/Day)</u>	<u>1/1/2023</u> <u>(\$/Day)</u>	<u>1/1/2024</u> <u>(\$/Day)</u>	<u>1/1/2025</u> <u>(\$/Day)</u>
<u>5/8" or 3/4" Meter</u>	<u>\$0.8482</u>	<u>\$0.8970</u>	<u>\$0.9486</u>	<u>\$1.0008</u>
<u>1" Meter for W-115 Class Only</u>	<u>\$0.8702</u>	<u>\$0.9202</u>	<u>\$0.9731</u>	<u>\$1.0266</u>
<u>1" or 1-1/4" Meter</u>	<u>\$2.1202</u>	<u>\$2.2421</u>	<u>\$2.3710</u>	<u>\$2.5014</u>
<u>1-1/2" Meter</u>	<u>\$4.2401</u>	<u>\$4.4839</u>	<u>\$4.7417</u>	<u>\$5.0025</u>

Water Rate (Customer Charge)

<u>Service Size</u>	<u>Daily Fixed Charge and Effective Date</u>			
	<u>1/1/2022</u> <u>(\$/Day)</u>	<u>1/1/2023</u> <u>(\$/Day)</u>	<u>1/1/2024</u> <u>(\$/Day)</u>	<u>1/1/2025</u> <u>(\$/Day)</u>
<u>2" Meter</u>	<u>\$6.7841</u>	<u>\$7.1742</u>	<u>\$7.5867</u>	<u>\$8.0040</u>
<u>3" Meter</u>	<u>\$12.7190</u>	<u>\$13.4503</u>	<u>\$14.2237</u>	<u>\$15.0060</u>
<u>4" Meter</u>	<u>\$21.1992</u>	<u>\$22.4182</u>	<u>\$23.7072</u>	<u>\$25.0111</u>
<u>6" Meter</u>	<u>\$42.3972</u>	<u>\$44.8350</u>	<u>\$47.4130</u>	<u>\$50.0207</u>
<u>8" Meter</u>	<u>\$67.8365</u>	<u>\$71.7371</u>	<u>\$75.8620</u>	<u>\$80.0344</u>

CWU Irrigation Meter Maintenance Fee W-610

<u>Service Size</u>	<u>Daily Fixed Charge</u>	
	<u>4/1/2019</u> <u>(\$/Day)</u>	<u>1/1/2020</u> <u>(\$/Day)</u>
<u>5/8" or 3/4" Meter</u>	<u>\$0.2264</u>	<u>\$0.2422</u>
<u>1" or 1-1/4" Meter</u>	<u>\$0.3621</u>	<u>\$0.3874</u>
<u>1-1/2" Meter</u>	<u>\$0.5102</u>	<u>\$0.5459</u>
<u>2" Meter</u>	<u>\$0.8939</u>	<u>\$0.9565</u>
<u>3" Meter</u>	<u>\$1.4035</u>	<u>\$1.5017</u>
<u>4" Meter</u>	<u>\$2.2423</u>	<u>\$2.3993</u>
<u>6" Meter</u>	<u>\$4.5853</u>	<u>\$4.9063</u>

CWU Irrigation Meter Maintenance Fee W-610

<u>Service Size</u>	<u>Daily Fixed Charge and Effective Date: W-610</u>			
	<u>1/1/2022</u>	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>
	<u>(\$/Day)</u>	<u>(\$/Day)</u>	<u>(\$/Day)</u>	<u>(\$/Day)</u>
<u>5/8" or 3/4" Meter</u>	<u>\$0.2422</u>	<u>\$0.2561</u>	<u>\$0.2708</u>	<u>\$0.2857</u>
<u>1" or 1-1/4" Meter</u>	<u>\$0.3874</u>	<u>\$0.4097</u>	<u>\$0.4333</u>	<u>\$0.4571</u>
<u>1-1/2" Meter</u>	<u>\$0.5459</u>	<u>\$0.5773</u>	<u>\$0.6105</u>	<u>\$0.6441</u>
<u>2" Meter</u>	<u>\$0.9565</u>	<u>\$1.0115</u>	<u>\$1.0697</u>	<u>\$1.1285</u>
<u>3" Meter</u>	<u>\$1.5017</u>	<u>\$1.5880</u>	<u>\$1.6793</u>	<u>\$1.7717</u>
<u>4" Meter</u>	<u>\$2.3993</u>	<u>\$2.5373</u>	<u>\$2.6832</u>	<u>\$2.8308</u>
<u>6" Meter</u>	<u>\$4.9063</u>	<u>\$5.1884</u>	<u>\$5.4867</u>	<u>\$5.7885</u>

[Ord. 4844 § 9, 2019; Ord. 4817 § 1, 2018; Ord. 4690 § 2, 2014; Ord. 4555 § 10, 2009; Ord. 4503 § 2, 2007.]

Section 5. Section 9.92.300 of the Ellensburg City Code, as last amended by Section 2 of Ordinance 4817, is hereby amended to read as follows:

9.92.300 Sewer utility fee and credit schedule.

Effective Date: ~~4/1/19~~ 1/1/2023

Service Credit	None
Extension Credit	None
Reconnect Fee	N/A
After Hours Reconnect Fee	N/A

Meter Testing Fee	N/A		
Inspection Fee	See ECC Title 4		
Temporary Service Fee	Actual cost		
Plant Investment Fee	Size of Meter	PIF	
		2019	2020 <u>Effective Date</u> <u>1/1/2023</u>
	3/4-inch or smaller	\$2,360.00	\$2,550.00 <u>\$5,680.00</u>
	1-inch	\$3,941.00	\$4,259.00 <u>\$9,467.00</u>
	1-1/2-inch	\$7,859.00	\$8,492.00 <u>18,933.00</u>
	2-inch	\$12,579.00	\$13,592.00 <u>\$30,293.00</u>
	3-inch	\$23,600.00	\$25,500.00 <u>\$60,587.00</u>
	4-inch	\$39,341.00	\$42,509.00 <u>\$94,667.00</u>
	6-inch	\$78,659.00	\$84,992.00 <u>\$189,333.00</u>
	8-inch	\$125,859.00	\$135,992.00 <u>\$302,933.00</u>
Reimbursement Fee	Varies by agreement and/or cost to city		
Developer Reimbursement Application Fee	\$50.00		
Public Works Permit Fee	\$25.00		
Side Sewer Inspection Fee	\$25.00 per inspection plus \$25.00 per each additional lateral		
Side Sewer Tap	\$150.00 plus sales tax		

[Ord. 4817 § 2, 2018; Ord. 4555 § 13, 2009; Ord. 4503 § 2, 2007.]

Section 6. Section 9.92.400 of the Ellensburg City Code, as last amended by Section 3 of Ordinance 4817, is hereby amended to read as follows:

9.92.400 Water utility fee and credit schedule.

Effective Date: ~~4/1/19~~1/1/2023

Service Credit	None		
Extension Credit	None		
Reconnect Fee	1 hour at senior pipeperson wage		
Unauthorized Service Fee	1.5 hours at senior pipeperson wage		
After Hours Reconnect Fee	2 hours at senior pipeperson overtime wage		
Inspection Fee	See ECC Title 4		
Temporary Service Fee	Actual cost		
Plant Investment Fees	Meter Size	PIF	
		2019	2020 <u>Effective Date</u> <u>1/1/2023</u>
	3/4-inch or smaller	\$3,080.00	\$3,600.00 <u>\$6,160.00</u>
	1-inch	\$5,144.00	\$6,012.00 <u>\$10,267.00</u>
	1-1/2-inch	\$10,256.00	\$11,988.00 <u>\$20,533.00</u>
	2-inch	\$16,416.00	\$19,188.00 <u>\$32,853.00</u>
	3-inch	\$30,800.00	\$36,000.00 <u>\$65,707.00</u>
	4-inch	\$51,344.00	\$60,012.00 <u>\$102,667.00</u>

	6-inch	\$102,656.00	\$119,988.00	<u>\$205,333.00</u>
	8-inch	\$164,256.00	\$191,988.00	<u>\$328,533.00</u>
Reimbursement Fee	Varies by agreement and/or cost to city			
Developer Reimbursement Application Fee	\$50.00			
Public Works Permit Fee	\$25.00			
Irrigation/Backflow Permit	\$10.00			
Meter Connection Fees	Meter Size	Service Charge	Meter Only	
	3/4" or less	\$900.00	\$190.00	
	1"	\$1,000.00	\$240.00	
	1-1/2" or more	actual cost	actual cost	
Meter Exchange Credit	Meter Size	Credit		
	3/4" or less	\$45.00		
	1"	\$120.00		
	1-1/2"	\$360.00		
	2"	\$750.00		
	3"	\$1,200.00		
	4"	\$2,250.00		
	6"	\$4,500.00		

Bacteriological Samples	Actual cost
Water Use by Hydrant	\$100.00 first month/per permit
	\$25.00 per week/permit after first month
Backflow Assembly	\$400.00 (refundable deposit)

[Ord. 4817 § 3, 2018; Ord. 4761 § 3, 2016; Ord. 4690 § 3, 2014; Ord. 4555 § 14, 2009; Ord. 4508 § 2, 2007; Ord. 4503 § 2, 2007.]

Section 7. Section 9.100.110 of the Ellensburg City Code, as last amended by Section 4 of Ordinance 4817, is hereby amended to read as follows:

9.100.110 Base rate and nonresidential rate calculation.

Effective Date: 1/1/2023

The base rate shall be calculated to provide adequate revenues to cover all costs allowable under applicable law that are incurred by the utility. The city council adopts the annual base rate for ~~2019-2023~~ to ~~2020-2024~~ as shown which shall be applied equally to residential units of all residential rate classes:

	Base Rate	Base Rate
Year <u>Effective</u> <u>Date</u>	\$/month	\$/day
2019 <u>1/1/2023</u>	\$9.88 <u>\$13.88</u>	\$0.3248 <u>\$0.4563</u>
2020 <u>1/1/2024</u>	\$10.88 <u>\$14.88</u>	\$0.3577 <u>\$0.4892</u>

Nonresidential rate calculation (based upon the ~~2019~~2023base rate):

Customer ISA	Fee	<u>2019 Effective</u> <u>1/1/2023</u> Monthly Rate
0 to 16,000 sf	(ISA ÷ 3900) × (\$9.88) <u>(ISA ÷ 3900) × (\$13.88)</u>	as calculated

16,001 to 100,000 sf	\$40.53+[((ISA-16,000)÷84,000)×\$35.57] <u>\$56.94+[((ISA-16,000)÷84,000)×\$49.97]</u>	as calculated
100,001 sf and above	\$76.10+[((ISA-100,000)÷100,000)×\$39.51] <u>\$106.91+[((ISA-100,000)÷100,000)×\$55.07]</u>	as calculated

Nonresidential rate calculation (based upon the ~~2020~~2024 base rate):

Customer ISA	Fee	2020 <u>Effective</u> 1/1/2024 Monthly Rate
0 to 16,000 sf	-(ISA÷3900)×(\$10.88) <u>-(ISA÷3900)×(\$14.88)</u>	as calculated
16,001 to 100,000 sf	\$44.63+[((ISA-16,000)÷84,000)×\$39.17] <u>\$61.05+[((ISA-16,000)÷84,000)×\$53.57]</u>	as calculated
100,001 sf and above	\$83.80+[((ISA-100,000)÷100,000)×\$43.51] <u>\$114.62+[((ISA-100,000)÷100,000)×\$59.04]</u>	as calculated

In ~~2019~~2023 to ~~2020~~2024, the ongoing revenue requirements for the stormwater utility shall be reviewed and the annual base rates shall be adjusted or maintained as needed. The frequency of adjustments to base rates thereafter shall be as required to ensure fair and full funding of the program. [Ord. 4817 § 4, 2018; Ord. 4690 § 4, 2014; Ord. 4634 § 1, 2013; Ord. 4549 § 5, 2009.]

Section 8. 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 9. 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 10. 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 17th day of October, 2022.

MAYOR

ATTEST:

CITY CLERK

Approved as to form:

CITY ATTORNEY

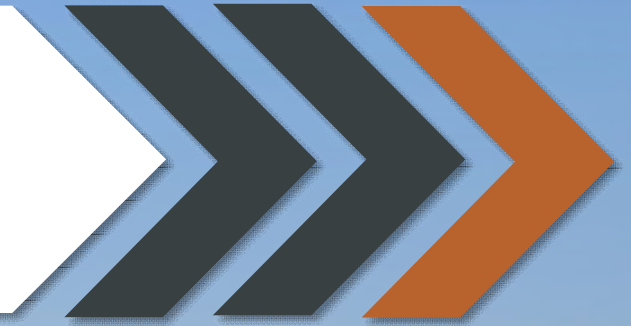
Publish:

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4897 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4897 was published as required by law.

BETH LEADER



City Council Meeting



Water, Wastewater, Electric, & Natural Gas Rate Study

Sergey Tarasov, Senior Project Manager
Paul Quinn, Assistant Project Manager

September 19, 2022



Agenda

- **Overview of the rate study process**
- **Rate Study Findings**
 - » Water
 - » Wastewater
 - » Electric
 - » Natural Gas
- **Plant Investment Fees**
- **Next steps**



Overview of Rate Setting Process

Fiscal Policies – Set the Management Foundation

Step 1:
Revenue Requirement
(defining overall needs)

Revenue

Debt

Reserves

O&M & Power

Capital

Step 2:
Cost of Service
(equity evaluation)

Define Customer Classes

Allocate Costs

Step 3:
Design Rates
(collect target revenue)

Fixed Charges

Variable Charges



Key Assumptions

- **Study period 2022 – 2025**
- **Projected rate revenue based on customer statistics plus growth**
- **Customer growth varies by customer class**
 - » Influenced by comprehensive planning documents and City data on historical actuals
- **2022 budget used as baseline for operating costs and non-rate revenues**
 - » Electric power costs based on load forecast and latest BPA rates
 - » Natural gas purchased energy based on load forecast and City's gas price forecast
 - » Various escalation factors used for future years: 1.50% - 5.00%
 - Water average: 2.46%
 - Wastewater average: 2.79%
 - Electric average: 3.11%
 - Natural gas average: 3.10%



Financial Policies

- Help guide the financial management of the City

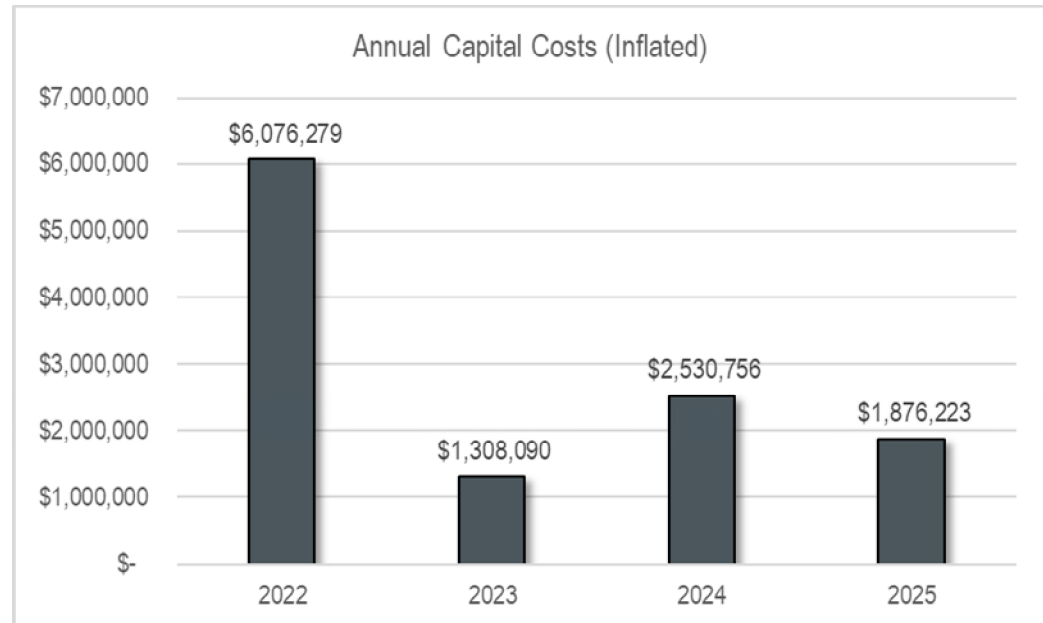
Policy	Purpose	Target
Operating Cash Reserves	To provide sufficient cash flow to meet daily operating expenses (short-term, annual revenue cycles).	20% of O&M Water = \$0.9M - \$0.9M Wastewater = \$0.8M - \$0.9M Electric = \$3.2M - \$3.5M Natural Gas = \$1.5M - \$1.6M
Total Cash Reserves	To provide sufficient cash flow to meet daily operating expenses (short-term, annual revenue cycles), contingency for capital cost overruns, and maintain creditworthiness for future debt issuances.	150 Days of O&M Water = \$1.7M - \$1.9M Wastewater = \$1.7M - \$1.9M
Debt Service Coverage	Ensure compliance with existing loan/debt covenants and maintain creditworthiness for future debt issuance.	Minimum Bond Covenant Requirement 1.25

A black and white photograph of water being poured into a clear glass. The water is captured mid-pour, creating a dynamic splash with many small bubbles and droplets. The glass is partially filled with water. The background is a light, neutral color. A large, dark gray curved shape separates the image from the text on the right.

Water Utility

Key Components

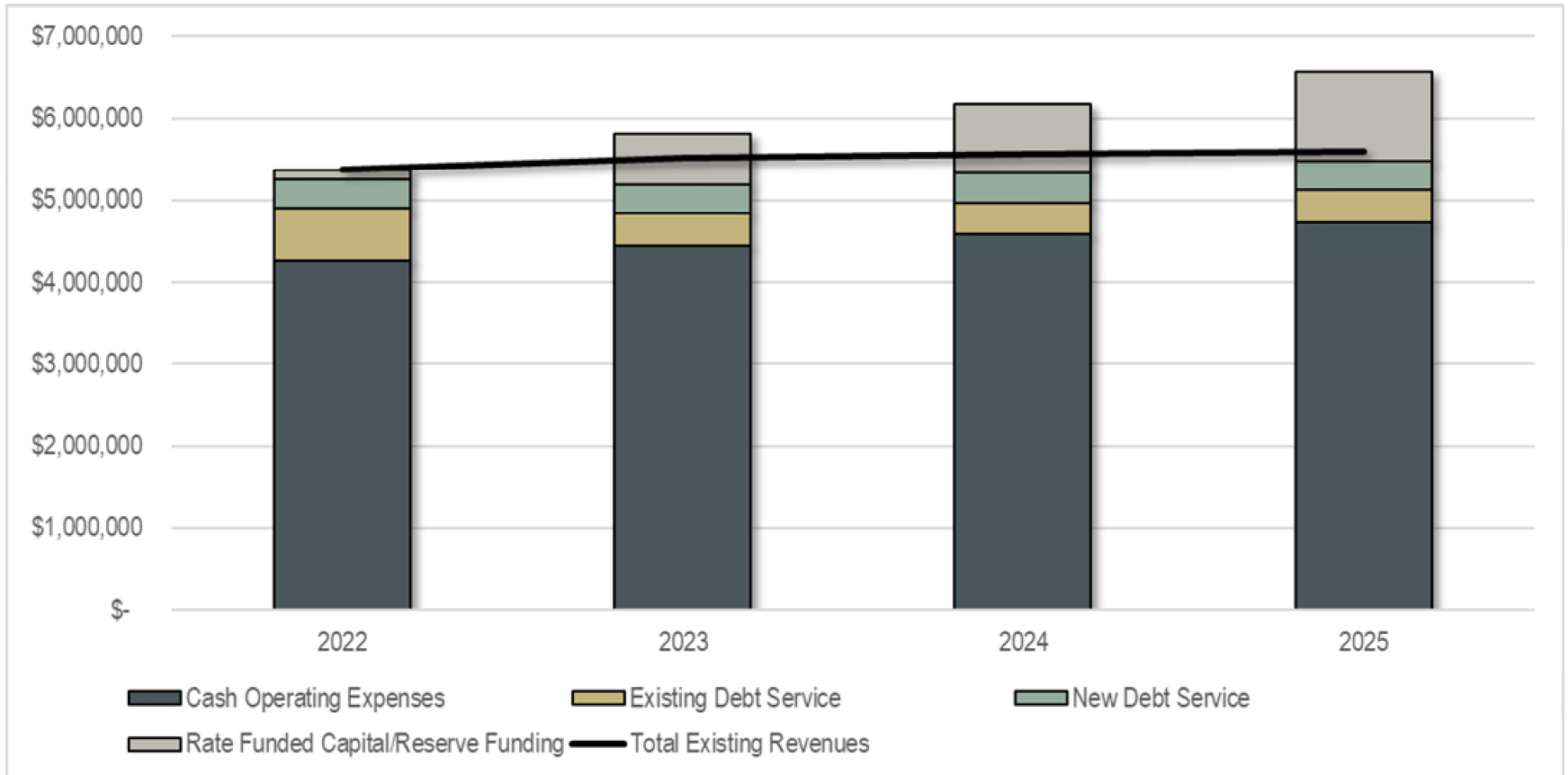
Description	2022 - 2025
Existing Rate Revenue	\$5.3M - \$5.5M
O&M Expenses	\$4.3M - \$4.6M
Existing Debt Service	\$0.6M - \$0.4M
Total CIP (Inflated)	\$11.8M



