

COUNCIL AGENDA

Monday, November 7, 2022



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

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

To attend the city council meeting virtually register here:
https://us02web.zoom.us/webinar/register/WN_q8FV0YQsQaW41r2NxjwJMq

AMERICANS WITH DISABILITIES ACT

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

COUNCIL MEETING GUIDELINES FOR PUBLIC PARTICIPATION

All City Council meetings are broadcast on Charter/Spectrum Channel 191 and available to livestream on Ellensburg Community Television at www.ectv2.com or on YouTube at ECTV Ellensburg. You may also attend by phone, only, and listen to the meeting by following the registration instructions under "Remote testimony during the meeting," below. Once you register, you will be sent a meeting invitation 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_q8FV0YQsQaW41r2NxjwJMq - Once registered, you will receive an email with the meeting link and phone number (for those who wish to call into the meeting).
2. **Join the meeting early**, as you may need to download the app in advance to participate. Once you've joined the meeting, your camera and microphone will be muted until you are recognized by the Mayor to speak.
3. Please note that there may be several items on the City Council Agenda that will precede the agenda item you wish to address.
4. **The Mayor will identify the agenda item** and ask if anyone wishes to speak on the matter.
5. Any interested person may provide comments: 1) under Item 7 on non-agenda items, or 2) on any listed agenda items. If you wish to speak, you must:
 - a) **Raise your "virtual hand"** in the corner of Zoom application on the computer screen or press *9 on your phone. Raising your hand signals the moderator that you wish to speak.
 - b) **Wait to be called upon by the Mayor** using your name, e-mail, or phone number used to log in to the teleconference.
6. **Please state your name, address, and whether you are representing only yourself or others.**

PROCEDURE FOR IN-PERSON PARTICIPATION (COUNCIL CHAMBERS)

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

PUBLIC COMMENT RULES FOR ALL MEETING PARTICIPANTS

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

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

CONSENT AGENDA

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

AGENDA ITEMS

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

PUBLIC HEARINGS

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

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

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

Study Session

[New Revenues and Outside Funding Request from Rodeo Board and Kittitas County](#)
[No Public Comment] 7
[Revenue Options Matrix 2023](#)

Pledge of Allegiance

1. Call to Order and Roll Call

2. Proclamations

- 2.A Native American Heritage Month [Public Comment Opportunity] 13
[Native American Heritage Month Proclamation](#)
- 2.B Veterans Day Proclamation [Public Comment Opportunity] 14
[Veterans Day Proclamation 2022](#)
- 2.C International Men's Day [Public Comment Opportunity] 15
[International Men's Day Proclamation](#)

3. Awards and Recognitions

4. Approval of Agenda [No Public Comment]

5. Consent Agenda [No Public Comment]

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

- 5.A Approve Minutes of October 17, 2022 Regular Meeting 16
[10-17-22 Regular Meeting](#)
- 5.B Acknowledge Minutes of Boards and Commissions 21

EBDA/CenterFuse 9-21-22
Environmental Commission 8-17-22
Planning Commission 8-25-22
Planning Commission 9-22-22
Public Transit Advisory Committee 7-19-22
Utility Advisory Commission 9-15-22
Utility Advisory Commission 10-10-22

5.C Approve University Way Banner Request for Kittitas County 4-H September 25 -
October 8, 2023 34
Kittitas County 4-H - 2023 Request

5.D Ellensburg Reservoir Siting Study Professional Services Agreement 35
Ellensburg Reservoir Siting Study Agreement

5.E Craig's Hill Pressure Zone Improvements Agreement for Professional Services 55
Ellensburg Craig Hill Agreement

5.F Grant Agreement for Ellensburg Fiber Extension and Fixed Wireless Broadband
Federal Capital Agreement - Grant Award 76
WSBO Grant Match Award Letter

5.G Approval of the Sun Life Stop-Loss Policy for Plan Year 2023 117
SunLife Stop Loss Renewal-010123

5.H Approve November 7, 2022 Voucher Listing 122
11-7-22 Voucher Listing

6. Petitions, Protests, and Communications

6.A Ellensburg School District Update by Superintendent Haberer [Public Comment
Opportunity]

6.B Memorandum of Understanding Between the City of Ellensburg, Ellensburg School
District, and Central Washington University [Public Comment Opportunity] 123
MOU City ESD CWU Belonging

6.C Website Redesign [Public Comment Opportunity]

7. Citizen Comment on Non-agenda Issues

8. Business Requiring Public Hearings

8.A Public Hearing (Legislative) for Proposed 2023 Property Tax Levy Ordinance (First
Reading) [Public Comment Opportunity] 126
Ordinance 4899 - 2023 Property Tax Levy (First Reading)

8.B Public Hearing - Preliminary 2023/2024 Biennial Budget [Public Comment Opportunity]	130
2023-2024 Budget Message	
Preliminary 2023-2024 Budget - Enhancements & Capital Project List	
Preliminary 2023-2024 Budget by Fund	

9. Introduction and Adoption of Ordinances and Resolutions

9.A Second Reading and Adoption of Ordinance 4898 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]	149
4898 (Second Reading)-Charter Cable TV Franchise Renewal	
9.B Resolution 2022 -36 Updating the Personnel Policies for the City of Ellensburg [Public Comment Opportunity]	184
RESOLUTION - 2022-36 - Personnel Policy Update - Remote Work	
Exhibit A - Remote Work Policy	
9.C Resolution 2022-37 to Reject All Bids for Bid Call No. 2022-20 Pad-Mounted Switch Cabinets [Public Comment Opportunity]	192
Resolution 2022-37 Rejecting All Bids for Bid Call 2022-20	

10. Unfinished Business

11. New Business

11.A 2022 Third Quarter Financial Status and Investment Reports 3rd Quarter 2022 Financial Status Report [Public Comment Opportunity]	195
3rd Quarter 2022 Investment Report	

12. Miscellaneous

12.A Manager's Report [No Public Comment]	211
11-7-22 Managers Report	
Letter to BOCC Re .09 Sales Tax Funds	
World Cafe	
12.B Councilmembers' Reports [No Public Comment]	

13. Executive Session

14. Adjournment

Next Ord. 4900
Next Res. 2022-38



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: New Revenues and Outside Funding Request from Rodeo Board and Kittitas County

Submitted by: Heidi Behrends Cerniwey City Manager Department

Recommended Action or Motion: Review revenue options and discuss City response to Kittitas County Board of Commissioners (BOCC).

Background/Summary: At the May 2, 2022 City Council Study Session, Kittitas County staff Kady Porterfield and Patty Stacey; along with Brian Twardoski and Carl Jensvold of the Ellensburg Rodeo Board, and Kittitas County Commissioner Wachsmith, reviewed the urgent need for capital improvements at the Kittitas Valley Event Center (KVEC). At that time, they also requested a commitment from the City to partner to fund those capital improvements with an estimated annual debt service. The City's portion was estimated to be \$250,000. Council took no action at that time.