- Existing debt: two revenue bonds with \$0.6M of annual debt service (declining to \$0.4M by 2023)
- Total CIP of \$11.8M funded by:
 - » Existing reserves
 - » Plant investment fees
 - » Cash generated from rates
 - » New debt proceeds
 - 2022 issuance at 2.50% interest rate and 20-year term



Revenue Requirement

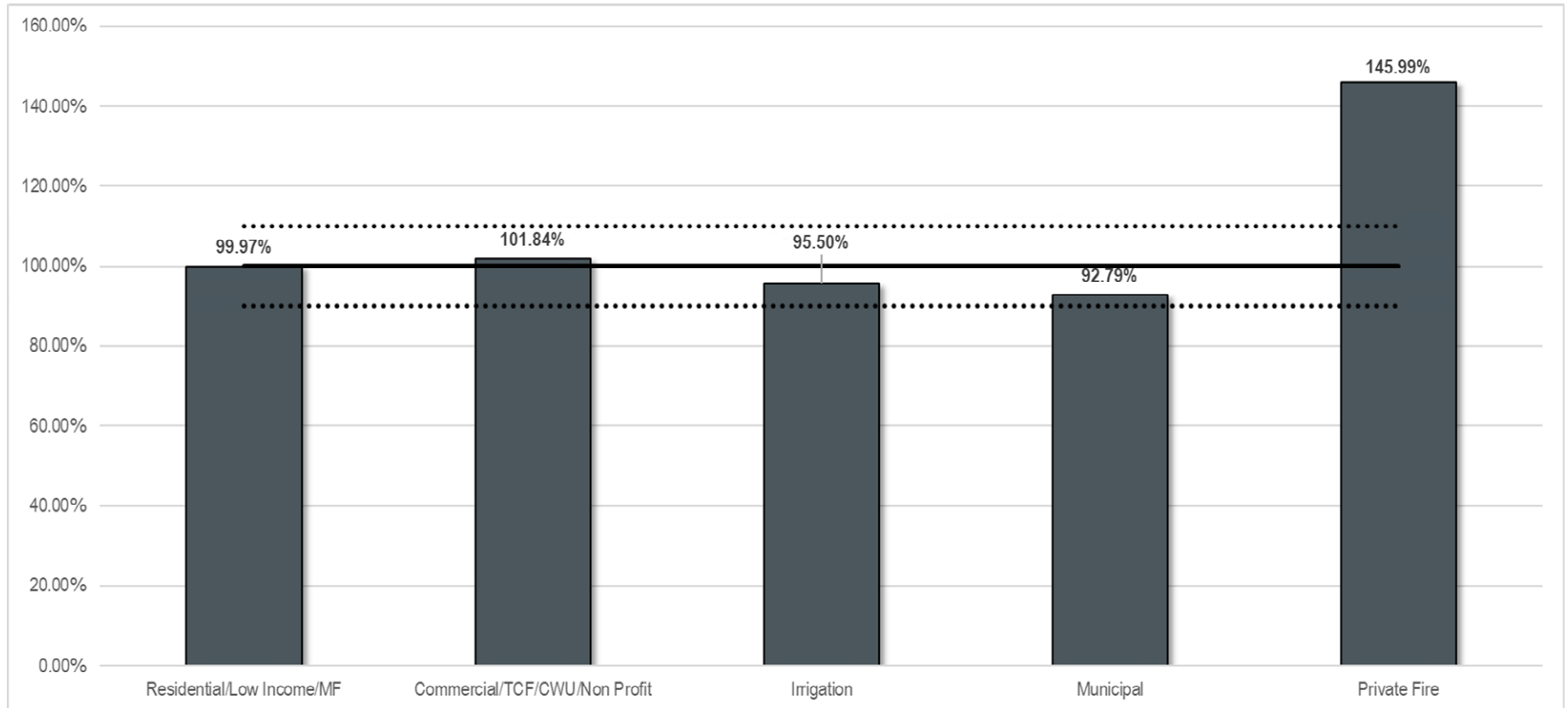


Description	2022	2023	2024	2025
Proposed Increase	-	5.75%	5.75%	5.50%
Sample Residential Monthly Bill	\$ 43.71	\$ 46.22	\$ 48.88	\$ 51.57
\$ Change		\$ 2.51	\$ 2.66	\$ 2.69

Notes: Assumes 5/8" meter & 9,327 gallons



Cost-of-Service Results



- **±10.00% of average is within cost-of-service**
 - » Private fire customers are paying above cost-of-service
 - » All other customers within cost-of-service



Cost-of-Service Results & Phase-In

Class	2023		Difference	
	Existing	COSA	\$	%
Residential/Low Income/MF	\$ 3,290,037	\$ 3,480,103	\$ 190,066	5.78%
Commercial/TCF/CWU/Non Profit	1,529,545	1,588,337	58,792	3.84%
Irrigation	305,735	338,543	32,809	10.73%
Municipal	294,904	336,080	41,177	13.96%
Private Fire	33,560	24,309	(9,251)	-27.57%
Total	\$ 5,453,781	\$ 5,767,373	313,592	5.75%

Class	Annual Rate Design Targets		
	2023	2024	2025
Residential/Low Income/MF	5.78%	5.77%	5.52%
Commercial/TCF/CWU/Non Profit	5.75%	5.75%	5.50%
Irrigation	5.75%	5.75%	5.50%
Municipal	5.75%	5.75%	5.50%
Private Fire	3.25%	3.25%	3.00%
Total System	5.75%	5.75%	5.50%



Proposed Rates

Customer Charge	Existing		Monthly Customer Charge (\$/mo.)		
	\$/day	\$/mo.	2023	2024	2025
Residential	\$ 0.8482	\$ 25.80	\$ 27.29	\$ 28.87	\$ 30.46
Multi-Family	0.8482	25.80	27.29	28.87	30.46
Commercial/Industrial	0.8482	25.80	27.28	28.85	30.44
CWU	0.8482	25.80	27.28	28.85	30.44
Non-Profit	0.4200	12.90	13.64	14.42	15.21
Irrigation	0.8482	25.80	27.28	28.85	30.44
Municipal	0.8482	25.80	27.28	28.85	30.44
Consumption Charge - Tier 1	Existing		Consumption Charge (\$/kgal)		
	\$/kgal		2023	2024	2025
Residential	\$ 1.92		\$ 2.03	\$ 2.15	\$ 2.27
Multi-Family	1.98		2.09	2.21	2.33
Commercial/Industrial	2.01		2.13	2.25	2.37
CWU	2.01		2.13	2.25	2.37
Non-Profit	1.00		1.06	1.12	1.18
Irrigation	2.12		2.24	2.37	2.50
Municipal	2.35		2.49	2.63	2.77
Consumption Charge - Tier 2	Existing		Consumption Charge (\$/kgal)		
	\$/kgal		2023	2024	2025
Residential	\$ 2.05		\$ 2.17	\$ 2.30	\$ 2.43
Multi-Family	1.98		2.09	2.21	2.33
Commercial/Industrial	1.67		1.77	1.87	1.97
CWU	1.67		1.77	1.87	1.97
Non-Profit	0.84		0.89	0.94	0.99
Irrigation	1.94		2.05	2.17	2.29
Municipal	2.26		2.39	2.53	2.67

- Rates adjusted on an across-the-board basis tied to phase-in percentage increases

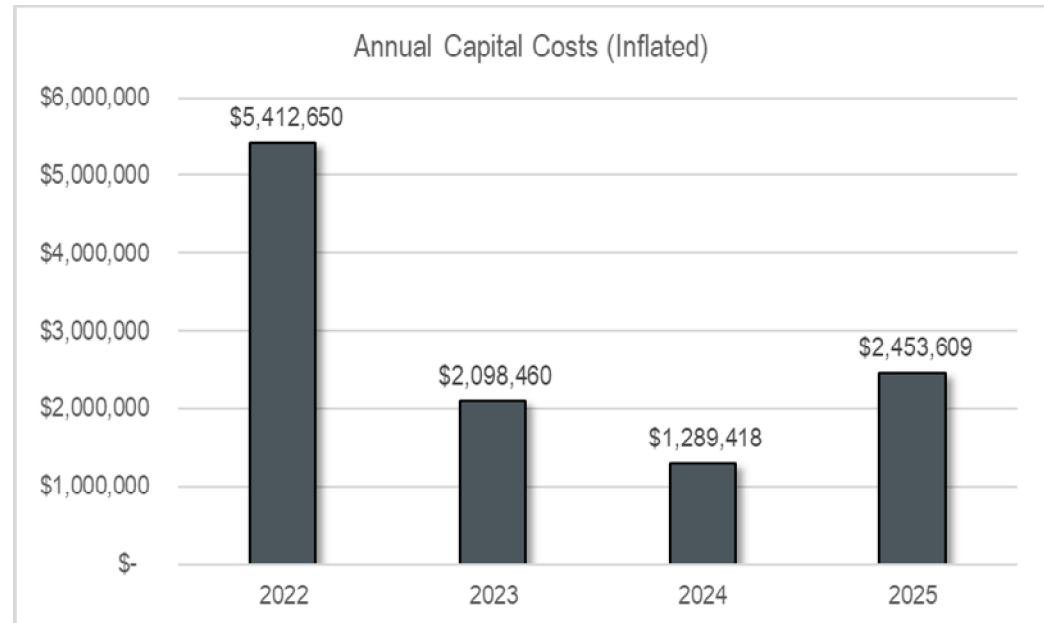
Notes: Customer charge reflects 5/8" or 3/4" meter, other meter rates available | Private fire & low income rates available



Wastewater Utility

Key Components

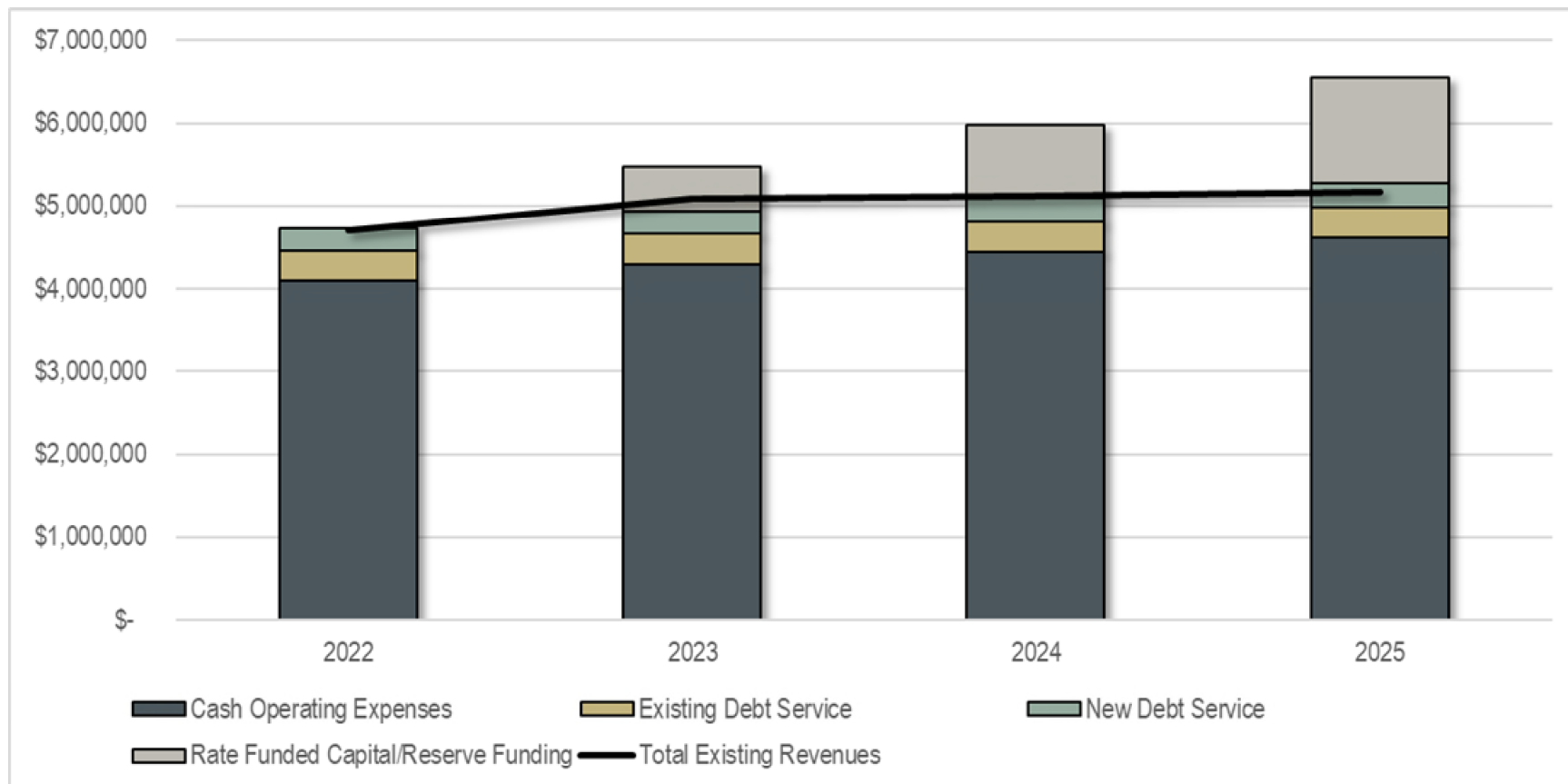
Description	2022 - 2025
Existing Rate Revenue	\$4.6M - \$4.8M
O&M Expenses	\$4.1M - \$4.4M
Existing Debt Service	\$0.4M
Total CIP (Inflated)	\$11.3M



- **Existing debt: one revenue bonds with \$0.6M of annual debt service**
- **Total CIP of \$11.3M funded by:**
 - » Existing reserves
 - » Plant investment fees
 - » Cash generated from rates
 - » New debt proceeds
 - 2022 issuance at 2.50% interest rate and 20-year term



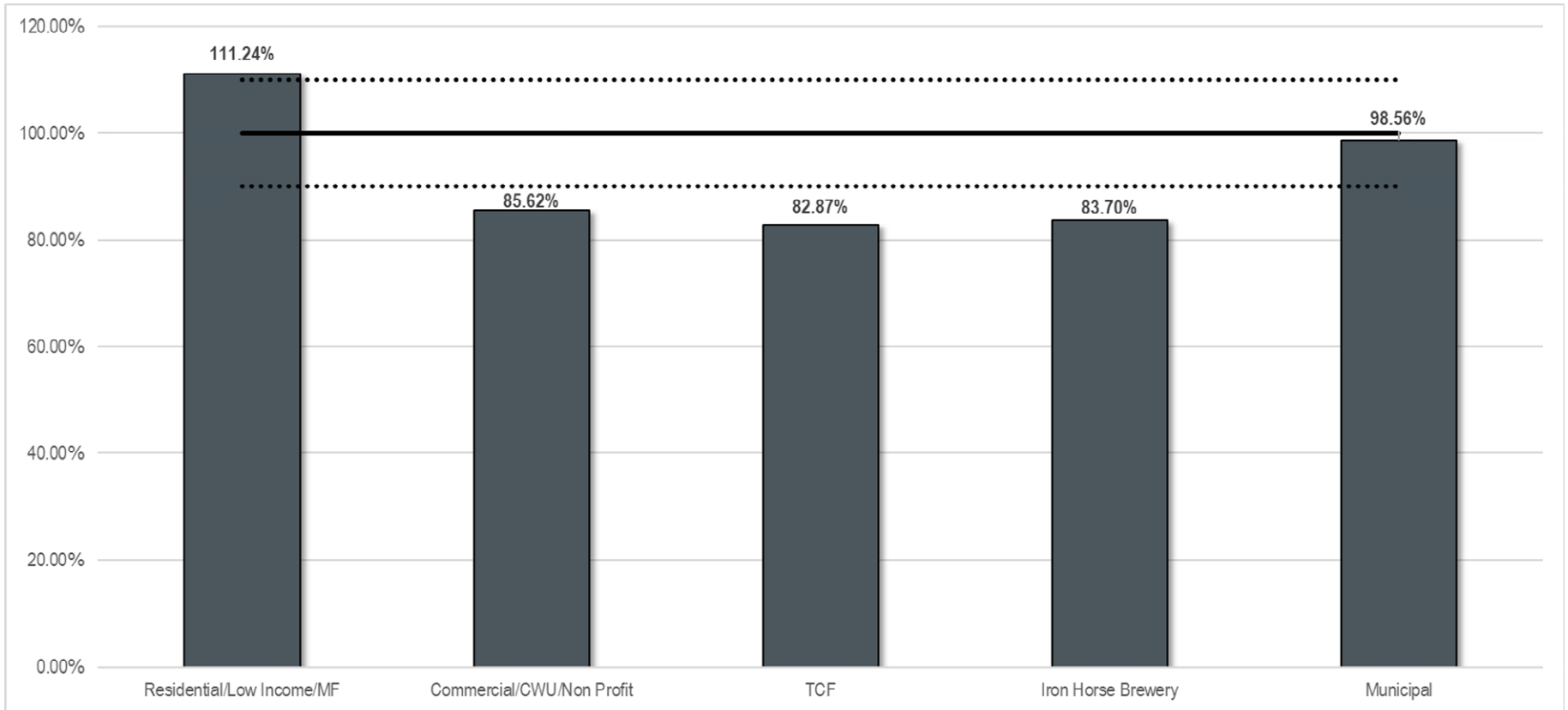
Revenue Requirement



Description	2022	2023	2024	2025
Proposed Increase	-	9.00%	9.00%	9.00%
Sample Residential Monthly Bill	\$ 37.55	\$ 40.93	\$ 44.61	\$ 48.62
\$ Change		\$ 3.38	\$ 3.68	\$ 4.01



Cost-of-Service Results



- **±10.00% of average is within cost-of-service**
 - » Commercial, CWU, Non-Profit, TCF, and Iron Horse Brewery are paying below cost-of-service
 - » Residential customers are paying above cost-of-service
 - » Municipal customers within cost-of-service



Cost-of-Service Results & Phase-In

Class	2023		Difference	
	Existing	COSA	\$	%
Residential/Low Income/MF	\$ 2,973,994	\$ 2,914,053	\$ (59,942)	-2.02%
Commercial/CWU/Non Profit	1,676,939	2,134,944	458,005	27.31%
TCF	27,968	36,789	8,820	31.54%
Iron Horse Brewery	65,731	85,600	19,869	30.23%
Municipal	16,627	18,387	1,761	10.59%
Total	\$ 4,761,259	\$ 5,189,773	428,513	9.00%

Class	Annual Rate Design Targets		
	2023	2024	2025
Residential/Low Income/MF	8.55%	8.56%	8.56%
Commercial/CWU/Non Profit	9.75%	9.75%	9.75%
TCF	9.75%	9.75%	9.75%
Iron Horse Brewery	9.75%	9.75%	9.75%
Municipal	9.00%	9.00%	9.00%
Total System	9.00%	9.00%	9.00%



Proposed Rates

Customer Charge	Existing		Monthly Customer Charge (\$/mo.)		
	\$/day	\$/mo.	2023	2024	2025
Residential	\$ 1.2345	\$ 37.55	\$ 40.76	\$ 44.25	\$ 48.04
S120 - Multi-Family - Per Unit (Up to 4 Units)	1.2171	37.02	40.19	43.63	47.36
S120 - Multi-Family - Per Unit (> 4 Units)	0.9120	27.74	30.11	32.69	35.49
S230 - Multi-Family	1.2171	37.02	40.19	43.63	47.36
Commercial/Industrial	1.4058	42.76	46.93	51.51	56.53
TCF/Iron Horse	1.4058	42.76	46.93	51.51	56.53
CWU	1.4259	43.37	47.60	52.24	57.33
Non-Profit	0.6173	18.78	20.61	22.62	24.83
Municipal	1.2967	39.44	42.99	46.86	51.08
Flow Charge	Existing		Flow Charge (\$/kgal)		
	\$/kgal		2023	2024	2025
Residential	\$ -		\$ -	\$ -	\$ -
S120 - Multi-Family	-		-	-	-
S230 - Multi-Family	3.9163		4.2513	4.6151	5.0101
Commercial/Industrial	4.5234		4.9644	5.4484	5.9796
TCF/Iron Horse	4.9438		5.4258	5.9548	6.5354
CWU	4.8238		5.2941	5.8103	6.3768
Non-Profit	2.2617		2.4822	2.7242	2.9898
Municipal	4.3863		4.7811	5.2114	5.6804
BOD & TSS Surcharge	Existing		Surcharge (\$/lb)		
	\$/lb		2023	2024	2025
Residential	\$ -		\$ -	\$ -	\$ -
S120 - Multi-Family	-		-	-	-
S230 - Multi-Family	0.3697		0.4013	0.4356	0.4729
Commercial/Industrial	0.3645		0.4000	0.4390	0.4818
TCF/Iron Horse	0.3645		0.4000	0.4390	0.4818
CWU	0.3697		0.4057	0.4453	0.4887
Non-Profit	-		-	-	-
Municipal	-		-	-	-

- Rates adjusted on an across-the-board basis tied to phase-in percentage increases

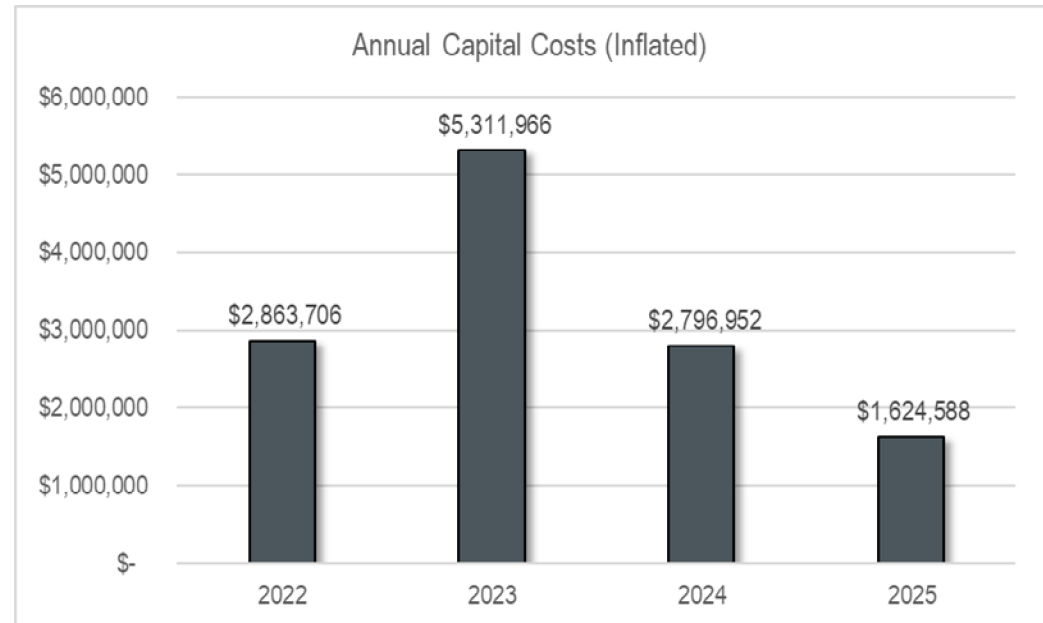
Notes: Low income rates available



Electric Utility

Key Components

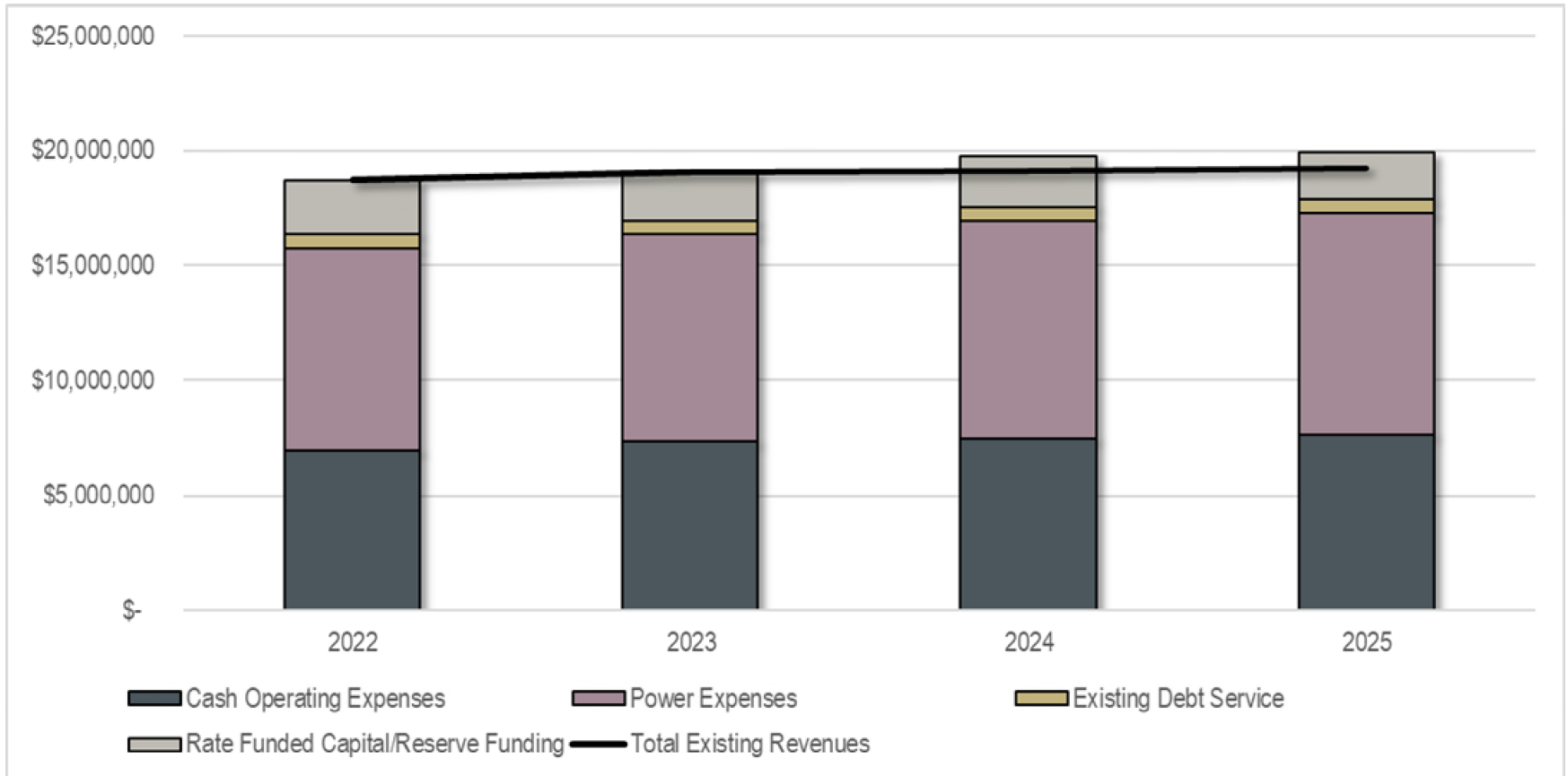
Description	2022 - 2025
Existing Rate Revenue	\$18.3M - \$18.6M
O&M Expenses	\$7.0M - \$7.6M
Power Expenses	\$8.8M - \$9.6M
Existing Debt Service	\$0.6M
Total CIP (Inflated)	\$12.6M



- **Existing debt: one revenue bond with \$0.6M of annual debt service**
- **Total CIP of \$12.6M funded by:**
 - » Existing reserves
 - » System development fees / Contributions in aid of construction (CIAC)
 - » Cash generated from rates
- **No additional new debt assumed**



Revenue Requirement

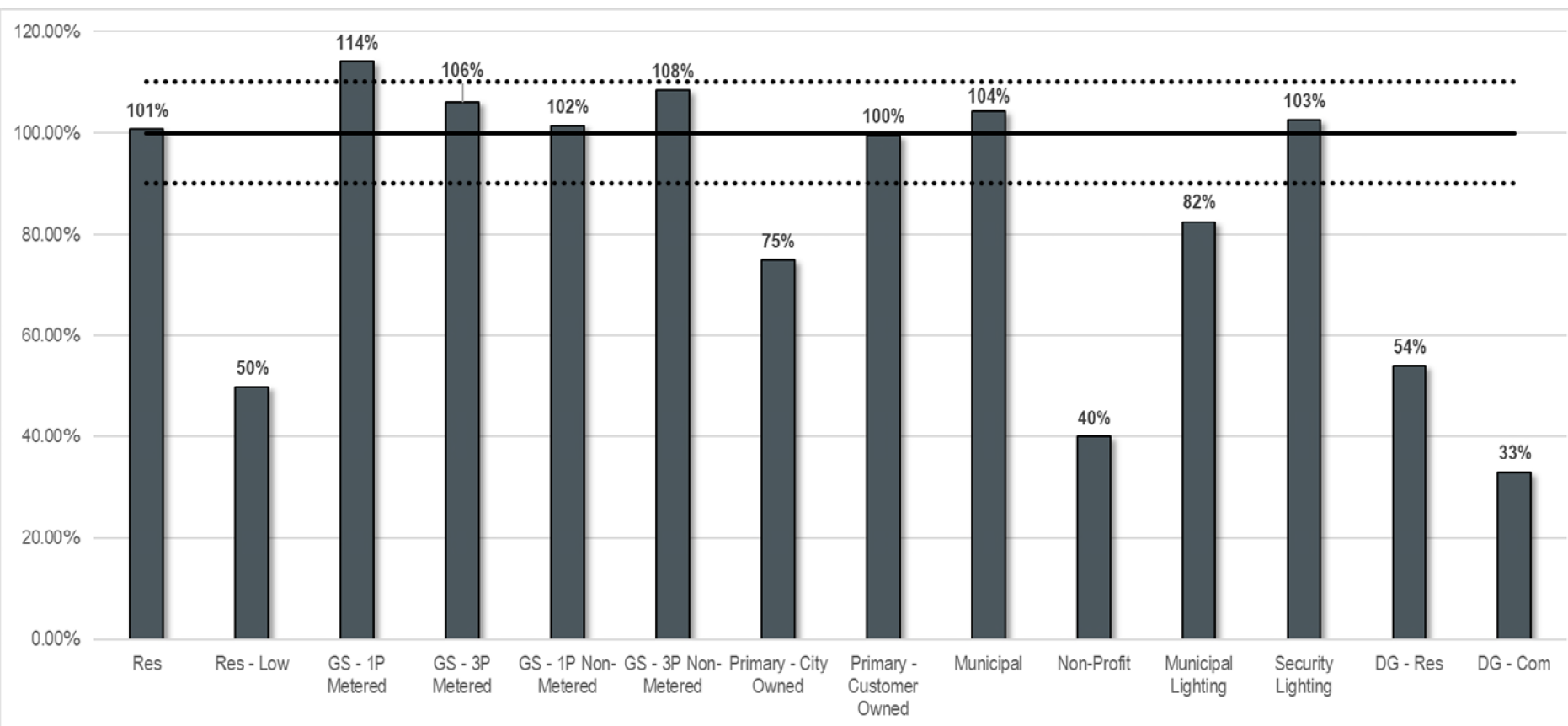


Description	2022		2023		2024		2025	
Proposed Increase	-		-		4.00%		-	
Sample Residential Monthly Bill	\$	90.64	\$	90.64	\$	94.27	\$	94.27
\$ Change			\$	-	\$	3.63	\$	-

Note: Assumes 850 kWh



Cost-of-Service Results



- **±10.00% of average is within cost-of-service**
 - » Low income, primary – city owned, non-profit, and DG customers are paying below cost-of-service
 - » GS – 1P Metered customers are paying above cost-of-service
 - » All other customers within cost-of-service



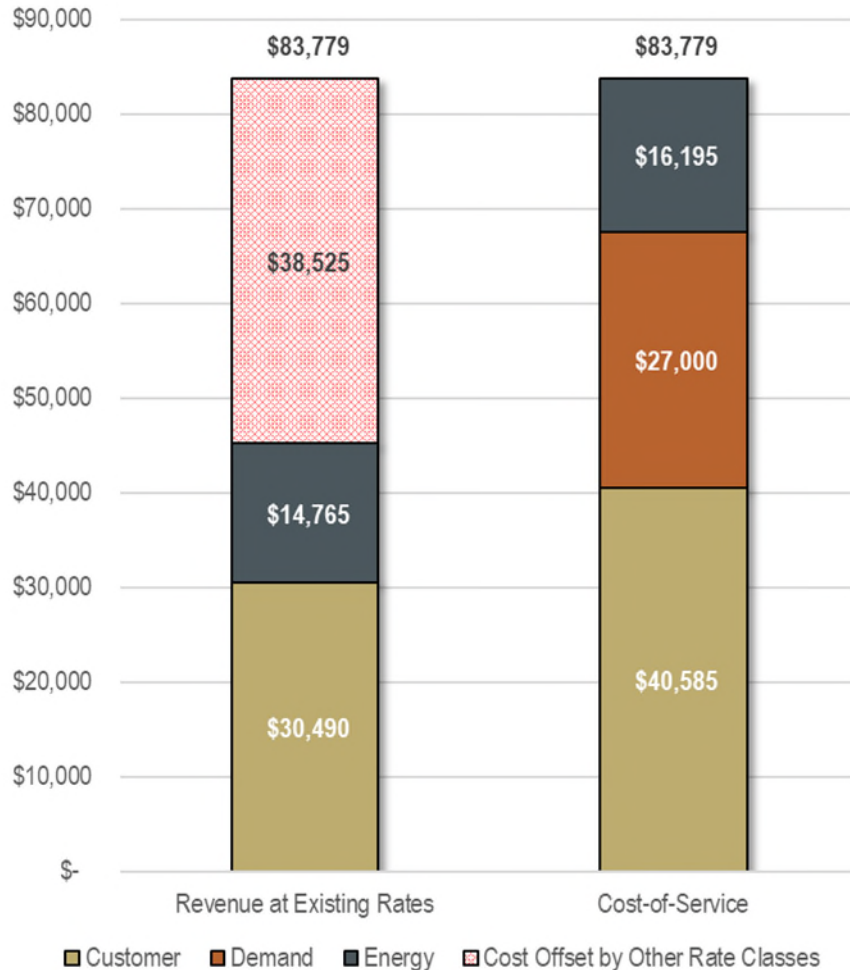
Cost-of-Service Results & Phase-In

Class	2023		Difference		Rate Design Target 2024
	Existing	COSA	\$	%	
Res	\$ 8,903,683	\$ 8,834,852	\$ (68,831)	-0.77%	4.73%
Res - Low	83,849	168,348	84,500	100.78%	4.73%
GS - 1P Metered	238,475	209,079	(29,396)	-12.33%	2.00%
GS - 3P Metered	3,416,172	3,215,024	(201,148)	-5.89%	2.00%
GS - 1P Non-Metered	1,502,675	1,480,382	(22,293)	-1.48%	2.00%
GS - 3P Non-Metered	560,274	516,848	(43,426)	-7.75%	2.00%
Primary - City Owned	604,520	806,356	201,835	33.39%	11.50%
Primary - Customer Owned	2,377,366	2,388,728	11,362	0.48%	4.00%
Municipal	570,447	547,019	(23,429)	-4.11%	4.00%
Non-Profit	16,516	41,388	24,872	150.59%	2.00%
Municipal Lighting	52,520	63,670	11,150	21.23%	10.00%
Security Lighting	22,994	22,408	(586)	-2.55%	4.00%
DG - Res	45,255	83,779	38,525	85.13%	4.73%
DG - Com	8,296	25,160	16,864	203.29%	2.00%
Total	\$18,403,041	\$18,403,041	-	0.00%	4.00%



Distributed Generation Cost-of-Service

Residential DG Cost of Service



Commercial DG Cost of Service





Proposed Rates

Customer Charge	Existing		Monthly Customer Charge (\$/mo.)		
	\$/day	\$/mo.	2023	2024	2025
Residential	\$ 0.9205	\$ 28.00	\$ 28.00	\$ 29.32	\$ 29.32
Residential - Low Income Senior	0.4603	14.00	14.00	14.66	14.66
General Service - 1P Metered	1.8740	57.00	57.00	58.14	58.14
General Service - 3P Metered	3.7808	115.00	115.00	117.30	117.30
General Service - 1P Non-Metered	0.9863	30.00	30.00	30.60	30.60
General Service - 3P Non-Metered	1.7425	53.00	53.00	54.06	54.06
Primary - City Owned	3.7808	115.00	115.00	128.23	128.23
Primary - Customer Owned	3.7808	115.00	115.00	119.60	119.60
Municipal	2.4658	75.00	75.00	78.00	78.00
Non-Profit	0.4932	15.00	15.00	15.30	15.30
Distributed Generation (Residential)	1.1014	33.50	33.50	35.08	35.08
Distributed Generation (Commercial)	1.6438	50.00	50.00	51.00	51.00
Energy Charge	Existing		Energy Charge (\$/kWh)		
	\$/kWh		2023	2024	2025
Residential	\$ 0.0737		\$ 0.0737	\$ 0.0772	\$ 0.0772
Residential - Low Income Senior	0.0369		0.0369	0.0386	0.0386
General Service - 1P Metered	0.0524		0.0524	0.0534	0.0534
General Service - 3P Metered	0.0524		0.0524	0.0534	0.0534
General Service - 1P Non-Metered	0.0731		0.0731	0.0746	0.0746
General Service - 3P Non-Metered	0.0731		0.0731	0.0746	0.0746
Primary - City Owned	0.0515		0.0515	0.0574	0.0574
Primary - Customer Owned	0.0474		0.0474	0.0493	0.0493
Municipal	0.0696		0.0696	0.0724	0.0724
Non-Profit	0.0366		0.0366	0.0373	0.0373
Distributed Generation (Residential)	0.0737		0.0737	0.0772	0.0772
Distributed Generation (Commercial)	0.0731		0.0731	0.0746	0.0746
Demand Charge	Existing		Demand Charge (\$/kW)		
	\$/kW		2023	2024	2025
General Service - 1P Metered	\$ 6.30		\$ 6.30	\$ 6.43	\$ 6.43
General Service - 3P Metered	6.30		6.30	6.43	6.43
Primary - City Owned	6.00		6.00	6.69	6.69
Primary - Customer Owned	5.30		5.30	5.51	5.51

- Rates adjusted on an across-the-board basis tied to phase-in percentage increases

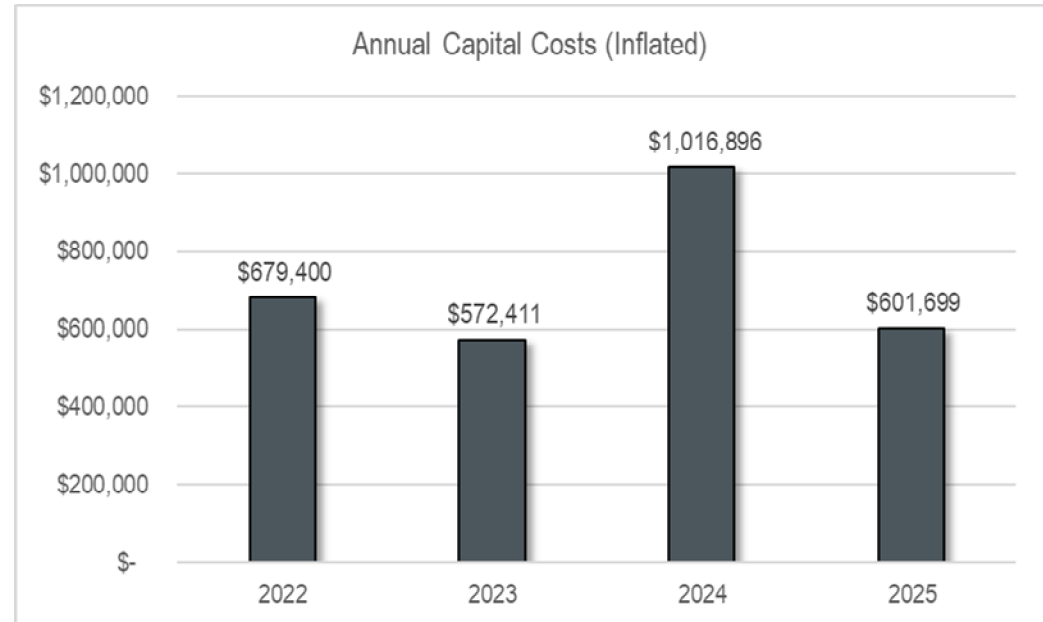


Natural Gas Utility

Key Components

Description	2022 - 2025
Existing Rate Revenue	\$3.6 - \$3.7M
O&M Expenses	\$3.3M - \$3.6M
Purchased Energy (Gas)	\$4.4M - \$4.3M
Existing Debt Service	\$0.1M
Total CIP (Inflated)	\$2.9M