Previous Council Action: The City of Ellensburg participated in previous phases of improvements to the Kittitas Valley Event Center through dedicated Lodging Tax funding for debt service.

Analysis: KVEC Ellensburg Rodeo activities have a positive economic impact in Ellensburg. Maintaining safe and attractive facilities to enhance local recreation and tourism activities is also important for continued success. At the study session, the Council will review a series of revenue options to support facility improvements, including a commitment to opt out of requests for future Distressed County Sales and Use Tax (.09%) Funding for a period of ten (10) years.

Financial Impact: A matrix of revenue options will be reviewed at the study session along with a draft letter to the BOCC. The letter will be considered during the Manager's Report at the regular Council meeting on November 7, 2022.

Attachments:

Revenue Source	Eligible cities	Description	Voter approval?	RCW	Estimated Annual Amount
Public Facilities District (PFD)	Any city	Any city may form a PFD to construct, operate, or maintain “regional centers” (independent taxing district) whose construction or operating costs are at least \$10 million. Revenue sources include sales taxes, user fees, admission and parking taxes, and bonds.	Some revenue sources require voter approval	35.57.020	0.2% sales tax; User charges and fees; Admissions Tax up to 5%; Parking Tax; Bonding capacity, etc.
Lodging Tax	Any city	Most cities may impose a tax up to 4% on the sale of short-term lodging less than 30 days, of which 2% is a credit against the state sales tax. Revenues must generally be spent for tourism promotion but may also be used to repay debt for affordable workforce housing near transit stations.	No	67.28.180 and 67.28.181(1)	2023 est. - 686K 2022- 531K (Oct) 2021 – 517K 2020 – 353K 2019 – 578K 2018 – 530K 2017 – 552K
Tourism Promotion Area (TPA)	Any city	Charges up to \$2 per room per night. Effective June 11, 2020 to July 1, 2027 the city/town may impose an additional fee up to \$3 per room per night. Only applies to lodging businesses with 40 or more rooms. May establish up to six different lodging classifications, with different rates in each. Revenues must be used for tourism promotion to increase the number of tourists to the area.	Does not require voter approval but requires support from local lodging businesses and may be repealed if a majority of lodging businesses submit a written petition	35.101.010 35.101.130	Room charge

Revenue Source	Eligible cities	Description	Voter approval?	RCW	Estimated Annual Amount
REET 2	Cities fully planning under Growth Management Act (GMA)	Additional excise tax of 0.25% on real estate sales. May be used for certain capital transportation, water/storm/sewer, and park capital purposes listed in the city's capital facilities plan (CFP). May also be used for limited REET 1 purposes or capital facility maintenance, with additional reporting requirements. Use of revenues is somewhat more restrictive than REET 1.	No, except for voluntary GMA cities	82.46.035(2)	REET 1 actual/est. 2023 est. – 380K 2022 – 490K (Oct) 2021 – 398K 2020 – 286K 2019 – 367K 2018 – 294K 2017 – 388K
.09 Distressed County Sales Tax		Authorized through 2032	No		County-wide \$1.5 million (2023)
Business and Occupation (B&O) Taxes	Any city	Tax upon local businesses, usually measured by the value of products or gross income/proceeds. Revenues are unrestricted.	No, except for retail businesses if rate exceeds 0.2% of gross receipts/ income	35.21.710	Currently have B&O tax on utilities
Admission Tax	Any city	Tax of up to 5% of the admission charge for various facilities and events. Revenues may generally be used for any lawful governmental purpose.	No	35.21.280	2023 est. – 105K 2022 – 97K (Oct) 2021 – 41K 2020 – 39K 2019 – 103K 2018 – 90K 2017 – 101K

Revenue Source	Eligible cities	Description	Voter approval?	RCW	Estimated Annual Amount
Business Licenses/Head Taxes	Any city	Normally business license fees are designed to recoup administrative costs only, but some cities generate revenue through variable business license fees based on criteria such as number of employees, hours worked, type of business, or square footage. Revenues may be used for any lawful governmental purpose.	No	35.22.280(32) 35.23.440(8) 35A.82.020 35.27.370(9)	2023 est. – 65K 2022 – 60K (Oct) 2021 – 70K 2020 – 58K 2019 – 59K 2018 – 55K 2017 – 63K
Affordable Housing Sales Tax Credit (HB 1406)	Any city that enacted its HB 1406 ordinance by July 27, 2020	20-year credit of either 0.0073% or 0.0146% against the state sales tax, depending on whether city has a “qualifying local tax” in place. Revenues may be used for affordable and supportive housing; cities under 100,000 population may also use revenues for rental assistance.	No	82.14.540	2023 est. – 86K 2022 – 71K (Oct) 2021 – 88K 2020 – 80K
Metropolitan Park District (MPD)	Any city	To manage, control, improve, maintain, or acquire park and recreation facilities. The formation of an MPD requires voter approval with a simple majority vote. MPDs are funded primarily by a regular property tax levy up to \$0.75 per \$1,000 assessed value, which is approved as part of the initial ballot measure establishing the district.	Yes	35.57.020	Maximum levy rate yields est. - 1.58 million annually

Revenue Source	Eligible cities	Description	Voter approval?	RCW	Estimated Annual Amount
Cultural Access Program (CAP) Levy	Any city, as long as county has not imposed this levy first	Property tax levy up to 7 consecutive years for nonprofit cultural organizations. Levy amount may not exceed 0.1% of taxable retail sales; may not be imposed concurrently with CAP sales tax.	Yes – simple majority	84.52.821, chapter 36.160	
Cultural Access Program (CAP) Sales Tax	Any city, as long as county has not imposed this levy first	Sales tax of up to 0.1% and 7 consecutive years for nonprofit cultural organizations; may not be imposed concurrently with CAP levy.	Yes – simple majority	82.14.525, chapter 36.160	Based on .1% rate: 2023 est. – 706K 2022 – 601K (Oct) 2021 – 680K 2020 – 595K 2019 – 598K 2018 – 353K



City of Ellensburg

PROCLAMATION

Native American Heritage Month
November 2022

Whereas, in 1990, President George H. W. Bush declared the month of November as National Native American Heritage Month; and

Whereas, the United States currently recognizes 574 American Indian and Alaska Native tribes, of which twenty-nine are located in Washington State; and

Whereas, as the first to live on this land, Native Americans and their traditions and values inspired-and continue to inspire - the ideals of self-governance, determination, and care for the earth; and

Whereas, the Confederated Tribes and Bands of the Yakama Nation settled on approximately ten million acres of land forming what is now known as Central Washington State; and

Whereas, the City of Ellensburg recognizes and honors the descendants, living or not, of all Native Nations residing herein and contributing to the strength and vibrance of a diverse community; and

Whereas, the City of Ellensburg adopted a "Land Acknowledgment Statement" in 2022 recognizing the land on which we are located as ceded land of the Yakama Nation.

Now, Therefore, the City Council of the City of Ellensburg does hereby proclaim November 2022 as Native American Heritage Month in Ellensburg and asks all residents to join in this observance by building bridges of understanding and friendship with members of the Yakama Nation and all of our Native American neighbors.

Signed this 7th day of November, 2022.

Nancy Lillquist, Mayor

Attest: _____
City Clerk



PROCLAMATION

VETERANS DAY PROCLAMATION

Whereas, in 1954 President Dwight D. Eisenhower, first proclaimed November 11 as Veterans Day, calling on Americans to solemnly remember the sacrifices of all those who fought so valiantly, on the seas, in the air, and on foreign shores, to preserve our heritage of freedom; and

Whereas, President Eisenhower asked Americans to commit ourselves to the task of promoting peace so that our Veterans efforts shall not have been in vain; and

Whereas, the members of our armed forces continue to be an inspiration to all of us through their demonstration of courage, leadership and commitment in service to our community and country; and

Whereas, communities across the nation participate in Operation Green Light for Veterans to shine a green light on November 11 to honor the service and sacrifice of veterans; and

Whereas, the greatest acknowledgement of our freedom is to honor our armed forces veterans who have sacrificed and, in many instances, paid the ultimate price for our freedom.

Now, Therefore, the City Council of the City of Ellensburg proudly joins Kittitas County and the rest of our nation to shine a green light at City Hall on November 11 and to salute and give special honor and recognition to those who served us in our armed forces and encourages all residents to promote peace.

Dated this 7nd day of November 2022,

Mayor Nancy Lillquist

Attest: _____
City Clerk



City of Ellensburg

PROCLAMATION

International Men's Day

Whereas, November 19 is International Men's Day, a day to celebrate men's positive contributions to their communities and families and to bring attention to social problems disproportionately impacting men; and

Whereas, striving toward gender equity includes concern for all gender-based disparities, including those impacting men; and

Whereas, according to the Ellensburg Police Department, fourteen of seventeen people who died by suicide in Ellensburg between 2015 and 2022 to date have been male; and

Whereas, according to national 2018 Point-in-time census, men are the majority of individuals experiencing homelessness (70 percent) followed by women (29 percent); and

Whereas, life expectancy for men in America is lower than women, 74.2 for men and 79.9 for women (2020); and

Whereas, according to Washington State Department of Employment Security, there were substantial differences in gender ratio by industry in Kittitas County (2020); male-dominated industries included transportation and warehousing (84.1 %), construction (82.2 %) and wholesale trade (71.2 %); and female-dominated industries included finance and insurance (75.4 %), health care and social assistance (75.3 %), and professional, scientific and technical services (62.8 %); and

Whereas, organizations and governments should continue to innovate the manner in which they design and deliver support services and resources to account for the unique needs and problems of men; and

Whereas, the City of Ellensburg recognizes and honors all men who contribute to the strength, vibrancy, and leadership of our City as we strive to be a place where each person can reach their full potential.

Now, Therefore, the City Council of the City of Ellensburg does hereby proclaim November 19, 2022 as International Men's Day in Ellensburg and encourages all community members to join in this observance.

Nancy Lillquist, Mayor

Attest: _____
City Clerk



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes of City Council, Regular Meeting

October 17, 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 Helen Doughtry with Girl Scout Troop 4020

1. Call to Order and Roll Call

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

Also present in person: City Manager Behrends Cerniwey, City Attorney Weiner, City Clerk Leader, Public Works & Utilities Director Lyyski, City Engineering Services Manager Mayo, Stormwater Manager Morrow, HR Director Young, Assistant Public Works Director Helgeson, Wastewater Treatment Facility staff Brad Coffey and Chris Holmes and approximately five members of the public

Also present remotely via Zoom: two members of the public

2. Proclamations

3. Awards and Recognitions

Ryan Lyyski, Public Works and Utilities Director, introduced Coleman Miller with Department of Ecology, who presented an Outstanding Wastewater Treatment Plant 2021 Award to city staff.

4. Approval of Agenda

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

5. Consent Agenda

5.A. Approve Minutes of October 3, 2022 Regular Meeting

5.B. Approve Minutes of October 3, 2022 Study Session

5.C. Acknowledge Minutes of Boards and Commissions

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

-
- 5.E. Consultant Agreement - Brick Road Improvements Design
 - 5.F. Approve Lodging Tax Banner Project Recommendation and Budget Adjustment
 - 5.G. Award Bid Call 2022-18 Distribution Transformers
 - 5.H. Project Acceptance – Bid Call No. 2020-35 - Helena Avenue Complete Streets Improvements Project
 - 5.I. Official Newspaper Contract Bid Award
 - 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)
 - 5.K. Amendment 1 to Interlocal Cooperation Agreement with NoaNet
 - 5.L. Approve University Way Banner Request by Air Force ROTC for November 7-13, 2022
 - 5.M. Approve October 17, 2022 Voucher Listing

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

6. Petitions, Protests, and Communications

7. Citizen Comment on Non-agenda Issues

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. The Mayor opened the public hearing. Terry Weiner, City Attorney, presented information in the staff report.

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

Councilmember Elliott moved to Approve first reading of Ordinance 4898. **Motion Approved 7-0.**

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 Ryan Lyyski, Public Works and Utilities Director, presented information in the staff report.

Mayor Lillquist suggested public notification of the utility rate increases.

Councilmember Elliott moved to Approve conducting second reading and adoption of Ordinance 4897. **Motion Approved 7-0.**

9.B. Resolution 2022-33 to Extend Streatery Permits

Terry Weiner, City Attorney, presented information in the staff report.

Councilmember Beauchamp recused herself from discussion of the item.

Councilmember Goodloe moved to Approve adoption of Resolution 2022-33. **Motion Approved 6-0. (Councilmember Beauchamp abstained)**

9.C. Resolution 2022-34 Authorizing the Acquisition of Real Property (701 N. Pacific St. Ellensburg, WA)

Derek Mayo, City Engineering Manager, presented information in the staff report.

Councilmember David Miller inquired whether the Resolution should be amended to change the purchase amount from \$245,000 to \$247,000.

Councilmember Elliott moved to Approve adoption of amended Resolution 2022-34 to include amendment of the dollar amount to \$247,000. **Motion Approved 7-0.**

9.D. Resolution 2022-35 Amending Previous Resolutions 2021-36 and 2022-18 Regarding the Non-Union Pay Plan for Fiscal Year 2022

Lisa Young, HR Director, presented information in the staff report.