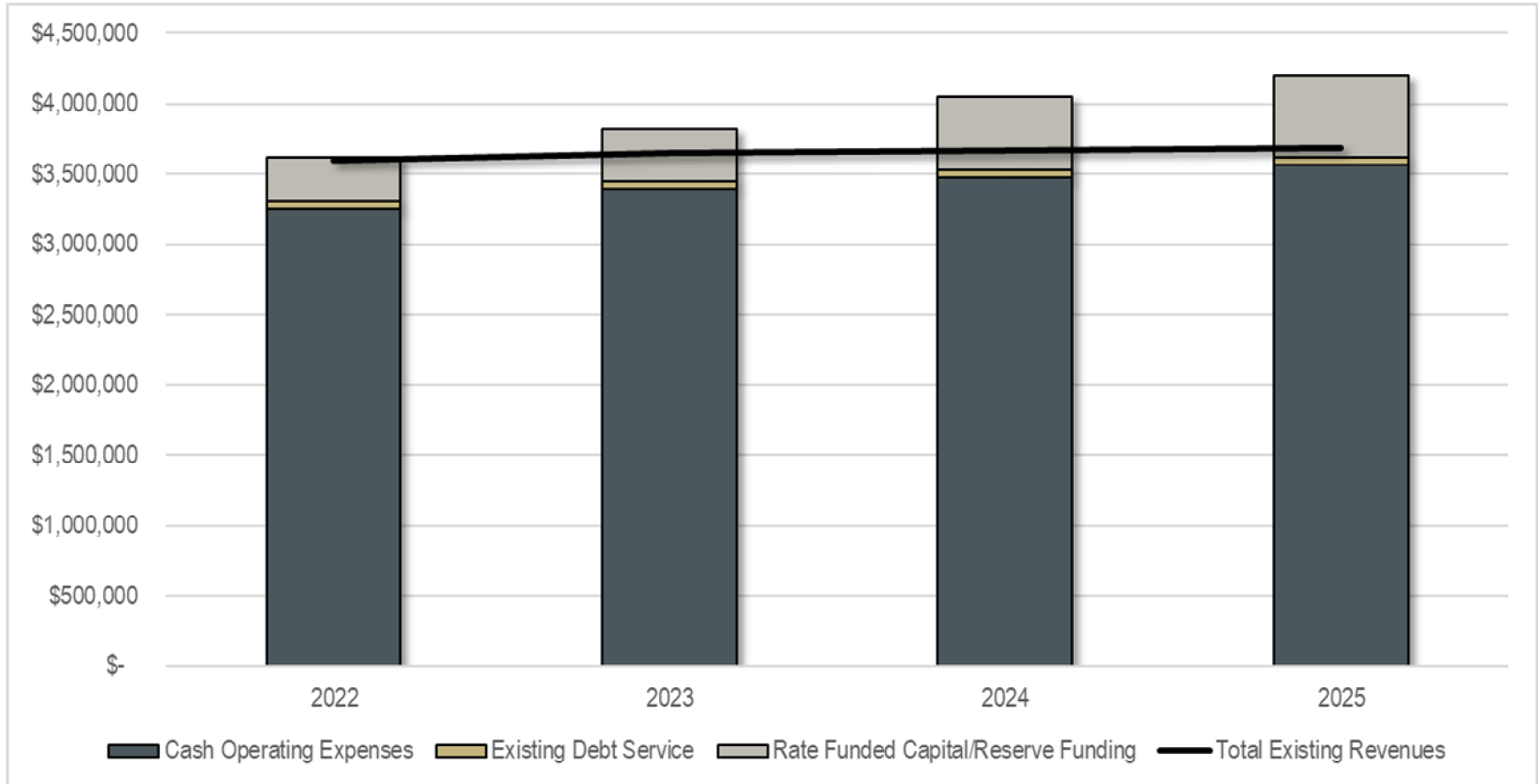
Note: Revenue excludes gas pass through



- **Existing debt: one revenue bond with \$0.1M of annual debt service**
- **Total CIP of \$2.9M funded by:**
 - » Existing reserves
 - » CIAC
 - » Cash generated from rates
- **No additional new debt assumed**



Revenue Requirement

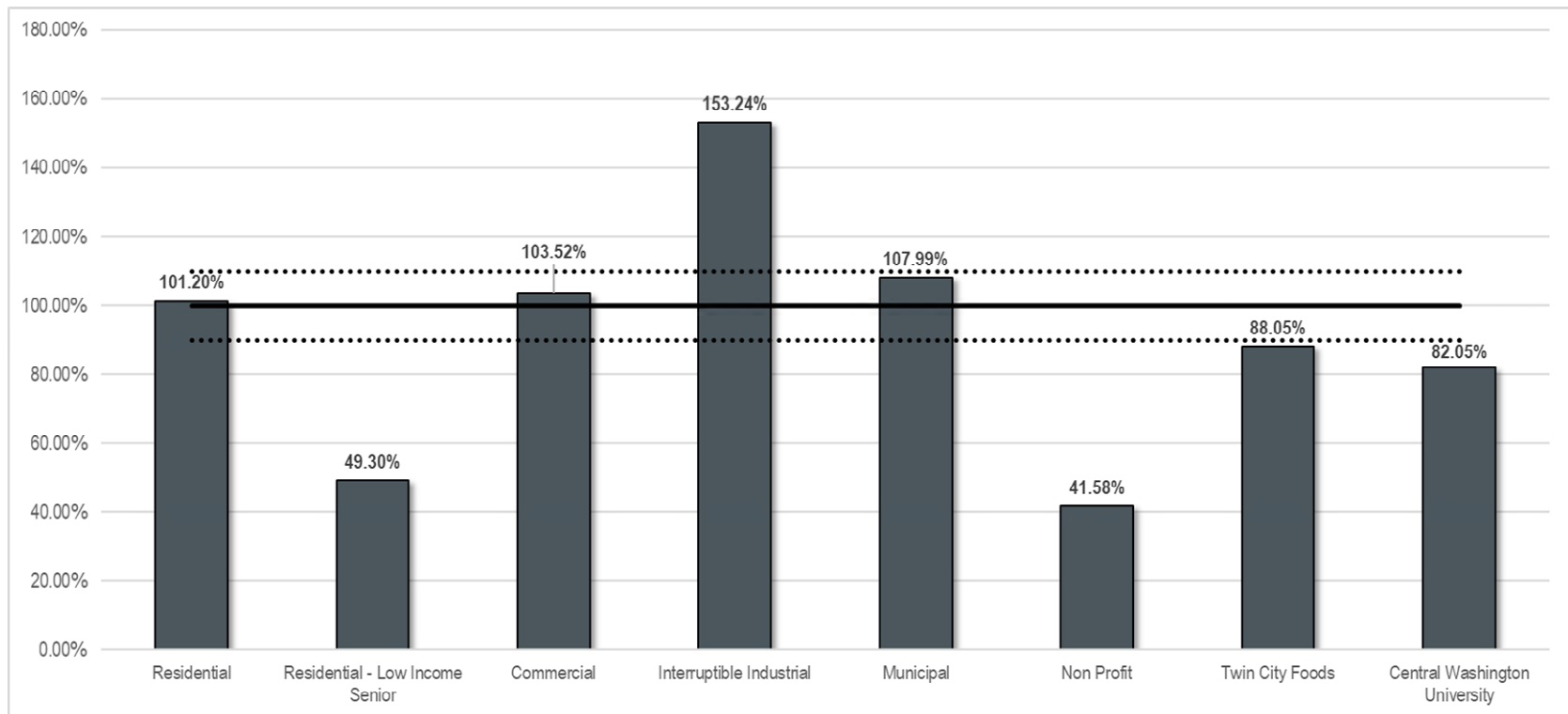


Description	2022	2023	2024	2025
Proposed Increase	-	6.25%	6.25%	3.75%
Sample Residential Monthly Bill	\$ 50.00	\$ 53.13	\$ 56.45	\$ 58.57
<i>\$ Change</i>		<i>\$ 3.13</i>	<i>\$ 3.32</i>	<i>\$ 2.12</i>

Notes: Assumes 56 ccf | Customer & distribution charge only



Cost-of-Service Results



- **Analysis assumes addition of an interruptible industrial customer in 2023**
 - » Modeled under existing commercial rates | cost-of-service will dictate proposed rates
- **±10.00% of average is within cost-of-service**
 - » Low income, non-profit, Twin City Foods, and CWU customers are below cost-of-service
 - » All other customers within cost-of-service



Cost-of-Service Results & Phase-In

Class	2023		Difference	
	Existing	COSA	\$	%
Residential	\$ 2,161,392	\$ 2,269,170	\$ 107,778	4.99%
Residential - Low Income Senior	10,848	23,379	12,531	115.51%
Commercial	1,047,462	1,075,102	27,641	2.64%
Interruptible Industrial	46,345	32,134	(14,211)	-30.66%
Municipal	35,629	35,054	(575)	-1.61%
Non Profit	3,959	10,116	6,157	155.51%
Twin City Foods	83,601	100,881	17,281	20.67%
Central Washington University	237,522	307,593	70,071	29.50%
Total	\$ 3,626,757	\$ 3,853,429	226,672	6.25%

Class	Annual Rate Design Targets		
	2023	2024	2025
Residential	6.56%	5.76%	3.24%
Residential - Low Income Senior	6.56%	5.76%	3.24%
Commercial	6.25%	6.25%	3.75%
Interruptible Industrial	n/a	6.25%	3.75%
Municipal	6.25%	6.25%	3.75%
Non Profit	6.25%	6.25%	3.75%
Twin City Foods	8.75%	8.75%	6.25%
Central Washington University	9.75%	9.75%	7.25%
Total System	6.25%	6.25%	3.75%



Proposed Rates

Customer Charge	Existing		Monthly Customer Charge (\$/mo.)		
	\$/day	\$/mo.	2023	2024	2025
Residential	\$ 0.5769	\$ 17.55	\$ 18.70	\$ 19.78	\$ 20.42
Residential - Low Income Senior	0.2885	8.78	9.35	9.89	10.21
Commercial	0.5769	17.55			
G200	0.5769	17.55	18.65	19.82	20.56
G205	0.6914	21.03	22.34	23.74	24.63
G207	1.3820	42.04	44.67	47.46	49.24
G210	2.7658	84.13	89.39	94.98	98.55
Interruptible Industrial	n/a	n/a	2,677.81	2,845.14	2,951.84
Municipal					
G400	0.5769	17.55	18.65	19.82	20.56
G405	0.9394	28.57	30.36	32.26	33.47
G407	1.8774	57.10	60.67	64.46	66.88
G410	3.7562	114.25	121.39	128.98	133.82
Non Profit					
G700	0.2885	8.78	9.33	9.91	10.28
G705	0.3457	10.52	11.18	11.88	12.33
G707	0.6910	21.02	22.33	23.73	24.62
G710	1.3829	42.06	44.69	47.48	49.26
Twin City Foods	2.7658	84.13	91.49	99.50	105.72
Central Washington University	650.75	19,793.52	21,723.39	23,841.42	25,569.92
Distribution Charge	Existing		Distribution Charge (\$/ccf)		
		\$/ccf	2023	2024	2025
Residential		\$ 0.5794	\$ 0.6174	\$ 0.6530	\$ 0.6742
Residential - Low Income Senior		0.2897	0.3087	0.3265	0.3371
Commercial		0.3113	0.3308	0.3515	0.3647
Interruptible Industrial		n/a	-	-	-
Municipal		0.2701	0.2870	0.3049	0.3163
Non Profit		0.1557	0.1654	0.1757	0.1823
Twin City Foods		0.3113	0.3385	0.3681	0.3911
Central Washington University		-	-	-	-

• Rates adjusted on an across-the-board basis tied to phase-in percentage increases



Residential Bill Impact

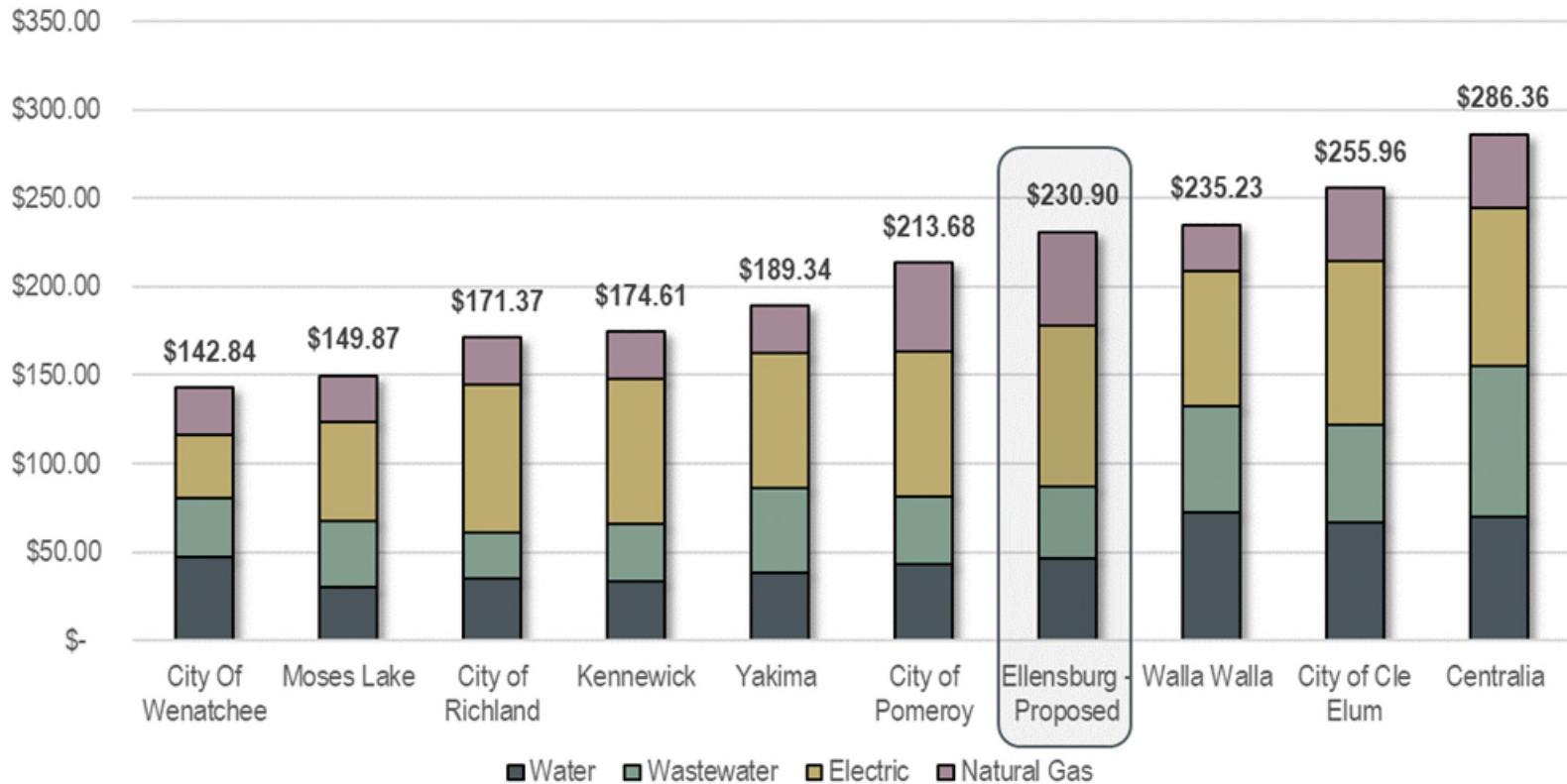
Utility	Average Residential Monthly Bill			
	Existing	2023	2024	2025
Water	\$ 43.71	\$ 46.22	\$ 48.89	\$ 51.59
Wastewater	37.55	40.76	44.25	48.04
Electric	90.64	90.64	94.93	94.93
Natural Gas	50.00	53.27	56.34	58.17
Total	\$ 221.90	\$ 230.90	\$ 244.41	\$ 252.73
\$ Change		\$ 9.00	\$ 13.51	\$ 8.32

Notes:

1. Water rates assume 5/8" meter & 12.47 ccf
2. Electric rates assume 850 kWh
3. Natural gas rates are distribution only & assume 56 ccf



Residential Bill Survey



Notes:

1. Water rates assume 5/8" meter & 12.47 ccf | Wastewater rates assume 6.45 ccf | Electric rates assume 850 kWh | Natural gas rates are distribution only & assume 56 ccf
2. Pomeroy provided electric service by Inland Power
3. Moses Lake provided electric service by Grant PUD
4. Wenatchee provided electric service by Chelan PUD
5. Cle Elum provided electric service by Puget Sound Energy (PSE)
6. Walla Walla & Yakima provided electric service by Pacific Power
7. Kennewick provided electric service by Benton PUD
8. Richland, Wenatchee, Moses Lake, Walla Walla, & Kennewick provided natural gas service by Cascade Natural Gas Corporation
9. Cle Elum & Centralia provided natural gas by Puget Sound Energy (PSE)
10. Pomeroy is not provided natural gas services. Natural gas rates reflect existing Ellensburg total



Plant Investment Fees (PIFs)



Overview

- **Revised Code of Washington (RCW) 35.92.025 grants Cities the authority to fix rates and charges for connecting to water & wastewater systems**
- **One time charge imposed on new development or expanded connection to system**
- **Represents a prorated share of the cost of providing system capacity**
- **Based on cost of system infrastructure investment**
 - » Allows for both existing and future costs
- **May not be used to fund operation and maintenance costs**



Calculation Overview

$$\frac{\text{EXISTING COST BASIS}}{\text{CURRENT \& FUTURE CUSTOMERS}} + \frac{\text{FUTURE COST BASIS}}{\text{FUTURE CUSTOMERS}} = \text{PIF}$$

Existing Costs

- Existing assets (original cost)
- Less: Meters & services
- Less: Contributions (developer/grants)
- Less: Net debt principal
- Plus: Interest (maximum 10 years)

Future Costs

- Future capital
- Less: Ineligible projects
- Less: Repair and replacement projects



Water – PIF Calculation

Cost Basis		Applicable Customers	Total
Existing Cost Basis \$27,990,342	+	Current & Future Customers 19,686	\$1,422
			+
Future Cost Basis \$56,187,271	+	Future Customers 11,841	\$4,745
Total Plant Investment Fee per MCE			\$6,167
<i>Current Plant Investment Fee per MCE</i>			<i>\$3,600</i>
<i>\$ Variance</i>			<i>\$2,567</i>

Note: MCE = meter capacity equivalent (3/4" basis)



Wastewater – PIF Calculation

Cost Basis		Applicable Customers	Total
Existing Cost Basis \$31,282,381	÷	Current & Future Customers 10,721	\$2,918
			+
Future Cost Basis \$8,720,023	÷	Future Customers 3,155	\$2,764
Total Plant Investment Fee per MCE			\$5,682
<i>Current Plant Investment Fee per MCE</i>			<i>\$2,550</i>
<i>\$ Variance</i>			<i>\$3,132</i>

Note: MCE = meter capacity equivalent (3/4" basis)

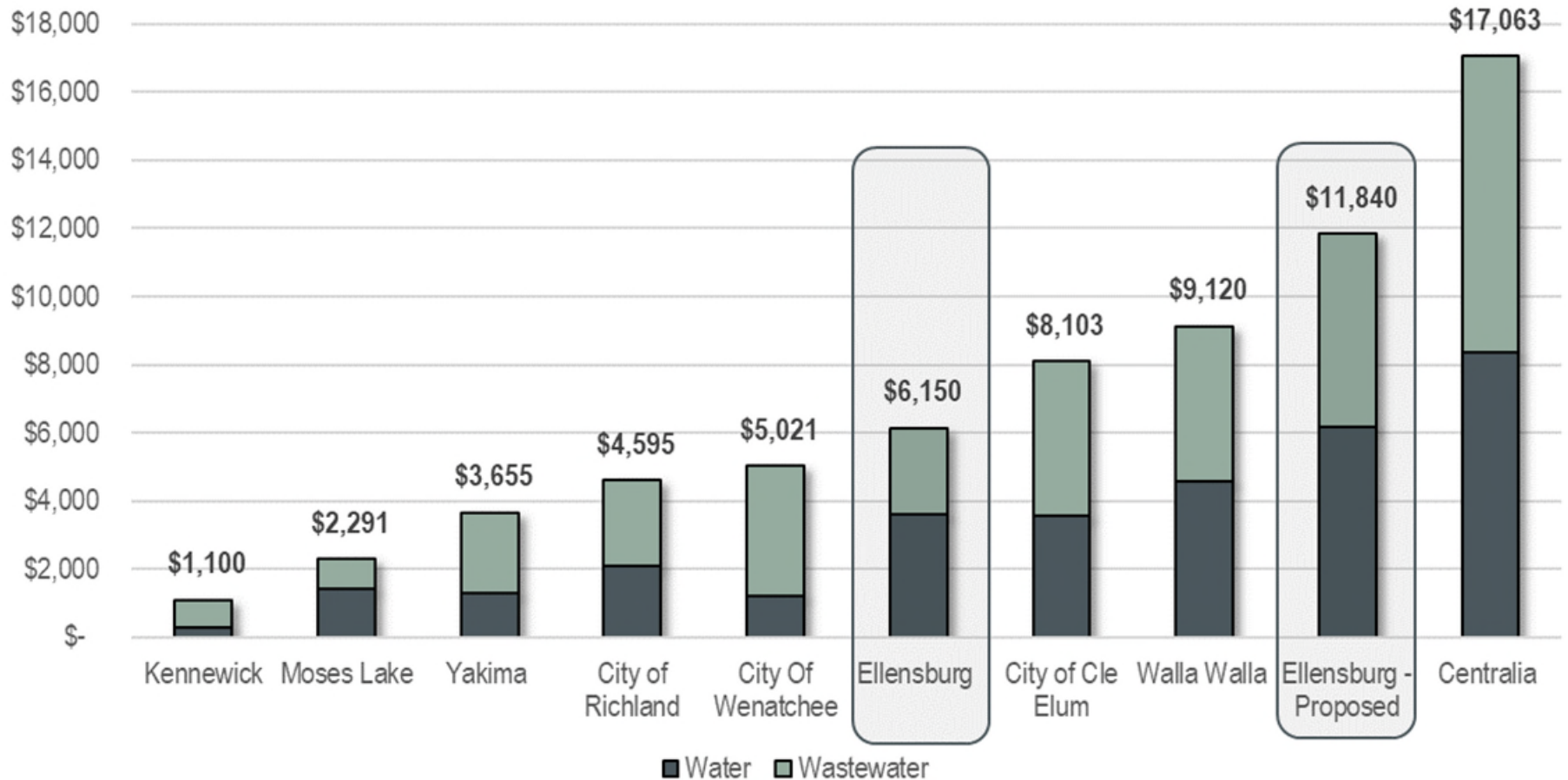


Plant Investment Fee Summary

Meter Size	Water			Wastewater		
	Existing	Proposed	\$ Variance	Existing	Proposed	\$ Variance
5/8" or 3/4"	\$ 3,600	\$ 6,160	\$ 2,560	\$ 2,550	\$ 5,680	\$ 3,130
1"	6,012	10,267	4,255	4,259	9,467	5,208
1 1/2"	11,988	20,533	8,545	8,492	18,933	10,441
2"	19,188	32,853	13,665	13,592	30,293	16,701
3"	36,000	65,707	29,707	25,500	60,587	35,087
4"	60,012	102,667	42,655	42,509	94,667	52,158
6"	119,988	205,333	85,345	84,992	189,333	104,341
8"	191,988	328,533	136,545	135,992	302,933	166,941

- **Calculated charges are “maximum allowable”**
 - » By policy may set below maximum allowable
 - » Rates make up the difference
 - » May be adjusted annually by an accredited inflation index (e.g., ENR CCI)

PIF Survey



Notes:

1. Assumes 3/4" meter
2. Kennewick assess fees based on square footage of lot. Fee reflected assumes lot size of 20,000 sf

Next Steps

- **Incorporate feedback**
 - » Proposed 3-year rate increases

System Rate Increase	Annual Increase		
	2023	2024	2025
Water	5.75%	5.75%	5.50%
Wastewater	9.00%	9.00%	9.00%
Electric	-	4.00%	-
Natural Gas	6.25%	6.25%	3.75%

» Plant Investment Fees

Meter Size	Water			Wastewater		
	Existing	Proposed	\$ Variance	Existing	Proposed	\$ Variance
5/8" or 3/4"	\$ 3,600	\$ 6,160	\$ 2,560	\$ 2,550	\$ 5,680	\$ 3,130
1"	6,012	10,267	4,255	4,259	9,467	5,208
1 1/2"	11,988	20,533	8,545	8,492	18,933	10,441
2"	19,188	32,853	13,665	13,592	30,293	16,701
3"	36,000	65,707	29,707	25,500	60,587	35,087
4"	60,012	102,667	42,655	42,509	94,667	52,158
6"	119,988	205,333	85,345	84,992	189,333	104,341
8"	191,988	328,533	136,545	135,992	302,933	166,941



Thank you!

Sergey Tarasov | Senior Project Manager

Paul Quinn | Assistant Project Manager

425.867.1937

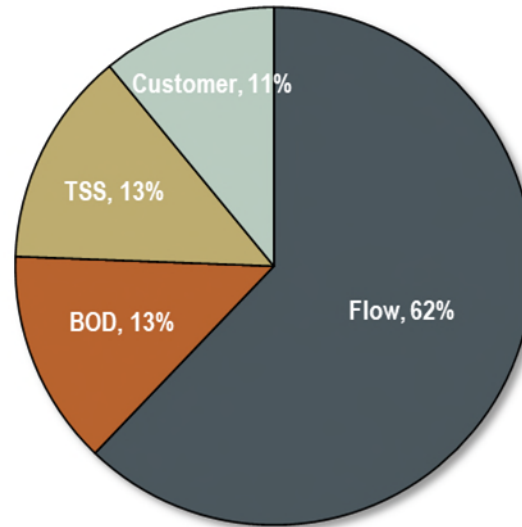
sergeyt@fcsgroup.com

paulq@fcsgroup.com

www.fcsgroup.com



Wastewater Cost Classification



Flow

Costs associated with handling customers wastewater throughout the utility system

BOD

Costs associated with removing organic waste matter from wastewater

TSS

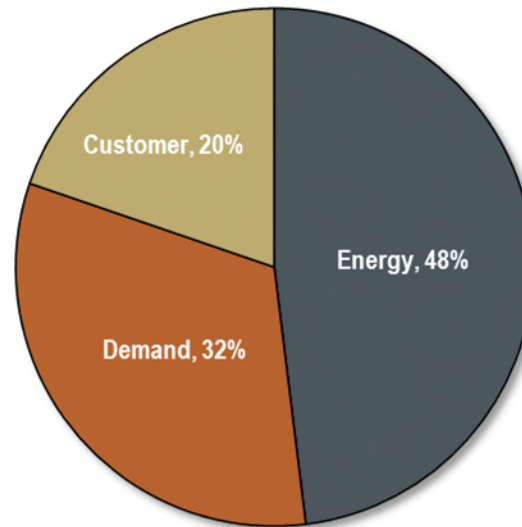
Costs associated with removing suspended solids (waterborne particles) from wastewater

Customer

Fixed costs that do not vary with customer flow or strength (e.g., utility billing)



Electric Cost Classification



Energy

Costs that vary with the total consumption (flow) of the electricity over a specified period of time. Measured in kilowatt-hours (kWh's)

Demand

Costs predicated upon the maximum rate of use required at one point in time. Demand may be coincident or non-coincident to the system peak demand. Demand is measured in kilowatts (kW's)

Customer

Fixed costs associated with having a customer on the system. These costs vary with the addition or deletion of customers, and not consumptive use – metering/billing/ account services



Water – Existing Cost Basis

Calculation Component	Characteristics	Amount
1. Original Cost of Current Assets	Costs come from City asset registry	\$ 30,197,817
2. Less: Meters & Services	Deduct costs that may have been paid for by customer base	(3,819,473)
3. Less: Contributions	Excluding assets that were funded by other entities. Required for WA districts but not cities	(7,143,912)
4. Less: Net Debt Outstanding	Avoids double counting of assets paid through rates and PIFs	-
5. Plus: Interest	RCW allows for inclusion of up to ten years of interest on each asset, not to exceed the original cost of the asset	8,755,910
Total Existing Cost Basis		\$ 27,990,342



Water – Future Cost Basis

Calculation Component	Characteristics	Amount
1. Capital Improvement Plan (CIP)	Projects identified out to 2041. All project costs in current day dollars.	\$ 81,946,022
2. Less: Ineligible Projects	Excluding meters, service, or projects that will be funded through other entities.	(1,252,209)
3. Less: Renewal & Replacement Projects	Future cost basis includes only capacity enhancing projects. Deducting projects that will replace aging infrastructure.	(24,506,542)
Total Future Cost Basis		\$ 56,187,271



Wastewater – Existing Cost Basis

Calculation Component	Characteristics	Amount
1. Original Cost of Current Assets	Costs come from City asset registry	\$ 26,077,065
2. Less: Contributions	Excluding assets that were funded by other entities. Required for WA districts but not cities	(5,550,327)
3. Less: Net Debt Outstanding	Avoids double counting of assets paid through rates and PIFs	-
4. Plus: Interest	RCW allows for inclusion of up to ten years of interest on each asset, not to exceed the original cost of the asset	10,755,643
Total Existing Cost Basis		\$ 31,282,381

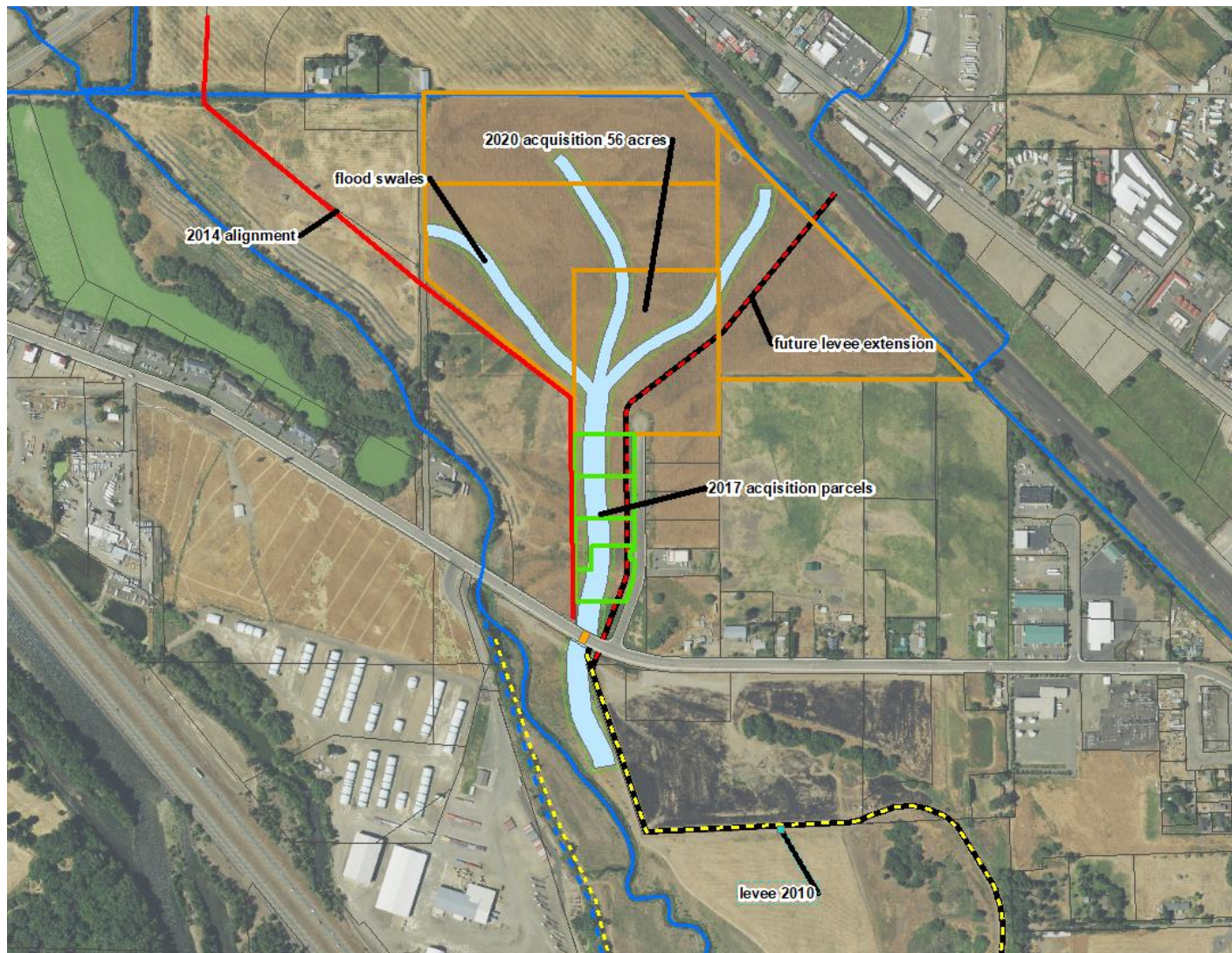


Wastewater – Future Cost Basis

Calculation Component	Characteristics	Amount
1. Capital Improvement Plan (CIP)	Projects identified out to 2041. All project costs in current day dollars.	\$ 29,987,334
2. Less: Ineligible Projects	Excluding projects that will be funded through other entities.	(2,900,000)
3. Less: Renewal & Replacement Projects	Future cost basis includes only capacity enhancing projects. Deducting projects that will replace aging infrastructure.	(18,367,311)
Total Future Cost Basis		\$ 8,720,023

City of Ellensburg Stormwater, Rate Increases 2023/2024

Justification for Needed Rate
Increase











Curb Cut Opening
Upstream of
Catch Basin

1" Gravel

1' Buffer with
3" to 6" Stone for
Overflow Drainage

4" Thick
Porous
Concrete

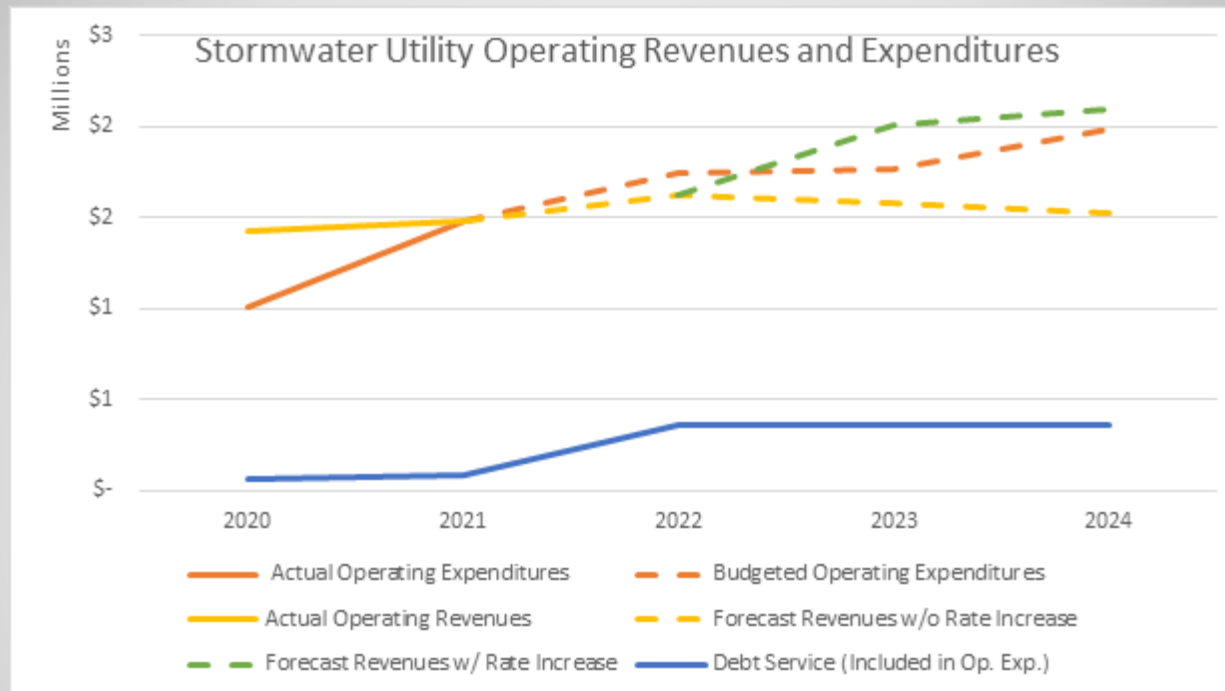
New Overflow
Storm Drain
System

18" Bioretention
Soil Media Mix

Existing
Ground

- Why a rate increase is needed:
 - Inflation and general costs from Bond Debt Services (parity) and several Large Grant Funded Projects. Revenues for the Stormwater Utility needs to exceed the operational cost of 1.25 million dollars in order to operate and pay back debt services.
 - Reserves spent down for Bond Debt Services and Grant Funded Projects
 - \$5,000,000.00 Bond to acquire 56 acres needed to design and construct a new bridge on Dolarway and extend levee up to Burlington Northern Railway to reduce flooding in West Ellensburg
 - Gateway 1 on University Way
 - Gateway 2 on Vantage Highway

- Stormwater rates are based on an ERU (Equivalent Residential Unit).
 - “Equivalent residential unit” or “ERU” means, and is equal to, 3,900 square feet of impervious groundcover, which approximates the average impervious surface area contained on single-family residential parcels within the city as determined from measurements of a representative sampling of single-family residential properties in the city of Ellensburg. An ERU is the unit of impervious groundcover to be used by the utility in calculating service charges for each parcel of property.
- The rate increase proposes an additional \$3.00/ERU
 - This is a one time increase for 2023.
- The rate increase proposes an additional \$1.00/ERU.
 - This is a one time increase for 2024.



Stormwater Utility Operating Revenues and Expenditures

- Bothell \$16.41/ERU
- Spokane County \$13.50
- Moses lake \$6.45
- Yakima County \$29.50
- West Richland \$8.50
- Snohomish County \$10.75
- Walla Walla \$14.40
- Issaquah undeveloped parcels \$17.90 bi-monthly, developed parcels \$35.79 bi-monthly
- Ellensburg \$13.88 in 2023 \$14.88 in 2024

Rates From Across the State



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Resolution 2022-33 to Extend Streatery Permits

Submitted by: Terry Weiner City Attorney Department

Recommended Action or Motion: Adopt Resolution 2022-33, extending permits for existing streateries through December 31, 2022.

Background/Summary: In mid-2020, the state of Washington imposed significant capacity restrictions on restaurants as a result of the ongoing COVID-19 pandemic. In response, the City Manager issued Emergency Management Order 2020-03, which allowed for the issuance of Temporary Streatery permits to restaurants in certain areas of the downtown area. A streatery allows restaurants and cafés, to use portions of adjacent street parking during operating hours, functioning as additional outdoor seating. The streateries were a temporary solution to allow restaurants to serve more customers when safety protocols limited indoor dining capacity. Ultimately, four restaurants in downtown Ellensburg received streatery permits and three are still currently operating those streateries.

Previous Council Action: As part of Resolution 2021-20 adopted on July 6, 2021, which rescinded the City's state of emergency for the pandemic, Council extended the streatery permits through December 31, 2021.

Following a November 15, 2021 Study Session and discussion regarding the future of streateries at its December 20, 2021 meeting, Council adopted Resolution 2021-20, which extended the permits for the three existing streateries through June 30, 2022. An ad hoc committee was also formed to study the development of permanent streatery regulations, which met several times this year.

Following a June 6, 2022 City Council meeting to review a draft streateries ordinance, Council then adopted Resolution 2022-26 to provide for an additional extension of the existing streateries permits through November 1, 2022.