Councilmember Elliott moved to Approve adoption of Resolution 2022-35. **Motion Approved 7-0.**

10. Unfinished Business

11. New Business

11.A. Professional Consultant Services Agreement for Unity Park Design and Documentation Services

Brad Case, Parks & Recreation Director, presented information in the staff report. He also acknowledged and thanked Karissa Witthuhn for her assistance with the project.

Councilmember David Miller moved to Approve authorizing 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. **Motion Approved 7-0.**

11.B. Sustainability & Energy Plan Consultant's Scope, Schedule, and Agreement
Buddy Stanavich, Power & Gas Manager, presented information in the staff report.

Councilmember David Miller moved to Approve authorizing the City Manager's signature on the Professional Services Agreement between the City of Ellensburg and McKinstry Essention, LLC. **Motion Approved 7-0.**

12. Miscellaneous

12.A. Manager's Report

The City Manager reviewed the report. She added information regarding the Bureau of Reclamation Shaake property tour; delay of City Park closures due to warm weather and reminders of Coffee with Council and the Ellensburg Academy

12.B. Councilmembers' Reports

- Councilmember Winn reported on Lodging Tax grant proposals
- Councilmember Monica Miller attended the Parks & Recreation Commission meeting
- Councilmember David Miller participated in the Council funded grant subcommittee, reported on a Planning Conference he recently attended and acknowledged the passing of former Councilmember, Larry Nickel
- Councilmember Goodloe attended Homelessness & Affordable Housing Committee, Utility Advisory Committee and DEI Commission meetings
- Councilmember Elliott attended a KITTCOM Board meeting, and reported on the upcoming KCCOG meeting and EBDA/Centerfuse meeting
- Councilmember Beauchamp attended the Affordable Housing Commission, Library Board, Developmental Disabilities Board, and Senior Citizen Advisory Committee meetings
- Mayor Lillquist reported on Homelessness & Affordable Housing Committee and reported the Railroad property on 5th Avenue was no longer being considered for a sleep center. She volunteered to serve on the Ad Hoc Homelessness Committee. She requested approval by Council for the Mayor's signature on a Department of Natural Resources budget support letter and a plastic producer responsibility letter.

Councilmember David Miller moved to Approve the Mayor's signature on the letter to Governor Inslee for support of the DNR budget request. **Motion Approved 6-0.**
(Councilmember Elliott abstained)

Councilmember Goodloe moved to Approve the Mayor's signature on the letter for plastic waste producer responsibility. **Motion Approved 7-0.**

Mayor Lillquist mentioned the Ellensburg Rodeo 100 Year Celebration and wanted to discuss what the City's involvement would be. Councilmembers Goodloe and Elliott and Mayor Lillquist will serve on a subcommittee to evaluate the City's involvement. She also reported on a meeting she attended with residents concerning Mercer Creek.

13. Executive Session

14. Adjournment

Meeting adjourned at 8:13 pm

Mayor

ATTEST:

City Clerk



Centerfuse

Ellensburg Business Development Authority

BOARD OF DIRECTORS MEETING MINUTES

Regular meeting held synchronously in-person and virtually

Wednesday, September 21, 2022

4:00-5:30 PM

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

Absent: Andreas Bohman, Vice Chair

Others present: Rich Elliott, Ellensburg City Council liaison; Bill Swan, Principal FIT HR; and Margaret Reich, Executive Director

1. Meeting Called To Order

The Chair called the meeting to order at 3:59 PM

2. Approval of Agenda

Chair Poshusta asked if there were any revisions to the agenda. Executive Director Reich requested to add to the agenda the result of the consultant responses to the non-residential inventory RFP.

Motion to approve the September 2022 meeting's agenda as amended by John Perrie, second by Del Bankston. Motion approved by unanimous vote.

3. Approval of Minutes

Motion to approve the August 2022 regular meeting minutes by Grant Clark, second by James Jankowski. Motion approved by unanimous vote.

4. Public Comment

None.

5. Board Business

a. Organizational Effectiveness

Grant Clark, Treasurer presented the financial reports.

Executive Director Reich updated the board on the status of the two Community Economic Revitalization Board (CERB) grant applications presented to the CERB Board Sept. 15th; and provided information from the Chamber regarding their two Small Business Innovation Fund grant applications, and a draft city of Ellensburg interagency agreement.

Executive Director Reich reminded the board that the two CERB grant applications required a motion to accept funds and authorize staff to sign grant contracts.

Motion to accept the \$50,000 grant funding from Community Economic Revitalization Board (CERB) Planning Grant Program along with cash match of \$12,500 for the Wood Products Feasibility Study and authorize staff to proceed with submitting grant award documents by Del Bankston, second by James Jankowski. Motion approved by unanimous vote.

Motion to accept the \$50,000 grant funding from Community Economic Revitalization Board (CERB) Planning Grant Program along with cash match of \$12,500 for the I-90 West Interchange Private Development Study and authorize staff to proceed with submitting grant award documents by Grant Clark, second by Jared Vallejo. Motion approved by unanimous vote.

Executive Director Reich presented resolution 2022-7 directing staff to pursue a grant application to the Kittitas County's Sales & Use Tax Public Facilities Distressed County Sales and Use Tax Grant Program in the minimum amount of \$72,000 with a commitment of ten percent local cash match by the October 7, 2022.

Motion to submit and sign a grant application to the Kittitas County's Sales & Use Tax Public Facilities Distressed County Sales and Use Tax Grant Program for a minimum of \$72,000 and ten percent cash match by Grant Clark, second by John Perrie. Motion approved by unanimous vote.

Bill Swan, Principle at FIT HR, is performing the CenterFuse staffing study. Bill provided a progress report on his work to date. His recommendation is to make the current Executive Director position fulltime and to add a second staff position.

Motion to proceed with the staffing study recommendation to create two positions by John Perrie, second by James Jankowski. Motion approved by unanimous vote.

b. Build Local Capacity

The countywide economic development plan is holding a meeting in October for Economic Development Organizations. Staff has learned that the Washington Commerce Building for the Arts grant proposal, prepared by staff on behalf of the Clymer Foundation, is included in the Commerce funding requests being sent to the Governor. CenterFuse received one response to the non-inventory buildings and land RFP and staff is proceeding with the awarding the professional services contract.

Board members shared information and thoughts about the September 6th Ellensburg City Council meeting. Councilmember Elliott indicated the past two CenterFuse presentations were very well received by Ellensburg City Council. There were also discussions about the recent Ellensburg utility rate study and its potential to adversely impact business development. The board directed staff to prepare a response to the proposed study recommendation as it places Ellensburg in a competitive disadvantage, and to prepare budgetary requests for city council. The second reading for the



adjustment of building permit fees for buildings valued over \$500,000 passed at the September 6th council meeting and will go into effect soon.

c. **Marketing**

The board encouraged staff to pursue getting the word out about CenterFuse's many accomplishments. Staff will work with the Marketing Advisors to do so. A new website analytics template was shared.

d. **Business Recruiting**

The prospective large distribution center submitted a request to the Washington State Governor to receive an award of funds from the Governor's Strategic Reserve Fund.