Analysis:

An ordinance providing for permanent streatery, parklet and sidewalk café regulations was presented to Council for consideration at its June 6, 2022 meeting. After discussion, Council instructed staff to research additional changes for potential revisions to the ordinance. The Landmarks and Design Commission subsequently met to recommend inclusion of design standards into the streateries ordinance. Council discussed several potential changes to the draft ordinance at its October 3, 2022 Study Session. Based on those discussions, staff will be revising the ordinance and reviewing changes with the Landmarks and Design Commission, which requires another extension of the temporary streateries permits until Council can consider the revised draft ordinance at a future meeting.

The proposed resolution extends the existing streatery permits until December 31, 2022, or until the adoption of permanent regulations, whichever occurs first.

Financial Impact:

None

Attachments:

[Resolution 2022-33 - Extend Streateries Permits](#)

RESOLUTION NO. 2022-33

A RESOLUTION of the City Council of Ellensburg, extending the ability of restaurants in certain areas of downtown Ellensburg to continue operating streateries on a temporary basis pending the development and adoption of permanent regulations.

WHEREAS, a state of emergency still exists in Washington State due to the current COVID-19 outbreak, and

WHEREAS, due to the rising number of COVID-19 cases in Washington in 2020-21, Governor Inslee issued Proclamations 20-25, *et seq.*, "Stay Safe - Stay Healthy," which at the time reduced restaurant operations occupancy; and

WHEREAS, Governor Inslee issued Proclamation 20-25.13, "Healthy Washington Roadmap to Recovery, on May 21, 2021, which moved all Washington counties into Phase 3, which also limited the capacity of restaurants and other businesses to serve customers; and

WHEREAS, as a result of the previous restrictions on restaurant capacities during the COVID-19 emergency, the Ellensburg City Manager, as authorized by City Council Resolution 2020-05, issued City Management Emergency Order 2020-03, which allowed restaurants in certain areas in the downtown area of the City of Ellensburg to obtain a permit to operate, under certain conditions, on the sidewalks adjacent to their storefronts and also operate "streateries" in portions of the street immediately in front of their businesses; and

WHEREAS, City Management Order 2020-03 was subsequently amended and extended by City Management Orders 2020-03-A, 2020-03-B and 2020-03-C, which was then extended to December 31, 2021 by City Council Resolution 2021-20 and November 1, 2022 by City Council Resolution 2022-26; and

WHEREAS, following the issuance of Management 2020-03, three restaurants in downtown Ellensburg obtained permits from the City to operate temporary streateries, and currently remain in operation; and

WHEREAS, City Council held a study session to discuss streateries on November 15, 2021, and directed City staff to provide recommendations for permanent regulation of streateries; and

WHEREAS, City Council adopted Resolution 2021-40 on December 20, 2021, extending the temporary permits for all streateries allowed under City Management Order 2020-03, as amended, to continue operation until June 30, 2022, or such time as the effective date of an ordinance regulating "streateries" on a permanent basis that City Council may adopt, whichever occurs first; and

WHEREAS, during its June 6, 2022 meeting, City Council considered an ordinance regulating streateries and at that time requested staff make additional changes to the proposed ordinance, including incorporation of design standards to be recommended by the Landmarks and Design Commission, and later approved Resolution 2022-26 at its June 21, 2022 meeting to extend permits for the three streateries currently operating under City Management Order 2020-03 to continue operation until November 1, 2022, or such time as the effective date of an ordinance regulating “streateries” on a permanent basis that City Council may adopt, whichever occurs first; and

WHEREAS, design standards for “streateries” recommended by the Landmarks and Design Commission following their September 7, 2022 were discussion with City Council during its October 3, 2022 study session, additional direction regarding the proposed “streateries” ordinance was given to City staff by the City Council, which requires additional time for staff to prepare and present to Council for consideration of adoption;

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

Section 1. The City Council finds that the facts set forth in the recital paragraphs of this Resolution support and justify the actions taken herein.

Section 2. All streateries currently permitted under City Manager Order 2020-03, as amended, shall be allowed to continue operating until December 31, 2022, or such time as the effective date of an ordinance City Council may adopt regulating “streateries” on a permanent basis, whichever occurs first. No new streateries shall be permitted to operate until such time as the City adopts permanent regulations for streateries.

Section 3. Upon request from the City’s Public Works & Utilities Department, restaurants may be required to remove their streatery for scheduled and/or emergency road or utility maintenance.

Adopted by the City Council of the City of Ellensburg this 17th day of October, 2022.

MAYOR

Attest:

CITY CLERK



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Resolution 2022-34 Authorizing the Acquisition of Real Property (701 N. Pacific St. Ellensburg, WA)

Submitted by: Derek Mayo Public Works & Utilities

Recommended Action or Motion: Adopt Resolution 2022-34 authorizing the acquisition and purchase of Real Property at 701 N. Pacific Street and the City Manager to execute the Purchase and Sales Agreement.

Background/Summary: The City's Electrical Utility has planned to expand the Dolarway Substation site for several years with purchase of the property. The expansion would allow for easier access to the substation site and allow for the expanded storage of power poles at this location. The City budgeted for the purchase of this property in 2020 in hopes it would become available. In late August of this year, staff was made aware of the property being put on the market.

The City submitted an offer on September 12 and we were notified that the City's offer of \$245,000, plus customary and standard closing costs was accepted by the owners. Closing costs are estimated to be about \$2,000.

Previous Council Action: No previous Council action.

Analysis: Upon the property being listed, we contacted an independent real estate agency, Windermere Real Estate, to complete a market analysis. Upon receipt of the market analysis, the City made an offer on the property that was within the range of the market review that we received.

Financial Impact: The current budget has adequate funding in the Light Budget for Land and Land Improvements.

Attachments:
[Resolution No. 2022-34 - Purchase of 701 N. Pacific](#)

RESOLUTION No. 2022-34

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, authorizing the Mayor or City Manager to execute purchase and sale documents necessary, and other related documents, for the purchase real property at 701 N. Pacific St., Ellensburg, WA 98929 (Tax Parcel Number: 368233) (“the Property”) from Ronald F. Hubbard Jr., Brenda J. Hubbard, James E. Hubbard, and Cecelia Edna Hubbard (Sellers).

WHEREAS, the City’s Electrical Utility has planned to expand the Dolarway Substation site for several years, which requires the City to acquire the Property to allow for easier access to the substation site and allow for the expanded storage of power poles at this location; and

WHEREAS, the Property was originally listed for sale in late August 2022, and upon completing an inspection of the Property, City staff had a market analysis completed by Windemere Real Estate; and

WHEREAS, the City submitted a purchase offer for the Property to the Sellers, after which the City and Sellers agreed to a purchase price of \$245,000 on September 13, 2022, and which includes customary and standard closing costs, and which is within the City’s market analysis;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, AS FOLLOWS:

Section 1. The “Whereas” provisions set forth above are hereby incorporated in this Resolution as findings in support of the actions authorized in this Resolution.

Section 2. The City Manager is hereby authorized to execute the Purchase and Sale Agreement along with any and all documents required to complete the purchase of the Property described above.

Section 3. If any section, sentence, clause, or phrase of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Resolution.

ADOPTED by the City Council of the City of Ellensburg this 17th day of October, 2022.

MAYOR

ATTEST: _____
CITY CLERK



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Resolution 2022-35 Amending Previous Resolutions 2021-36 and 2022-18 Regarding the Non-Union Pay Plan for Fiscal Year 2022

Submitted by: Lisa Young Human Resources

Recommended Action or Motion: Staff recommends approval of Resolution 2022-35 and approve the necessary budget adjustments.

Background/Summary: Recruitment and retention continue to be a priority for Human Resources (HR) as we struggle to attract qualified candidates to fill positions. This has increased the daily workload for HR staff causing reduced response times and an increasing list of to-do items when time is available.

Previous Council Action: Ongoing support of the City's effort to hire and retain high quality candidates.

Analysis: There are several positions that have been identified as needing adjustment to assist with recruitment and retention efforts, and to recognize where work has grown beyond the original duties and expectations. These adjustments include increased pay scales for Building Official and Planning Manager, reclassification of the Senior Financial Analyst/Budget Officer to Assistant Finance Director, and reclassification of PW Operations Analyst to Shop and Warehouse Manager. In addition to these changes, HR is requesting the ability to hire two temporary project specialists - one to assist with recruitment and marketing for the Journey-level Linepersons in the Light Division, and one to assist HR with the backlog of projects and to take on some of the daily tasks.

Financial Impact: The Building Official and Planning Manager are tied together for internal equity. The adjustment will increase the top of the wage scale by \$289 per month, from \$7,905 to \$8,194 based on local comparisons, and the steps will be adjusted accordingly. For the reclassification of PW Operations Analyst

to Shop/Warehouse Manager we are aligning the wage with the Stormwater Manager and Transit Manager, again for internal equity. This results in a base wage increase at Step 11 of \$2,898 per month. This position will supervise 6-8 employees and be responsible for overseeing the shop and warehouse operations, including inventory, and will require significant technology and program management skills. These changes can be partially supported by vacancy savings, and indirectly through interdepartmental funding for Shop and Warehouse services. For the reclassification of the Senior Financial Analyst/Budget Officer to Assistant Finance Director, the top step of the wage scale will be set at 20% less than the Finance Director. This results in a base wage increase of \$1,681 per month. These changes can be partially supported by vacancy savings for 2022, and indirectly through interdepartmental funding for Finance Department services.

The request for a temporary project employee in HR will be partially supported by interdepartmental funding for HR services; the remainder will result in an increase to the general fund expenses. If hired at Step 1, the base wage cost would be \$4,706 per month. For the remainder of 2022 this would be approximately \$9,412. A regular full-time position has been requested in the 2023-2024 budget.

The request for a temporary project employee to assist with recruitment and marketing efforts for the Journey-level Linepersons will be funded by operational savings realized in the 2022 Electric Utility fund budget.

Attachments:

[Resolution 2022-35 - Amending Pay Plan Resolutions for 2022 Fiscal Year](#)

RESOLUTION NO. 2022-35

A RESOLUTION amending the current pay plan for Fiscal Year 2022 for select positions based on recruitment, retention, and operational needs.

WHEREAS, the City Manager has prepared and submitted to the City Council of the City of Ellensburg a standard schedule of pay; and

WHEREAS, in an effort to improve recruitment and retention efforts and recognize some workloads that have grown beyond their original scope, the Human Resources department conducted a targeted wage survey to see if adjustments are supported; and

WHEREAS, the Ellensburg City Council desires to adopt such amended pay plan;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Resolution Nos. 2021-36 and 2022-18 are hereby amended by revising the pay ranges for Building Official and Planning Manager, as identified in Section 3.

Section 2. Resolution Nos. 2021-36 and 2022-18 are hereby further amended by adding two (2) temporary positions to the City Manager's office, as well as a reclassification of PW Operations Analyst to Shop/Warehouse Manager, and a reclassification of Senior Financial Analyst/Budget Officer to Assistant Finance Director, as identified in Section 3.

Section 3. Effective October 17, 2022, the pay range assignment for each non-union class title shall be as follows (amendments in bold):

CLASS TITLES BY DEPARTMENT

PAY RANGE

CITY MANAGER

TITLE	MIN	MAX
City Manager	11,152	14,869
Public Information Officer	6,146	8,194
Executive Assistant – City Manager	4,427	5,902
Assistant City Manager/City Attorney	10,594	14,125
Assistant City Attorney	6,768	9,861
Executive Assistant/Deputy City Clerk	4,427	5,902
IT & Telecommunications Manager	6,840	9,120
IT Systems Administrator	5,943	7,924
IT Systems Administrator - SQL	5,943	7,924
Network/Desktop Analyst	5,229	6,972
Human Resources Director	7,934	10,578
HR Specialist	4,707	6,276
Civil Service Secretary/Chief Examiner	150	150
HR Specialist – Temporary	\$27.15/hr	\$30.78/hr
Project Specialist – Marketing & Communications (Temporary)	\$50.00/hr	\$50.00/hr

COMMUNITY DEVELOPMENT DEPARTMENT

TITLE	MIN	MAX
Community Development Director	8,387	11,182
Building Official	6,146	8,194
Planning Manager	6,146	8,194
Assistant Building Official	5,573	7,431
Building Inspector II	5,004	6,672
Building Inspector	4,584	6,112

FINANCE DEPARTMENT

TITLE	MIN	MAX
Finance Director	8,680	11,573
Assistant Finance Director	7,184	9,578
Accounting Manager	5,923	7,897
Senior Financial Analyst/Budget Officer (reclassified to Assistant Finance Director)	5,923	7,897
Application Specialist	5,923	7,897
Accountant II	5,202	6,936
Utility Services Supervisor	5,202	6,936
City Clerk	4,999	6,665
Accounting Analyst	4,669	6,225

LIBRARY

TITLE	MIN	MAX
Library Director	7,669	10,225
Public Services/Internal Ops Librarian	4,669	6,225
Librarian	4,669	6,225
Part-time Library Substitute*	14.49/hr	15.87/hr

**Reflects WA Minimum Wage increase of 5.8%*

PARK AND RECREATION DEPARTMENT

TITLE	MIN	MAX
Parks & Recreation Director	7,669	10,225
Aquatic & Recreation Supervisor	5,030	6,707

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PARK AND RECREATION DEPARTMENT (continued)

2022 State Minimum Wage - \$14.49	I	II	III	IV	V	VI
Lifeguard	14.59	15.32	16.09			
Instructor	14.59	15.32	16.09			
Recreation Aide	14.59	15.32	16.09	16.89		
Custodian	14.59	15.32	16.09			
Sports Officials I-V	14.49	15.94	17.39	19.13	26.78	
Sports Officials VI Gym/Field Supv.						17.39

POLICE DEPARTMENT

TITLE	MIN	MAX
Police Chief	8,387	11,182
Police Captain (2 positions)	7,396	9,861
Animal Shelter Manager	4,480	5,973
Police Records Supervisor	4,386	5,848

PUBLIC WORKS AND UTILITIES DEPARTMENT

TITLE	MIN	MAX
Public Works & Utilities Director	10,594	14,125
Assistant Utilities Director	8,612	11,482
City Engineer Services Manager	8,612	11,482
Operations Supervisor – Electric	8,340	11,120
Sr. Electrical Engineer	8,202	10,936
Project Engineer (2 Positions)	8,105	10,806
Construction Project Manager (Temporary)	7,868	10,491
Assistant Public Works Director	7,514	10,019
Gas Engineer	7,514	10,019
Assistant City Engineer/Capital Projects Manager	7,514	10,019
Power and Gas Manager	7,034	9,378
Stormwater Utility Manager	6,842	9,123
Shop/Warehouse Manager	6,842	9,123
Transit Manager	6,842	9,123
Assistant Transit Manager	6,018	8,024
Civil Engineer	5,774	7,698
Rate Analyst	4,973	6,631
Sr. Operations Analyst	4,901	6,535
Operations Analyst (reclassified to Shop/Warehouse Mgr)	4,669	6,225
Operations Analyst – ES	4,669	6,225
Executive Assistant	4,207	5,609
Executive Assistant – ES	4,207	5,609

All other City positions are covered by Union contracts. This resolution has no application to such positions.

Section 4. The amended Pay Plan Schedule is hereby adopted as hereinafter set forth. All remaining terms and conditions of Resolution Nos. 2021-36 and 2022-18 remain in full force and effect.

PASSED AND ADOPTED by the City Council of the City of Ellensburg at a regular meeting on the _____ day of _____, 2022.

Mayor

Attest:

City Clerk



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Professional Consultant Services Agreement for Unity Park Design and Documentation Services

Submitted by: Brad Case Parks and Recreation

Recommended Action or Motion: Authorize the City Manager to execute the professional consultant services agreement with Walker|Macy for design, documentation, and project management services at Unity Park and approve the necessary budget adjustments.

Background/Summary: A proposed professional consultant services agreement has been negotiated with Walker|Macy to complete the Unity Park final design, develop construction plans, and provide project supervision. Walker Macy has been performing design work on Unity Park since September 2018, developing a plan based on feedback from community members, local event organizers, downtown business owners and neighbors, and a variety of City boards and commissions, as well as City staff. The work being proposed in the agreement will culminate in the much-anticipated completion of the park. After entering into a professional services agreement, Walker|Macy and City staff will put together a project schedule.

Previous Council Action: At its September 19, 2022, meeting the City Council reviewed and approved the Unity Park concept and authorized staff to develop an agreement with Walker|Macy for final park design, development of construction documents, and project supervision.

Analysis: The design confirmation for Unity Park has been completed and staff is ready to move forward with final design, the development of construction and bid documents and project supervision. Walker|Macy, the landscape architect for the Unity Park project, has put together a scope of work and fee schedule for the above-mentioned work. The proposed scope of work includes design phase, construction documentation, permitting, bidding support, services during construction, and project closeout.

Input on final design will be developed through continued conversations with the Landmarks & Design Commission, Arts Commission, the Diversity, Equity and Inclusion Commission, and the Parks & Recreation Commission.

Financial Impact:

Funding for this phase of the project will be taken from \$1.8 million Council appropriated for the Unity Park project through the American Rescue Plan Act (ARPA)/Coronavirus State & Local Fiscal Recovery (CLFR) Funds. With an estimated total project budget of \$2.5 million, staff is requesting a \$400,000.00 re-appropriation of the ARPA & CLFR funds Council dedicated to gateway entry signage to the Unity Park project. As a part of the 2023/24 budget development, staff will be requesting \$300,000.00 from the Park Acquisition & Development Fund towards Unity Park construction.

Attachments:

[Professional Services Consultant Contract for Design and Documentation Services
Unity Park Scope-Fee](#)

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF ELLENSBURG
WALKER|MACY**

RELATING TO: UNITY PARK DESIGN AND DOCUMENTATION SERVICES

THIS LUMP SUM AGREEMENT is made and entered into this 17th day of October, 2022 ("Effective Date"), by and between THE CITY OF ELLENSBURG, a non-charter code city of the State of Washington, (hereinafter called the "CITY") and WALKER|MACY, a Corporation 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 Unity Park 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 scope of work 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 12 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 December 31, 2023. 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. The CITY shall pay the CONTRACTOR as set forth in this section. In no event shall the amount paid by CITY exceed the Maximum Compensation as set forth in Section 5, unless otherwise agreed to by the CITY in writing. Such payment shall be full compensation for work performed, services rendered, and all labor, materials, supplies, equipment and incidentals necessary to complete the work.

4.2. The CONSULTANT shall submit invoices to the CITY for work completed in accordance with Exhibit A. Invoices shall detail the work, and shall itemize with receipts and invoices the non-salary direct costs.

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 12 of this Agreement shall be as agreed to by the parties in writing.

4.7. The CITY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the Agreement for allowable unforeseen costs, or reimbursing the CONSULTANT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this Agreement. Such authorization(s) shall be in writing and shall not exceed the lesser of \$15,000 or 10% of the Maximum Compensation as

shown in Section 5 of this Agreement. The amount included for the Management Reserve Fund is \$15,000. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section 12 – Extra Work.

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 \$404,950.00. 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 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 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 subconsultant of CONSULTANT shall be or shall be deemed to be the employee, agent representative or subconsultant 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. OWNERSHIP OF DOCUMENTS. Upon completion of the work and payment of

CONSULTANT'S fee, all documents, exhibits, photographic negatives, or other presentations 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. However, any alteration of the documents, by the CITY or by others acting through or on behalf of the CITY, will be at the CITY's sole risk.

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

8.1. 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,

8.2. 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.

9. SUBCONTRACTING.

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

9.2. 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 subconsultant or supplier shall be notified by the CONSULTANT of CONSULTANT's obligations under this Agreement, including the nondiscrimination requirements.

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

10. SUPERVISION, INSPECTION AND PERFORMANCE.

10.1. 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.

10.2. 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 subconsultants whose selection has been authorized by CITY; provided that CITY's authorization shall not relieve CONSULTANT or its subconsultants 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 subconsultants retained to perform the Services.

10.3. 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.

11. 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.

12. 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 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.

13. TERMINATION.

13.1. The CITY may terminate this Agreement at any time, for the convenience of the CITY, upon not less than ten (10) days' written notice to the CONSULTANT. Written notice will be by certified mail sent to the consultant's designated representative at the address provided by the CONSULTANT.

13.2. 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.

13.3. In the event this Agreement is terminated prior to the completion of the work, a 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.