6. **For the good of the order**

A process for 2023 strategic planning was shared. The October 12th board meeting will be devoted to strategic planning.

7. **Adjournment** – time 5:26 Motion to adjourn by Del Bankston

Drafted: 9/26/2022

Approved: *Del Bankston*

Submitted by: Margaret Reich





ELLENSBURG ENVIRONMENTAL COMMISSION

**August 17, 2022 Regular Meeting
(5:15 p.m. to 5:45 p.m.)
Hybrid Meeting In-Person and Zoom**

Members Present: Christina Wollman, Daphne Condon, Andrea Sledge, and Raven Harlin

Members Absent: Kristine Steinkoenig (excused), Steve Luten (excused), Jean Marie Linhart (excused)

Also present: Laura Wilson, Recording Secretary

CALL TO ORDER

Commissioner Wollman called the meeting to order at 5:15 p.m.

AGENDA

The agenda was acknowledged with no changes.

MINUTES

Commissioner Wollman moved to approve the June 15, 2022 and July 20, 2022 regular meeting minutes. Commissioner Condon seconded the motion. The motion passed with all in favor.

CITIZEN COMMENT

There was no citizen comment.

NEW BUSINESS

P22-016 Judge Ronald Road Short Plat SEPA

Council Member Winn recused himself from the discussion. Planner Wilson presented the Foster North Subdivision SEPA. The commission discussed the number of lots, critical areas present, vegetation, and possible bike lanes.

BICYCLE ADVISORY

Commissioner Harlin stated the Oddfellows had quite a few bikes to donate and told the commissioners to spread the word around.

STAFF UPDATE/DISCUSSION ITEMS

Commissioner Condon stated she is moving out of state and is resigning from the commission. Commissioner Wollman stated she will be absent from the September meeting. Mrs. Wilson reminded the commission that Commissioner Steinkoenig will also be absent from the September meeting.

ADJOURNMENT- The meeting adjourned at 5:45 pm.



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes Planning Commission, Regular Meeting

August 25, 2022

5:45 PM

Council Chambers 501 North Anderson Street

Ellensburg, WA 98926

And remotely via Zoom

1. Call to Order

2. Roll Call

Roll Call Present In-Person: Fred Padjen, Ed Harrel, Sigrid Davison, George Bottcher

Roll Call Present-Via Zoom:

Absent: Geraldine O'Mahony, Sathy Rajendran (excused)

Also present: Jamey Ayling, Community Development Director, Chelsea Benner, Department of Ecology (Zoom), Delano Palmer, Citizen

3. Approval of Agenda

Commissioner Harrel moved to Approve the Agenda. **Motion Approved 4-0.**

4. Approval of the Minutes

Approval of Minutes of the August 11, 2022, Planning Commission Meeting

Commissioner Harrel made a motion to approve the minutes from August 11, 2022. **Motion Carried 4-0.**

5. New Business

A. Open Record Public Hearing to consider updates to the Shoreline Master Program

Ayling presented staff report. Levy maintenance is the responsibility of Public Works. Open to public. No public comments. No questions or discussions from Commission. Commissioner Harrel made a motion to recommend approval of the updates to the Shoreline Master Program as presented by staff. **Motion Carried 4-0.**

B. Discuss building permit fee table and proposed amendments

Valuation fees of other jurisdictions was shown by staff. Staff proposed an additional column be added to the valuation table for over \$1,000,000. Proposed base fee

change and dollar amount for each additional \$1,000 or fraction thereof valuation was presented. The required State Building fee has been increased by the State and staff proposed removing the specific fee amount. Ayling proposed to add a provision to the fee table of double permit fees when contractors start building without a permit. The fee will be at the discretion of the Building Official to assess on a case- by-case situation. The International Building Code has adopted this in code, but Community Development as not added a line item to fee table. The Commission consensus is an agreement to move forward with the presented changes.

6. Old Business

A. Discussion of Sign Code Revisions

A redline version with corrections was presented and discussed. A Public Meeting will be held and then a recommendation be made to City Council. The Commission agrees with the sign code revisions.

7. Citizen Comment

8. Staff update/Discussion Items

A. Commissioner Davison stated that she would like to see a community reader board that mentions upcoming City and County events for residents.

9. Commission Representative Update

10. Adjournment

Chairman Padjen adjourned the meeting at 6:47 p.m.
Next meeting September 8, 2022, 5:45 p.m.



CITY OF ELLENSBURG

Date of Meeting

Time of Meeting

Place of Meeting

Minutes Planning Commission, Regular Meeting

September 22, 2022

5:45 PM

Council Chambers 501 North Anderson Street

Ellensburg, WA 98926

And remotely via Zoom

1. Call to Order

2. Roll Call

Roll Call Present In-Person: Fred Padjen, Ed Harrel, Sathy Rajendran

Roll Call Present-Via Zoom: Sigrid Davison, Geraldine O'Mahony

Absent: George Bottcher (excused)

Also present: Jamey Ayling, Community Development Director, Delano Palmer, Citizen

3. Approval of Agenda

Commissioner Harrel moved to Approve the Agenda. **Motion Approved 5-0.**

4. Approval of the Minutes

Approval of Minutes of the August 25, 2022, Planning Commission Meeting

Commissioner Harrel made a motion to approve the minutes from August 25, 2022. **Motion Carried 5-0.**

5. New Business

A. Open Record Public Hearing to consider amendments to the Sign Code

Director Ayling presented staff report. Chapter 3.12 Section F Banner was researched and marked up. Section F was the only change since the last meeting. No public comments were received. Staff recommend that the Planning Commission consider and approve these conditions. No public testimony. Commissioners had discussion. Commissioner Rajendran moves to recommend approval of sign code changes and send to the City Council for approval. **Motion Carried 5-0.**

6. Old Business

7. Citizen Comment

8. Staff update/Discussion Items

Delano Palmer will be interviewed for Planning Commission Commissioner on 9/22/22.

Planning Commission October 27th meeting will need to be held for public hearing of Annexation of I O O F and Motel 6 Conditional Use Permit.

Community Reader board was discussed. Locations were mentioned.

9. Commission Representative Update

Council liason has changed to Adam Winn

10. Adjournment

Chairman Padjen adjourned the meeting at 6:08 p.m.
Next meeting October 6, 2022, 5:45 p.m.

PUBLIC TRANSIT ADVISORY COMMITTEE MEETING MINUTES

City of Ellensburg
Date & Time of Meeting
Place of Meeting

Minutes of PTAC Meeting
July 19, 2022 3:30 PM
Hybrid Meeting

1. Call to Order and Roll Call

Roll Call Present: Bruce Tabb, Christopher King, Josh Hackney, Joey Bryant, Joe Burke, Yngrid Winter, Bob Mersinger

Roll Call Absent: 0

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

2. Approval of Agenda

- Motion by Bob Mersinger to approve the July 19, 2022 PTAC Meeting Agenda.
Motion Affirmed by all.

3. Follow Up Items

- Gregg Schlanger with CWU Arts Dept will put the call out for the bus shelter artwork at the start of the fall quarter. Gregg will also assign a graphic design intern to create a flyer.

4. Ridership Stats

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

5. Agenda Items

- The 2022 – 2027 Transit Development Plan and the 2021 Annual Report was reviewed by the committee.
- Motion by Joey Bryant to adopt, with minor edits, the 2022 – 2027 Transit Development Plan and the 2021 Annual Report.
Motion Affirmed by all.
- The 2022 – 2027 Transit Development Plan will be presented to the City Council August 15th, 2022.

6. Transit Marketing Updates

- Current and planned advertising was shared.

7. Transit Updates

- HopeSource will let the city know when they are able to begin the Enhanced Cabulance service. The delay is due to the lack of drivers.

PUBLIC TRANSIT ADVISORY COMMITTEE MEETING MINUTES

- Grant funding award was shared with the committee.
- Images of the new transit amenities, including a new bus shelter and several ADA landings was shared with the committee.

9. Approval of Minutes

- Motion by Joey Bryant was made to approve the minutes of the May 17, 2022 PTAC Meeting. **Motion Affirmed by all**

10. Next PTAC Meeting:

The next regular PTAC meeting will be held on August 16, 2022.

11. Adjournment:

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

Betsy Dunbar

Drafted: 7-20-2022

Approved: 10-18-2022



CITY OF ELLENSBURG

Utility Advisory Committee

Date of Meeting

September 15, 2022

Time of Meeting

3:30 PM

Place of Meeting

Council Chambers & remotely via Zoom

Nancy Goodloe, Chairperson, term expires May 31, 2024

Ed Barry, Vice Chairperson, term expires May 31, 2023

Nancy Lillquist, City Council, term expires May 31, 2025

Scott Carlson, CWU, term expires May 31, 2025

Bryan Clark, KITTCOM, term expires May 31, 2023

Jim Goeben, Telecommunications Utility customer, term expires May 31, 2023

Nate Sitton, City Utility Customer, term expires May 31, 2023

1. CALL TO ORDER

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

2. ROLL CALL

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

Also present: Ryan Lyyski, Public Works & Utilities Director; Kim Bowie, Operations Analyst; Darin Yusi, Gas Engineer (Zoom); Buddy Stanavich, Power & Gas Manager; Ben Faubion, IT; Jon Morrow, Stormwater Manager.

Others present remotely via Zoom.

3. APPROVAL OF MINUTES

3.A. Approve minutes - July 21, 2022 regular meeting minutes

Committee member Barry moved to approve the minutes. **Motion approved. 7-0**

4. APPROVAL OF CONSENT AGENDA

Consent items have been distributed to committee members 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 committee member or at the request of a member of the public with concurrence of a committee member.

4.A. Illinois Well Facility Contract Change Order #2

Committee member Lillquist moved to approve the consent agenda. **Motion approved. 5-0**

5. CORRESPONDENCE AND CITIZEN COMMENTS ON NON-AGENDA ITEMS

Sylvia Shriner spoke via virtual appearance about the possible gas extension to the Foster North development.

6. TELECOMMUNICATIONS UTILITY DISCUSSION ITEMS

6.A. Telecommunications Issues and Updates

Ben Faubion shared telecommunications updates.

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

7.A. Annual Natural Gas Safety Survey

Committee member Lillquist move the committee to perform the annual natural gas safety survey in-house using public awareness funds not to exceed \$1,000 for survey incentives.

Motion approved. 5-0

7.B. 2023-2024 Stormwater Utility Rate Discussion

Committee member Barry move the committee forward a favorable recommendation to City Council for adoption of ordinance with increased rate structure. **Motion approved. 5-0**

8. INFORMATIONAL ITEMS

8.A. Digital Advertising Campaign

Darin Yusi presented the results of a digital advertising campaign completed by Viamedia.

8.B. Public Works & Utilities Issues and Updates

Department updates were shared.

9. NEXT MEETING

9.A. October 20th, 2022 at 3:30 pm

10. ADJOURNMENT

With no further discussion, the meeting adjourned at 4:19 pm.

Kim Bowie

Recording Secretary

Drafted: 9/16/2022

Approved: 10/20/2022



CITY OF ELLENSBURG

Utility Advisory Committee Special Meeting

Date of Meeting

October 10, 2022

Time of Meeting

2:00 PM

Place of Meeting

Council Chambers

1. CALL TO ORDER & ROLL CALL

Chairperson Goodloe called the meeting to order at 2:00 pm.

Members present: Nancy Goodloe, Chair; Nancy Lillquist, City Council; Ed Barry, Vice Chair; Scott Carlson, CWU (Zoom). Nate Sitton, City Utility Customer (absent).

Also present: Ryan Lyyski, Public Works & Utilities Director; Kim Bowie, Operations Analyst; Buddy Stanavich, Power & Gas Manager; Derek Mayo, Engineering Services Manager; Julie Coppock, Rate Analyst; Terry Weiner, City Attorney.

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

2. Sustainability & Energy Plan - Consultant's Scope, Schedule & Agreement

2.A Sustainability & Energy Plan Consultant's Scope, Schedule, and Agreement

Nancy Lillquist referenced a letter submitted for public comment on October 10, 2022.

Committee member Barry moved to forward 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 not to exceed the budgeted amount of \$200,000.

Motion approved. 4-0.

3. ADJOURNMENT

With no further discussion, the meeting adjourned at 2:14 pm.

Kim Bowie

Recording Secretary

Drafted: 10/11/2022

Approved: 10/20/2022

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: Kittitas County 4-H

Contact Person: Amy Alder

Phone Number: 962-7565

Banner Hang Dates (Monday-Sunday): 09/25/23-10/09/23

- 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)



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: _____



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: Ellensburg Reservoir Siting Study Professional Services Agreement

Submitted by: Josh Mattson Public Works & Utilities

Recommended Action or Motion: Authorize the City Manager's signature on the Ellensburg Reservoir Siting Study Agreement for Professional Services between the City of Ellensburg and HLA Engineering and Land Surveying, Inc.

Background/Summary: The City of Ellensburg is completing the 2020 Water System Plan. The City's water system is divided into two pressure zone labeled 1740 and 1824. A new water reservoir is required in the existing 1824 Pressure Zone to resolve the projected system storage capacity deficiency noted in this plan. A reservoir siting study is required at this time to determine a suitable location for the future reservoir.