14. INDEMNIFICATION/HOLD HARMLESS.

14.1. The indemnification and defense obligations specified in this Section 14 ("Indemnity Obligations") have been mutually negotiated and shall survive the expiration, abandonment, or termination of this Agreement. 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.

14.1.1. Professional errors and omissions. For any losses that arise from any error, omission, negligence or other malpractice in the exercise of CONSULTANT's professional judgment in the performance of architectural, landscape architectural, engineering, or land surveying services such that RCW 4.24.115 would apply, CONSULTANT shall defend, indemnify, and hold the CITY harmless from all such losses to the extent caused, or alleged to be caused, by any violation of law, including state, federal or municipal law or ordinance, or negligent act, omission, breach of contract, or willful or intentional misconduct of CONSULTANT. The obligation of indemnity under this subparagraph does not, however, extend to losses caused by the negligence (whether sole, concurrent or contributory) of the CITY.

14.1.2. Construction claims. In the event that this Agreement is relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of any building, highway, road, excavation, or other structure, project, development, or improvement attached to real estate (specifically including moving or demolition in connection therewith) and therefore subject to RCW 4.24.115,

CONSULTANT shall defend, indemnify and hold harmless the CITY from all losses to the extent caused, or alleged to be caused, by any violation of law, including state, federal or municipal law or ordinance, or any negligent act or omission of CONSULTANT. The obligation of indemnity under this Subparagraph does not, however, extend to losses caused by the negligence (whether sole, concurrent or contributory) of the CITY.

14.2. In any and all claims against the CITY by any employee of CONSULTANT, the indemnification obligations set forth above shall not be limited in any way by any limitation on the amount or type of damages or compensation benefits payable by or for CONSULTANT under the applicable worker's or workmen's compensation, benefit, or disability laws (including but not limited to, the Industrial Insurance laws, Title 51 of the Revised Code of Washington). CONSULTANT expressly waives any immunity CONSULTANT might have under such laws, and, by entering into this Agreement, acknowledges that this waiver has been mutually negotiated.

15. INSURANCE.

15.1. 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.

15.2. 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.

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

15.3.1. 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,

15.3.2. 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 with respect to the work performed for the CITY; and,

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

15.3.4. Professional Liability insurance appropriate to the CONSULTANT's

profession.

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

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

15.4.2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

15.4.3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

15.5. 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:

15.5.1. 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 excess of the CONSULTANT's insurance and shall not contribute with it.

15.5.2. The CONSULTANT's insurance shall be endorsed to state that coverage shall not be cancelled, suspended or materially changed by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.

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

15.5.4. 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 respects to the limits of the insurer's liability.

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

15.7. 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 commencement of the work.

15.8. 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. 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 dispute the venue of any litigation brought hereunder shall be Kittitas County.

17. 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 Parks & Recreation
Attention: Brad Case
501 N. Anderson
Ellensburg, WA 98926

WALKER|MACY
Attention: Michael W. Zilis
111 SW Oak Street, Suite 200
Portland, OR 97204

18. 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.

19. 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.

20. 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.

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

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

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

24. 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:

Scope of Work

Exhibit A – Labor by Task

Exhibit B – Schedule for the Work

Exhibit C – Consultant Labor Costs and Non-salary Reimbursable Costs

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

CONSULTANT:

By: _____

Printed
Name: _____

Title: _____

Tax ID#: _____

THE CITY OF ELLENSBURG:

By: _____

Printed
Name: _____

Title: _____

ATTEST: _____
Clerk

Approved as to Form:

City Attorney

October 6, 2022

Brad Case
Parks and Recreation Director
City of Ellensburg
501 North Anderson
Ellensburg, WA 98926

RE: Unity Park
Walker Macy Project #P3500.02

Dear Brad,

We appreciate the opportunity to submit the following proposal for providing design and documentation services for the Unity Park.

PROJECT UNDERSTANDING AND TEAM ROLES:

1. The project includes a new public park located in downtown Ellensburg, Washington as presented to City Council on September 19, 2022 with site improvements that are proposed to include a public comfort station, plaza with range of seating types, shade structure(s), permanent performance stage and related infrastructure, water feature, and planting/irrigation. The park will be designed with an eye towards flexibility to support both events/programming and day-to-day use by the community.
2. The following sub consultants are included in this proposal and will be contracted directly to Walker Macy:
 - Architect: Signal Architecture
 - Civil Engineer: Coughlin Porter Lundeen
 - Structural Engineer: Quantum Consulting Engineers
 - Lighting Designer: Blanca Lighting Design
 - Electrical Engineer: TFWB Engineers
 - Mechanical and Plumbing Engineer: Greenbusch Group
 - Irrigation Consultant: Design Two-Four Two-Six
 - Cost Consulting: DCW
3. Walker Macy's role will be to:
 - Lead the design of Unity Park, manage the project and coordinate the work of the consultant team, and represent the project to the City of Ellensburg Parks & Recreation (City) and the public.

- Walker Macy, in collaboration with the design team, will document surface improvements including paving, planting, grading, irrigation, and site furnishings for areas.
 - We will work directly with the City and the design team during the effort to ensure a comprehensive approach to the work.
4. The team's civil engineer will document all erosion and sedimentation control. The team's civil engineer will also document site demolition, all subsurface utilities, roadway, vehicular improvements, and any work within the public right-of-way.
 5. The team's architect will document the comfort station with restrooms, storage, and potential office or concierge space. The team's architect will also assist in the design of the shade structures and stage windbreak.
 6. The team's structural engineer will document structural design of the comfort station and canopies as well as information for all site walls greater than 3' in height and will document reinforcing for light pole foundations. The structural engineer will review structural components and will provide signed and stamped structural calculations and redlines for details including but not limited to: custom guardrails and handrails, custom bench supports, joist and structural support member spacing and sizing for decks, shade structures, and windbreak, fencing systems and structural footings, anchors and supports for other elements.
 7. The team's electrical engineer will document all lighting and electrical services for the site and comfort station building. Services include providing power from the park to a proposed location for EV charging stations (designed and installed by others). Site design, specifications, installation, and operation provided by others. The electrical engineer will provide CAD files of the electrical fixture locations to Walker Macy and Walker Macy will document final fixture layout for site lighting.
 8. The team's lighting designer will document all fixtures and photometric calculations. Walker Macy will work with the City and design team to select site and comfort station fixtures and will include site fixtures in the landscape layout plan. Comfort station fixtures will be included in the building plans.
 9. The team's design-assist water feature engineer will support the design/documentation of a water feature and provide bid-ready documents.
 10. Consultants who are contracted directly to the City (surveyor, geotechnical engineer, arborist, etc. as required) will be available to provide assistance during the project.
 11. The City will be responsible for the following:
 - Topographic survey including underground utilities
 - Geotechnical report, if required
 - Arborist report, if required
 - All activities and fees necessary to obtain permits will be by the City. Walker Macy will assist the team by providing support drawings for inclusion in the permit applications. Preparing additional drawings that are specific to permitting are not anticipated or included in this proposal. We assume permit drawings will be derivatives of our working plans.

SCOPE OF WORK:

Based on our understanding of the project, and the information provided, we propose the following scope of work:

1. Design Phase

- 1.1 Meet with City and design team virtually to review the concept confirmation phase and discuss construction budget for the site and landscape improvements, design phase goals, and schedule.
- 1.2 Review Parks & Recreation Commission and City Council feedback from Concept Confirmation and incorporate as appropriate into site concept plan.
- 1.3 Attend virtual meetings with client to review design efforts and to coordinate our work.
- 1.4 Conduct meetings with design team to review design efforts and to coordinate our work.
- 1.5 Submit 50% Design Phase Package for review and design team coordination.

Graphic Deliverables: *for use in the Landmarks & Design Commission, Arts Commission, and DEI Commission processes*

- Illustrative Site Plan
- Illustrative Sections/ Elevations
- Diagrams or sketches as needed to describe design concepts
- Image boards describing proposed materials

Technical Deliverables

- Site Plan / Materials Plan
- Typical Sections / Elevations
- Grading Concept Plan
- Water Feature Concept and Narrative
- Comfort Station Plans
- Civil Site Plan

- 1.6 Attend virtual review meeting with City team and design team and incorporate review meeting comments into advancement of park design.
- 1.7 Incorporate review comments from 50% Design submittal and prepare 100% Design Phase Drawings.
- 1.8 Provide graphics or documentation for Landmarks and Design Commission reviews,.
- 1.9 Provide graphics or documentation for DEI and Arts Commission presentations to be led by City staff or City Council liaison, as required.
- 1.10 Lead Value Engineering efforts as required to bring project into budget goals.
- 1.11 Revise Design Phase Drawings to reflect approved Value Engineering scope.
- 1.12 Deliverables at 100% Design Phase:

- Site Demolition Plans
- Tree Protection Plans
- Site Plans / Material Plans
- Grading Plans
- Irrigation Conceptual Zone Plans (includes point of connection, mainline routing, and irrigation value locations).
- Planting Area Plans noting plant types (e.g., tree, shrub, groundcover); not specific plant species.
- Comfort Station Plans
- Civil Site Plan
- Civil Utility Plan
- Lighting Fixtures, Schedule, and Photometrics
- Electrical Site Plan
- Structural Plans
- Mechanical Plans
- Plumbing Plans
- Water Feature Plan and Details
- Specifications Table of Contents in CSI format
- Cost Estimate

Meetings:

- Three (3) coordination meetings with City (virtual).
- One presentation to Parks & Recreation Commission (virtual).
- Attend up to three (3) Landmarks and Design Commission meetings (virtual).
- One (1) Preliminary Art Selection Committee meeting (virtual). *Recommendations to client and Arts Commission for art opportunities.*
- Consultant team coordination meetings.
- One (1) site visit.

2. Construction Documentation

- 2.1 Attend virtual coordination meetings with the City and design team.
- 2.2 Respond to comments and incorporate this information into the construction documentation. Review the construction budget, schedule, and milestones. Attain approval to proceed with Construction Documentation.
- 2.3 Produce and submit 50% and 90% Construction Documents. 50% Construction Documents will be the basis for the building permit submittal. Building permit corrections will be included in 90% Construction Documents.
- 2.4 Attend virtual review meeting(s) with City team and design team and incorporate review meeting comments into advancement of park design.
- 2.5 Incorporate review comments following 50% and 90% submittals (90% comments to be incorporated in Bid Set).
- 2.6 Lead Value Engineering efforts as required to bring project into budget goals.

2.7 Revise Drawings to reflect approved Value Engineering scope.

2.8 Produce Bid Set documents.

2.9 Deliverables:

- Site Demolition Plans
- Tree Protection Plans
- Layout Plans
- Materials Plans
- Grading Plans
- Irrigation plans and Details
- Planting Plans and Details
- Site Construction Details
- TESC Plans and Details
- Civil Utility Demolition Plans
- Civil Site Plans
- Civil Utility Plans
- Civil Details
- Comfort Station Architectural Plans, Sections, Elevations, and Details
- Structural Plans and Details
- Mechanical Plans and Details
- Plumbing Plans and Details
- Electrical Plans and Details
- Water Feature Plans and Details
- Specifications in CSI format. Specification template to be provided to Walker Macy by Owner if there is a required or standard format.
- Cost Estimate (2)

2.10 Meetings:

- Five coordination meetings with City (virtual).
- One client Maintenance and Operations team review meeting (virtual).
- Consultant team coordination meetings.

3. Permitting *(to run concurrently with Construction Documentation)*

3.1 Submit final stamped and signed documents to the city as required for permitting.

3.2 The permits currently anticipated for this project are:

- Demo Permit
- Building Permit
- Grading Permit

3.3 Respond to permit comments during permitting.

3.4 Revise drawings and resubmit to the permit center if required.

3.5 Meetings:

- Attend pre-application or pre-submittal meeting with City agency staff (virtual).

4. Bidding Support

- 4.1 Attend pre-bid conference on site.
- 4.2 Respond to bidder questions and prepare addenda during bid period as necessary.
- 4.3 Assist in review of bids.
- 4.4 Meetings:
 - One city review meeting (virtual).
 - One pre-bid meeting (on site).
 - One bid opening meeting (virtual).

5. Services During Construction

- 5.1 Develop "For Construction" set of Construction Documents.
- 5.2 Attend (1) pre-construction meeting.
- 5.3 Review product submittals and shop drawings; respond to requests for information, produce change orders and clarification drawings as needed.
- 5.4 Walker Macy will attend virtual biweekly project meetings facilitated by the City's designated project manager and will attend up to six (6) Construction Observation site visits. Other consultant team members will attend meetings as needed to confirm compliance with documents. The City's designated project manager will provide meeting notes for weekly project meetings during construction. Design team will review meeting notes and provide comments.
- 5.5 Attend (1) substantial completion walk-through and develop a punch list.
- 5.6 Attend (1) final acceptance walk-through to review completion of the punch list.
- 5.7 Attend (1) warranty walk-through and develop a warranty list.

6. Project Closeout

- 6.1 Prepare record (or as-built) documents (digital) for all work within our scope based on contractor provided record (or as-built) drawings in CAD format.

FEES:

We propose the following fees:

1. Design Phase	\$154,000.00
2. Construction Documentation & Permitting	\$160,000.00
3. Bidding Support	\$7,200.00
4. Service During Construction	\$79,250.00
5. Project Closeout	<u>\$4,500.00</u>
Total:	\$404,950.00 <i>plus expenses</i>

We propose to bill monthly on a percentage of completion per phase. Reimbursable expenses are additional and will be billed at 1.1 times our cost. Estimated reimbursable expenses not to exceed \$17,500.

ASSUMPTIONS:

- Our proposal is based on the approved concept design, the above scope of work, attached limit of work, and an estimated project construction budget of \$2,100,000 to \$2,200,000.
- A detailed site survey provided by the City in AutoCAD drawing format suitable for construction documentation, will be available for our use.
- A geotechnical report of the project site provided by the City will be available for our use, if required.
- Construction Documentation will be provided in AutoCAD based upon Walker Macy standards.
- Revisions to the construction documents due to value engineering which occur after 90% CD milestone submittal will require Walker Macy to evaluate potential impact to fees.
- Site visits in addition to those identified will require Walker Macy to evaluate potential impact to fees.
- City will provide complete Division Zero and Division One CSI-formatted specifications. City's designated project manager will lead bidding process with support from Walker Macy and consultant team.
- The design team will attend all meetings and Commission meetings outlined in the scope of work. Meetings beyond those noted will be additional services and will be billed as time and materials.
- Art selection process beyond (1) meeting to provide the City and Arts Commission with recommendations for art opportunities is not currently a part of the proposed scope of services.
- This proposal includes a potential early site demolition and site preparation submission. If the project is further divided into multiple design or construction phases, scope and fees will be re-evaluated.
- Project is scheduled to be completed by December 2023. If project extends substantially beyond the scheduled date additional scope and fees will be re-evaluated.
- LEED documentation is not currently a part of the proposed scope of services.
- Walker Macy is not responsible for verifying the accuracy of Contractors' record documents.
- Walker Macy will provide CSI-formatted specifications.

Please contact me or Brian Bishop if you have any questions, require clarification, or if we can be of further assistance. We look forward to working with you on this Unity Park project.

Sincerely,

WALKER MACY

Michael W. Zilis
Principal
mzilis@walkermacy.com

Exhibit A - Labor by Task

BASIC SERVICES		Basis	Landscape Walker Macy	WM markup (10%)	Architecture	Civil	Structural	Lighting	Electrical	MP	Irrigation	Cost	PHASE TOTALS
			Walker Macy		Signal	CPL	Quantam	Blanca	TFWB	Greenbush	Design 2426	DCW	
1.	Design Phase	Fixed Fee	\$64,800.00	\$8,155.00	\$29,500.00	\$9,000.00	\$9,750.00	\$15,000.00	\$4,750.00	\$8,600.00		\$4,950.00	\$154,505.00
2.	Construction Documents / Permit	Fixed Fee	\$72,000.00	\$8,002.50	\$30,000.00	\$13,000.00	\$11,000.00		\$4,125.00	\$8,500.00	\$3,500.00	\$9,900.00	\$160,027.50
3.	Bid	Fixed Fee	\$3,600.00	\$330.00	\$500.00	\$1,000.00	\$250.00		\$250.00	\$800.00	\$500.00		\$7,230.00
4.	Services During Construction	Fixed Fee	\$36,000.00	\$3,932.50	\$15,000.00	\$9,500.00	\$4,000.00		\$3,125.00	\$4,500.00	\$3,200.00		\$79,257.50
5.	Close Out Phase	Fixed Fee	\$3,600.00	\$75.00					\$250.00		\$500.00		\$4,425.00
			\$180,000.00	\$20,495.00	\$75,000.00	\$32,500.00	\$25,000.00	\$15,000.00	\$12,500.00	\$22,400.00	\$7,700.00	\$14,850.00	\$405,445.00

Exhibit B –Schedule for Work

Design Phase– Assume 8-10 weeks

- Based on estimated NTP of 10/18/2022
- 100% Design – Estimated milestone 12/9/2023

Construction Documents and Permit Support – Assume 12 weeks

- 50% CD – Estimated milestone 1/20/2023
- 90% CD – Estimated milestone 2/24/2023

Bidding Support – Assume 8 weeks

- Estimated Bid Opening of 4/7/2023

Construction Support – Assume 16-24 weeks to Substantial Completion

- Estimated Contractor NTP 5/7/2023

Close-out – Assume 4 weeks

Exhibit C – Walker Macy Billing Rates by Role

<u>Project Role</u>	<u>Billing Rate Range</u>
Principal	\$175 - \$225
Sr. Associate / Associate Principal	\$130 - \$165
Associate	\$115-125
Project Landscape Architect	\$95-115
Design Staff	\$80-110

Exhibit D - Limit of Work





CITY COUNCIL AGENDA REPORT

City Council Meeting Date: October 17, 2022

Item Title/Agenda Subject: Sustainability & Energy Plan Consultant's Scope, Schedule, and Agreement

Submitted by: Buddy Stanavich Public Works & Utilities

Recommended Action or Motion: Staff and the Utility Advisory Committee recommend Council authorize the City Manager's signature on the Professional Services Agreement between the City of Ellensburg and McKinstry Essention, LLC.

Background/Summary: The Ellensburg City Council adopted a Strategic Vision for 2023 – 2028 which is guided by five strategic pillars that include, among others, Energy & Natural Resources and Sustainable Infrastructure. Additionally, Washington state has enacted several laws recently aimed at addressing the climate crisis by reducing carbon emissions by 95% by 2050. Both the City Council's Strategic Vision and the state legislation impacts the City-owned electric and gas utility, the municipality, and the community at large. Any actions taken by one group to advance the vision, or comply with the legislation, can have a significant impact on the other group, either positively or negatively, making it challenging to make investment and policy decisions.

Washington State's Clean Energy Transformation Act (CETA) and more recently, the Climate Commitment Act (CCA), create compliance milestones and reporting requirements for the City's natural gas and electric utilities. The Utility Advisory Committee (UAC) has hosted several discussions on compliance options and the need for planning for future decarbonization.

The City desires a cohesive and comprehensive Sustainability and Energy Plan that will become the standard that guides the City when making future decisions to amend or adopt ordinances and policies. Public impact will be a key component of this work. The City published a Request for Qualifications, reviewed submittals and interviewed four firms. McKinstry

Essention, LLC (McKinstry) was selected as the most qualified firm. City staff then began scope and contract negotiations with McKinstry for comprehensive Sustainability and Energy Planning.

Previous Council Action:

City Council approved funding in the amended 2021-2022 Biennial Budget to facilitate development of a plan to reduce the municipal and community carbon footprint and to outline actions/options to address compliance with federal and state clean energy and transportation regulations.

On October 10, 2022, the Utility Advisory Committee (UAC) held a special meeting to discuss the Sustainability & Energy Plan Consultant's Scope, Schedule, and Agreement. The UAC forwarded a favorable recommendation to Council to authorize the City Manager's signature on the Professional Services Agreement between the City of Ellensburg and McKinstry Essention, LLC.

Analysis:

A cohesive and comprehensive Sustainability and Energy Plan will help guide the City through various compliance obligations. For example, electrification would reduce the burning of fossil fuels, reduce local greenhouse gas emissions, and improve the health of individuals in highly impacted communities. Increased electrification may also create supply constraints on the utility, which could cause rate increases or supply issues to vulnerable populations. For this reason, care must be taken when developing any plan, to understand and consider the needs of the entire community and the impact actions may have on them.

The purpose of this project is to develop a combined, cohesive, community driven plan detailing how the sustainability and energy portions of the strategic vision will be executed, while remaining in compliance with state energy legislation and considering the needs and impacts to the most vulnerable in the community.

1.) McKinstry and their subcontractors will accomplish the following project objectives:

Establish a baseline greenhouse gas (GHG) inventory, recommend emission reduction goals, and develop a high-level emission reduction scenario based on identified mitigation

measures.

2.) Plan for compliance with WA State legislation: the Clean Energy Transformation Act (CETA), Clean Buildings Performance Standard (CBPS) and the Climate Commitment Act (CCA).

Financial Impact:

The total cost of this Agreement is \$200,000 of which \$120,000 will come from the General Fund and the additional \$80,000 will be funded by the Light and Gas utilities. The budget for 2022 was adopted to accommodate for these expenditures, and necessary expenditure authority for the remainder of the expenditures will be included in the Preliminary 2023/2024 Biennial Budget.

Attachments:

[City of Ellensburg - McKinstry Professional Services Agreement](#)

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF ELLENSBURG
AND
McKinstry Essention, LLC**

RELATING TO: Sustainability and Energy Plan Project

THIS LUMP SUM AGREEMENT is made and entered into this 17 day of October, 2022 ("Effective Date"), by and between THE CITY OF ELLENSBURG, a non-charter code city of the State of Washington (hereinafter called the "CITY") and McKinstry Essention, 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 Sustainability and Energy Plan 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 (November 1, 2023). 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. The CITY shall pay the CONSULTANT as set forth in this section. In no event shall the amount paid by CITY exceed the Maximum Compensation as set forth in Section 5, unless otherwise agreed to by the CITY in writing. Such payment shall be full compensation for work performed, services rendered, and all labor, materials, supplies, equipment and incidentals necessary to complete the work.

4.2. The CONSULTANT shall submit invoices to the CITY for work completed in accordance with Exhibit A. Invoices shall detail the work, and shall itemize with receipts and invoices the non-salary direct costs.

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 \$200,000. 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 C. Budgets for 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 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 subconsultant of CONSULTANT shall be or shall be deemed to be the employee, agent representative or subconsultant 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. OWNERSHIP OF 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 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. The CITY consents to the list of subconsultants to be assigned a portion of the work as listed in Exhibit E.

10.2. 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 subconsultant or supplier shall

be notified by the CONSULTANT of CONSULTANT's obligations under this Agreement, including the nondiscrimination requirements.

10.3. 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 subconsultants whose selection has been authorized by CITY; provided that CITY's authorization shall not relieve CONSULTANT or its subconsultants 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 subconsultants 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. 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, a 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 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.

15.4. The Parties agree that the aggregate liability of CONSULTANT for any damages, including contract, indemnity or otherwise, arising in any way out of the performance of this contract shall be limited to the proceeds payable by the primary insurance coverage as negotiated and required by this Agreement.

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 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 excess of the CONSULTANT's insurance and shall not contribute with it.

16.5.2. Any payment of 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 respects 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 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 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 Public Works & Utilities
Attention: Buddy Stanavich
501 N. Anderson
Ellensburg, WA 98926

McKinstry Essention, LLC
601 E Riverside Ave, Suite 510
[Spokane, WA 99202

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

Exhibit B – Schedule for the Work

Exhibit C – Budget for Each Task and Milestone

Exhibit D – Subcontractors Agreed To

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

CONSULTANT:

By: _____

Printed
Name: _____

Title: _____

Tax ID#: _____

THE CITY OF ELLENSBURG:

By: _____

Printed
Name: _____

Title: _____

ATTEST: _____
Clerk

Approved as to Form:

City Attorney

Exhibit A – Scope of Work

The Scope and Tasks to develop the Sustainability and Energy Plan for the City of Ellensburg will include the following:

Task 1 – Project Management

McKinstry's assigned Project Manager, Christie Hoffpauer, will provide leadership and project management throughout the duration of the Sustainability and Energy Plan development process. She will ensure the resulting plan is cohesive and includes all the elements specified below. Specific tasks will include:

- Development of the overall project workplan, schedule and budget
- Facilitation of initial kick-off meeting and informational interviews
- Contracting and ongoing coordination and management of sub consultants
- Facilitation of all team and City project update meetings
- Management of adherence to schedule, budget, and milestone deliverables

Task 2 – Data Collection and Interviews

To start the project, the team will work with the City Manager to identify key City representatives to interview. This will provide us with an understanding of the City's needs. Additionally, we will develop a comprehensive data request identifying the various data sources and information needed to support the planning process.

2.1. Initial Interviews & Planning Session

To ensure the team has a complete and accurate understanding of the City's current state and needs, a series of interviews will be scheduled with individuals, groups, departments or committees as directed by the City Manager. Care will be taken to ensure these interviews are efficient and include all topics in one meeting whenever possible.

2.2. Data Request

The team will develop and review the complete data request during the project kick-off meeting. This meeting will be used to identify key sources of data and possible alternatives or assumptions to use if the requested data is not available. This will include a discussion on confirming the GHG inventory boundary and scope, assumptions, and exclusions (if any) based on data availability (see the proposed list of emission sources outlined in Task 5 below).

2.3. Data Collection and Analysis

As data is received, the team will conduct a thorough review of all energy and sustainability performance data, codes, standards, programs, policies, and plans to develop an inventory of prior and current sustainability and energy efforts. This review will identify existing best practices and gaps to be addressed in the planning process. The team will conduct:

- Current state assessment - ongoing sustainability policies, projects, programs, and planning documents (i.e., Municipal code, City of Ellensburg Comprehensive Plan Chapter 7 etc.)
- Review of the relevant and applicable Local, State and Federal regulatory requirements

Deliverable: Comprehensive current state assessment and assumptions.

Task 3 – Public Participation Program

The Ellensburg Sustainability and Energy Plan should be informed by community input, and CETA compliance requires a public process to identify and assess the impacts of utility actions on vulnerable populations and highly impacted communities. The public participation scope of work includes tasks to survey the community in a manner required by CETA law and specifically consistent with the requirements in WAC 194-40-220. It will consider any barriers to public participation due to language, cultural, economic, technological, or other factors consistent with community needs.

3.1 Defining “Vulnerable Populations”

With the city utility, we will prepare a preliminary definition of “vulnerable populations” within the City of Ellensburg and identify community organizations that serve those populations. We will then work with those organizations to confirm or modify the definition.

3.2 Assessing Impacts to “Vulnerable Populations”

Once the baseline municipal and community GHG inventory is complete, and preliminary opportunities for cost-effective emission reduction actions are identified, we will work with the city to determine the possible impacts to the vulnerable populations identified in task 3.1, and implement a public process to:

- discuss the utility actions to be taken, and
- discuss the possible risks that vulnerable populations and highly impacted communities may face as a result of those actions, and
- solicit public input on how to mitigate those risks, and
- solicit public input on the indicators that are appropriate to the risks faced by vulnerable populations

The public input process will primarily be executed in task 3.3, but additional input may also be incorporated into task 3.4.

3.3 Community Organization and Leader Interviews

This task seeks to obtain critical feedback from both the community organizations identified in task 3.1 above, as well as other community representatives who have an interest in, and could be impacted by, the actions resulting from this plan.

- Using a list of specific organizations or individuals identified by the City of Ellensburg, we will schedule and complete one-on-one telephone interviews. Understanding that some groups or individuals may require multiple discussions, this scope includes up to 26 total interviews. This process allows any 'quieter' leaders to feel that they were given a chance to contribute. Questions and areas to probe with this leadership group will be identified in collaboration with the City and other team members and may take place at multiple times throughout the project. We anticipate representatives from Central Washington University would be one group included in this process.

3.4 Utility Customer Input

- **On-line Chat Survey:** This is an innovative, qualitative one-on-one online chat survey. The benefit of this survey is that we can capture many responses within a short period of time. The

survey questions will be developed with City and team input and will be timed once preliminary actions have been identified in tasks 4 and 5. A link will be sent out by the city utility to all utility customers and posted on their website. Respondents will simply click the link to go to the survey. This chat survey allows every utility customer an opportunity to voice their opinions and may include the vulnerable populations identified in task 3.2. We will administer the survey and tabulate the results in a summary report. The city will publicize the survey to gain maximum response and participation in the survey.

The results of task #3 will be incorporated into the updated CEIP document, considered when prioritizing actions to achieve sustainability goals, and considered in future public information campaigns undertaken by the City.

Deliverables: *Tabulated survey responses, summary reports and survey findings report*

Task 4 – WA State Legislative Compliance

The team will conduct the analyses necessary to complete a revised Clean Energy Implementation Plan (CEIP).

4.1 Clean Energy Transformation Act (CETA) Clean Energy Compliance Analysis

The team will conduct an analysis of City loads and resources and determine a potential path for compliance with CETA's clean energy requirements.

Deliverable: *CETA Clean Energy Compliance Analysis*

4.2. Conservation Potential Assessment (CPA)

The team will provide an updated Conservation Potential Assessment (CPA) for Ellensburg that meets the requirements of Washington's Clean Energy Transformation Act (CETA). Based on discussions with City staff, we will use the Utility Potential Calculator (UPC), developed by Lighthouse Energy Consulting and other consultants under contract to the Bonneville Power Administration (BPA). The UPC uses a streamlined set of inputs and relies upon the cost-effectiveness determinations and measure acquisition rates of the 2021 Power Plan to estimate the future conservation available in a utility service territory. This approach will facilitate a cost-effective and CETA-compliant outcome to setting conservation targets in the Clean Energy Implementation Plan.

Deliverables: *Completed UPC Tool with underlying measure detail; summary memo outlining high-level results, and energy efficiency targets for CETA 2022-2025 Interim Compliance Period.*

4.3. Demand Response Potential Assessment (DRPA)

We will provide a Demand Response Potential Assessment (DRPA). The assessment will use the DRPA tool developed by Lighthouse Energy Consulting, which is based on the demand response products, assumptions, and methodology used in the Northwest Power and Conservation Council's 2021 Power Plan. The tool will be updated with Ellensburg specific customer and load data. Lighthouse will provide a memo that summarizes the results of the DRPA, discuss the results with City staff, and determine how the results should be incorporated into the updated CEIP.

4.4. Climate Commitment Act (CCA) Compliance Analysis

As part of the Climate Commitment Act, the City will need to reduce emissions or seek additional allowances as the emissions cap decreases over time. This task will analyze the City's obligations under the CCA requirements and will evaluate how the GHG mitigation strategies identified in Task 5 will ensure compliance.

4.5. Washington Clean Buildings Performance Standard (CBPS)

The team will include in the plan a recommended path to compliance for any municipal owned building having an Energy Usage Intensity (EUI) higher or close to the state set limit for the building type and use. Steps include:

- Completing a Utility Data Analysis (UDA) comparing the (EUI) for all municipal owned buildings to the state targets
- Walking the buildings and proposing a list of potential improvement measures to reduce energy usage and bring the buildings into compliance.
- Recommending continuous performance measurement and verification.
- Quantifying the impact municipal and potential community actions to reduce building EUI may have on the utility gas and electric demand. The City may see additional impacts to its system based on fuel switching, resulting in additional electric loads. This task will seek to quantify those impacts to understand the ultimate impact of the CBPS on the City's loads.

4.6. Resilience and Resource Adequacy

We will examine the impacts to the City's loads and peak demands based on the identified compliance actions, including any potential shifting of end uses from natural gas to electricity.

The results of Task 4 will be incorporated as measures and supplemental information in the Sustainability and Energy Plan in Tasks 5 and 6.

Deliverables: CETA compliance analysis with refreshed CEIP, CPA, updated DRPA, CCA and CBPS compliance evaluations and projections of future loads and peak demands from additional loads.

Task 5 – Sustainability and Energy Baseline and Goal Setting

Concurrently with Task 4, the team will complete the following tasks focused on baselining the City's greenhouse gas emissions (GHG) and developing sustainability goals and strategies for inclusion in the City's Sustainability and Energy Plan. This task includes the following phases of work, which will be completed in tandem with all tasks outlined in Task 4.

5.1. Baseline Municipal + Community GHG Inventory

The team will develop a baseline GHG inventory including all selected Scope 1 and 2 emissions sources for Municipal and Community activities for the baseline year of 2019. Scope 3 emission sources will be excluded. Specific sub-tasks to support the GHG inventory will include:

- Compile all data and calculate a baseline GHG emissions inventory by source and scope using the EPA Community and Municipal GHG inventory calculator tools. Using this public access tool will enable the City to independently update its GHG inventory in the future if desired.
- Develop a business-as-usual scenario through the selected horizon year to be used as the basis for an emission reduction scenario utilizing identified GHG mitigation strategies.

The level of effort scoped for this task assumes that the following data sets are readily available, aggregated, and can be provided in Excel format for the 2019 calendar year. The following data sets will be required to complete the baseline GHG inventory:

- Utility provided electricity for both municipal operations and the community. This should include electricity consumption for:
 - Residential, non-residential, commercial, and industrial buildings
 - Street lighting and traffic control
 - Electricity for pumping, agriculture, sanitation, and any other municipal/community processes
 - Any other sources/uses of electricity for city operations or community activities
- Natural gas consumption data for both municipal operations and the community, including residential, non-residential, commercial, and industrial buildings.
- Municipal Transportation/Fleet Fuel Consumption and Mileage Data
 - Fuel consumption, mileage, and vehicle inventories for on-road fleet vehicles: light-duty and heavy-duty vehicles for waste hauling, fire department, police, city staff, etc.
 - Fuel consumption and equipment details for off-road vehicles/equipment: generators, maintenance equipment, etc.
 - Fuel consumption, mileage, and vehicle inventories for Central Transit revenue and non-revenue fleets
 - City employee commuting data
- Community Transportation Data
 - Total vehicle miles traveled on-road by passenger vehicles
 - Total vehicle miles traveled on-road by freight and service vehicles
 - Total vehicle miles traveled by off-road vehicles and mobile equipment (large stationary sources)
- Wastewater and Stormwater
 - Operational data on City wastewater treatment plant including treatment processes, volume, etc.
- City Data
 - Population projections
 - Vehicle miles traveled projections
- **The following emission sources will be excluded:**
 - Agricultural livestock operations within the City boundaries
 - Fugitive emissions from leaked refrigerants, industrial processes, etc.
 - Bowers Field Airport (located outside city boundaries)
 - Kittitas County Ryegrass Landfill (County jurisdiction)

Deliverables: *City of Ellensburg GHG Emission Workbooks and Baseline GHG Inventory*

5.2. Sustainability Goals and Strategies

The team will identify and develop high level strategies that will enable the city to meet its goals and compliance targets. Every measure proposed by the plan will be evaluated through the lens of diversity, equity, and inclusion to ensure the needs of the entire community are taken into consideration, while balancing the city's goals and compliance obligations. The specific sub-tasks will include:

- Develop emission reduction and sustainability targets and supporting measures in alignment with State of WA requirements. Goals, targets, and strategies will be developed for the following plan categories:
 - Energy
 - Green Buildings
 - Transportation
 - Water
 - Land Use

**Note: Solid waste disposal would be considered Scope 3 and excluded. However, the municipal collection and transportation of solid waste will be discussed within the plan as a component of the energy/transportation sections.*

5.3. Strategy Prioritization

After preliminary goals and strategies are developed for each category, the team will conduct the following tasks to collect stakeholder input and prioritize strategies for inclusion in the plan:

- Conduct one review meeting per plan category with key staff and stakeholders to develop, vet, and prioritize strategies for inclusion in the plan. Departments/key staff may include City Planning, Public Works, Fleet Management, Facilities Maintenance, Central Transit, etc. Relevant committees such as the Utility Advisory Committee, Environmental Commission, and City Council may also be included as deemed appropriate.

**Note: It is assumed that the City will identify the stakeholders to be included in each meeting and will take the lead on coordinating the meeting date.*

- Develop a high-level emission reduction scenario based on the identified mitigation measures.

Deliverable: Sustainability Goals, Targets, and Mitigation Strategies

Task 6 – Sustainability and Energy Plan Development

Following the completion of tasks 1-5, the team will produce a draft Sustainability and Energy Plan for the City of Ellensburg, summarizing current and prior sustainability and energy initiatives, the City's baseline GHG emissions, GHG reduction targets, and recommended strategies. Specific utility reports required for compliance will be included as appendices to the report. The specific sub-tasks will include:

6.1. Draft the Sustainability and Energy Plan

The Sustainability and Energy Plan will contain all content as outlined in the prior tasks above and will be designed to be graphic and visually pleasing. The team will provide all wrap-around narrative content, data, and graphics.

The team will facilitate one round of review to obtain comments and revisions from selected City stakeholders. All feedback will be compiled and incorporated into the final Sustainability and Energy Plan.

Deliverable: Draft and Final Sustainability and Energy Plan

6.2. Presentation of the Final Plan

Upon completion of the plan, the team will accompany the City Manager to the report presentation meeting to answer questions and support communicating the results of the final plan.

Exhibit B – Schedule for the Work

	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Kick-off meetings, initial interviews and planning sessions											
Data collection and analysis											
Current state assessment and assumptions											
Preliminary CETA and CBPA assessment											
Public outreach content and chat survey set-up											
GHG emissions workbooks and baseline inventory											
Completion of public outreach, tabulating and reporting											
CCA Analysis and Utility Resiliency											
Completion of sustainability goals, targets and mitigation strategies											
Draft report written and delivered											
Final report written, delivered and presented											

Exhibit C – Budget for Each Task and Milestone

TASK	Description	Cost
1	Project Management	\$21,241
2	Data Collection, Interviews and Analysis	\$36,571
3	Public Participation and Information Campaign	\$24,558
4	Washington State Legislative Compliance	\$59,567
5	Sustainability and Energy Baseline and Goal Setting	\$35,182
6	Sustainability and Energy Plan Development	\$22,881

Total: \$200,000

Milestone	Completed	% of Work	Value
Kick-off Meetings, initial interviews and planning sessions	Early Nov		-
Data Collection and analysis	December	8%	\$16,000
Current state assessment and assumptions	January	8%	\$16,000
Preliminary CETA and CBPA assessment	February	17%	\$34,000
Public outreach content and chat survey set-up	March	8%	\$16,000
GHG emissions workbooks and baseline inventory	March	8%	\$16,000
CCA Analysis and Utility Resiliency, Late April	April	14%	\$28,000
Final public outreach, tabulating and reporting	May	9%	\$18,000
Sustainability goals, targets and mitigation strategies	May	13%	\$26,000
Draft report delivered	July	5%	\$10,000
Final report written, delivered and presented	September	10%	\$20,000

Exhibit D – Subconsultants Agreed To

1. Cumming Group
523 West 6th Street, Suite 1001
Los Angeles, CA 90014
2. Lighthouse Energy Consulting
612 SE 48th Ave
Portland, OR 97215
3. Critical Data, Inc.
620 S Washington St.
Spokane, WA 99204



MANAGER'S REPORT

DATE: October 17, 2022

To: Ellensburg City Council

FROM: Heidi Behrends Cerniwey, City Manager

1. Notice of Natural Gas Purchases

Staff is notifying City Council, as required by Chapter 9.80 of the Ellensburg City Code, of a recent natural gas purchase commitment to Shell Energy North America. The purchase commitment is for 31,000 MMBtus at \$5.250/MMBtu for delivery October 2022. The total value of the contract purchase is \$162,750.

2. Waste Management Increase – Kittitas County Disposal Rate Increase

Waste Management notified the City that their rates will increase on November 1, 2022. The disposal rate increased at Kittitas County Solid Waste from \$121.63 to \$133.79. The price adjustment is authorized under section 3.3.2 of the Waste Management contract with the City, which allows for periodic adjustment when disposal fees are increased. This will increase a 35-gallon customer from \$17.94 to \$18.05 per month.

3. Whitfield Triangle Real Estate Purchase Opportunity Now Posted

The City of Ellensburg posted notice of real estate offering on October 12, 2022 for the Whitfield Triangle; approximately .18777 acres in size located on N. Alder Street. Persons interested in providing a proposal for the property can obtain the necessary bid form by contacting Beth Leader, City Clerk at (509) 925-8614 or cityclerk@ci.ellensburg.wa.us. Bid submittals must be received in a sealed envelope by no later than 4:00 pm on Wednesday, November 9, 2022, and clearly marked "Bid Call 2022-21 for Whitfield Triangle." Notice was posted at the site and in the Daily Record, mailed to addresses within 1,000 ft of the property, sent to interested parties, and to all registered real estate agents in the community.