Following the completion of the reservoir siting study, a new 1824 Zone Reservoir near the northern city limits with a usable storage volume of 4.0 million gallons (MG) would be designed and constructed along with a new 1824 Zone transmission water main. City staff reviewed 40 statements of qualifications from firms listed in the Municipal Research and Service Center (MRSC) Consultant Roster under the water system and reservoir professional design categories. Two firms were interviewed and HLA Engineering and Land Surveying, Inc. (HLA) was selected as the most qualified firm. Staff began scope and contract negotiations with HLA for the 1824 Zone reservoir siting study.

The Utility Advisory Committee has forwarded a favorable recommendation to Council to authorize the City Manager's signature on the professional services agreement for this project with HLA.

Previous Council Action: September 16, 2019, Regular Council Meeting - Council authorized the City Manager to execute a Professional

Services Agreement with RH2 Engineering in the amount of \$349,803.00 to perform the 2020 Water System Plan Update and design of the Illinois Well Outfitting.

Analysis:

A new reservoir is required to resolve a projected system storage capacity deficiency as noted in the City of Ellensburg's 2020 Water System Plan which is nearing completion. A reservoir siting study will determine a suitable location for the future reservoir. Design of the reservoir and transmission water main will be completed after preparation of the siting study.

HLA and their subcontractors will accomplish the following project objectives:

1. Provide siting study services including field investigations, analysis of existing private and public utilities, and parcel information for potential sites and water main corridors.
2. Furnish a Final Siting Study to the City for use in determining and selecting the final site.

Financial Impact:

The total cost of this Agreement is \$69,696.00 which will be funded by the Water utility. Adequate expenditure authority exists in the 2022 and proposed Preliminary 2023/2024 Biennial Budget to accommodate these expenditures.

Attachments:

[Ellensburg Reservoir Siting Study Agreement](#)

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF ELLENSBURG
AND
HLA ENGINEERING AND LAND SURVEYING, INC.**

**RELATING TO: RESERVOIR SITING STUDY
 NEW 4.0 MG 1824 ZONE RESERVOIR**

THIS COST PLUS FIXED FEE AGREEMENT is made and entered into this ____ day of _____, 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 HLA ENGINEERING AND LAND SURVEYING, INC., 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 Reservoir Siting Study 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 June 30, 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. Payment shall be on the basis of the CONSULTANT'S standard billing rates multiplied by the actual hours worked, cost for actual labor, overhead and profit plus CONSULTANT'S direct non-salary reimbursable costs for cost plus fixed fee agreements or based on percentage of completed work for lump sum agreements, as set forth in the attached Exhibit C.

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

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

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

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

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

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 \$6,969. 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 13 – 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 \$69,696. 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 D. 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. WORK PRODUCT AND DOCUMENTS.

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

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

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

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

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

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

9.2. The CONSULTANT shall comply with all requirements of applicable

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

10. SUBCONTRACTING.

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

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

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

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

11. SUPERVISION, INSPECTION AND PERFORMANCE.

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

11.2. CONSULTANT represents that it has or will obtain all personnel necessary to perform the Services and that such personnel shall be qualified, experienced, and licensed as may be necessary or required by applicable laws and regulations to perform the Services. All Services shall be performed by CONSULTANT, its employees, or by 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.

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: Josh Mattson, Assistant City Engineer
501 N. Anderson
Ellensburg, WA 98926

HLA Engineering and Land Surveying, Inc.
Michael T. Battle, PE, President
2803 River Road
Yakima, WA 98902

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 – Consultant Labor Costs and Non-salary Reimbursable Costs

Exhibit D – Budget for Each Task

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

CONSULTANT:

By: 

Printed

Name: MICHAEL T. BATTLE, PE

Title: PRESIDENT

Tax ID#: 91-1237183

THE CITY OF ELLENSBURG:

By: _____

Printed

Name: _____

Title: _____

ATTEST: _____

Clerk

Approved as to Form:

City Attorney

EXHIBIT A

SCOPE OF WORK

City of Ellensburg
Reservoir Siting Study – New 4.0 MG 1824 Zone Reservoir
HLA Project No. 22184E

PROJECT DESCRIPTION:

The City of Ellensburg (CITY) desires to construct a new 4.0 MG reservoir near the northeast corner of the water service area at an elevation greater than 1,740 feet, to eliminate dead water storage and provide water to the 1824 Zone. This Study will evaluate suitable locations for a future reservoir based on elevation limitations, Bowers Field airspace requirements, anticipated environmental conditions, estimated land acquisition costs, and overall infrastructure cost.

SCOPE OF SERVICES:

At the direction of the CITY, HLA Engineering and Land Surveying, Inc. (HLA), shall provide professional engineering services for the Reservoir Siting Study project (PROJECT). HLA services shall include the following:

1.0 Siting Study

- 1.1 Provide complete project management to deliver the PROJECT within mutually determined expectations.
- 1.2 Attend kick-off meeting with the CITY to identify and confirm the intent of the study, verify background information, and establish schedule expectations.
- 1.3 Prepare baseline Siting Study schedule for CITY review and comment. Provide monthly project status and schedule updates.
- 1.4 Determine elevation band in the northeast area of the water service area near the elevation of 1,740. Utilize City/County GIS contours and/or Google Earth elevations. Supplement above information with field topographic survey spot elevations if required.
- 1.5 Present elevation band to the CITY and agree on up to eight (8) property locations for further evaluation.
- 1.6 Perform field investigations necessary to confirm conditions of up to eight (8) initial siting locations, including summary and photographs of each site.
- 1.7 Present draft summary of up to eight (8) property locations within the established elevation band and review with the CITY. CITY and HLA to reduce draft list to four (4) properties to continue in the Study.

- 1.8 Provide environmental and geotechnical overview of conditions anticipated at the four (4) selected locations. Summarize anticipated conditions for each location.
- 1.9 Determine Bower's Field airspace impact and requirements associated with each of the four (4) locations.
- 1.10 Determine parcel number, parcel size, owner name, assessed value, anticipated land use modifications, and opinion of property value for each of the four (4) locations. A local real estate agent shall be engaged to assist with current property valuation(s).
- 1.11 Determine estimated infrastructure costs for site access, and 16-inch diameter transmission main necessary to connect the future reservoir to the existing distribution system.
- 1.12 Research and identify existing right of way limits and/or required utility easements for the transmission main.
- 1.13 Determine parcel number, owner name, assessed value, estimated easement area, and opinion of easement value for each transmission main alignment associated with the four (4) reservoir siting locations. A local real estate agent shall be engaged to assist with current property valuation(s).
- 1.14 Identify public and private utilities within the Study area that may have impact on design and/or cost of the improvements.
- 1.15 Prepare draft Study and site maps summarizing and comparing four (4) potential reservoir locations.
- 1.16 Review with CITY the draft Study and findings associated with the four (4) selected properties. Incorporate CITY comments into the draft Study.
- 1.17 Furnish Final Siting Study, exhibits and siting recommendations in electronic format to the CITY for use in determining and selecting final site.

2.0 Design Engineering

Design Engineering services may be added as a separate Agreement for Professional Services or amendment to this Agreement once the CITY acquires property for a reservoir site and moves forward with design.

3.0 Additional Services

Provide professional engineering and land surveying services for additional work requested by the CITY that is not included above.

4.0 Items to be Furnished and Responsibility of CITY

The CITY will provide or perform the following:

- 4.1 Provide full information as to CITY requirements of the PROJECT.
- 4.2 Assist HLA by placing at their disposal all available information pertinent to the PROJECT, including previous reports, drawings, plats, surveys, utility records, and any other data relative to the PROJECT.
- 4.3 Provide the most recent calibrated water system model for the HLA's use to perform this work.
- 4.4 Contact property owners affected by the PROJECT, in coordination with HLA, to gain necessary access to private property for field investigation(s).
- 4.5 Examine all documents presented by HLA and provide written decisions within a reasonable time as not to delay the work of HLA.

EXHIBIT B

SCHEDULE FOR THE WORK

City of Ellensburg
Reservoir Siting Study – New 4.0 MG 1824 Zone Reservoir
HLA Project No. 22184E

It is anticipated the following schedule will be followed for the completion of the Project. The schedule may be modified as mutually agreed during the Project Kickoff Meeting between the City and the Consultant:

Approved Consultant Agreement	October 2022
Project Kickoff Meeting	October 2022
Begin Siting Study	October 2022
30% City Review Meeting	January 2023
60% City Review Meeting	February 2023
90% City Review Meeting	April 2023
Final Siting Study	May 2023

EXHIBIT C
SCHEDULE OF RATES
FOR

HLA Engineering and Land Surveying, Inc.

Effective January 1, 2022, through December 31, 2022

Senior Principal Engineer	\$235.00 per hour
Licensed Principal Land Surveyor	\$215.00 per hour
Licensed Principal Engineer	\$210.00 per hour
Licensed Professional Engineer	\$189.00 per hour
Other Licensed Professional	\$189.00 per hour
Project Engineer II	\$173.00 per hour
Licensed Professional Land Surveyor	\$170.00 per hour
Project Engineer I	\$155.00 per hour
Contract Administrator III	\$142.00 per hour
Senior Planner	\$140.00 per hour
CAD Technician	\$136.00 per hour
Engineering Technician III	\$128.00 per hour
Resident Engineer	\$128.00 per hour
Surveyor	\$126.00 per hour
Surveyor on Two Man Crew	\$120.00 per hour
Contract Administrator II	\$118.00 per hour
Engineering Technician II	\$110.00 per hour
Surveyor on Three Man Crew	\$105.00 per hour
Contract Administrator I	\$91.00 per hour
Engineering Technician I	\$91.00 per hour
Administrative/Clerical	\$91.00 per hour
Vehicle Mileage	Federal Rate

EXHIBIT C
SCHEDULE OF RATES
FOR

HLA Engineering and Land Surveying, Inc.

Effective January 1, 2023, through December 31, 2023

Senior Principal Engineer	\$245.00 per hour
Licensed Principal Land Surveyor	\$220.00 per hour
Licensed Principal Engineer	\$218.00 per hour
Licensed Professional Engineer	\$198.00 per hour
Other Licensed Professional	\$196.00 per hour
Project Engineer II	\$180.00 per hour
Licensed Professional Land Surveyor	\$175.00 per hour
Project Engineer I	\$161.00 per hour
Contract Administrator III	\$147.00 per hour
Senior Planner	\$145.00 per hour
CAD Technician	\$141.00 per hour
Engineering Technician III	\$133.00 per hour
Resident Engineer	\$133.00 per hour
Surveyor	\$128.00 per hour
Contract Administrator II	\$122.00 per hour
Surveyor on Two Man Crew	\$122.00 per hour
Engineering Technician II	\$114.00 per hour
Surveyor on Three Man Crew	\$108.00 per hour
Contract Administrator I	\$95.00 per hour
Engineering Technician I	\$95.00 per hour
Administrative/Clerical	\$95.00 per hour
Vehicle Mileage	Federal Rate

EXHIBIT D

ENGINEER'S HOURLY ESTIMATE - SITING STUDY											
Project Title: Reservoir Siting Study - New 4.0 MG 1824 Zone Reservoir											
Client: City of Ellensburg											
HLA Project Number: 22184E											
Date: October 5, 2022											
Reservoir Siting Study											
Task No.	Project Task	Senior Principal Engineer \$235.00	Licensed Principal Engineer \$210.00	Licensed Prof. Engineer \$189.00	Licensed Prof. Land Surveyor \$170.00	Project Engineer II \$173.00	CAD Technician \$136.00	Surveyor on Two-Man Crew \$120.00	Admin/ Clerical \$91.00	Total Hours	Task Direct Costs
1	Provide complete project management	8	8			8					\$4,944.00
2	Attend kick-off meeting with CITY		4			4	2				\$1,804.00
3	Prepare baseline siting study schedule, and monthly status updates		2			4			2		\$1,294.00
4	Determine elevation band in northeast area of water service area utilizing City/County GIS, Google Earth. Supplement with topographic spot survey if required.		10		2		4	16	0		\$4,904.00
5	Present elevation band to CITY. Agree on eight (8) locations to study.		4			8	4				\$2,768.00
6	Perform field investigations to confirm conditions at eight (8) sites. Make written summary and take photos of each site.		8			24			2		\$6,014.00
7	Present summary of eight (8) sites to CITY. With CITY agreement, reduce to four (4) sites to continue.		4			6	4				\$2,422.00
8	Perform environmental and geotechnical investigation at each site. Provide summary report of each.		2			8					\$1,804.00
9	Determine Bower's Field airspace impact and requirements at each of four (4) locations		2	4		12					\$3,252.00
10	Parcel: Determine parcel number, parcel size, owner name, assessed value, anticipated land use modifications, and opinion of property value for each location (4).		2		4	12	4		2		\$3,902.00
11	Determine infrastructure construction costs for each site, including 16" transmission main connection.		2			12	4				\$3,040.00
12	Research and identify right of way limits and utility easements for transmission main.		2		8	4					\$2,472.00
13	Easement: Determine parcel number, owner name, assessed value, estimated easement area, and opinion of easement value for each of the four (4) locations.		4		4	12					\$3,596.00
14	Identify public and private utilities within the study area that may impact design.		2			8	8				\$2,892.00
15	Prepare draft study summarizing and comparing four (4) locations for CITY review.		2			32			4		\$6,320.00
16	Review draft study and findings with CITY for four (4) properties. Incorporate CITY comments to final draft.	2	2			6			2		\$2,110.00
17	Furnish final siting study, exhibits, and recommendations to CITY in electronic format.		8			12	8		4		\$5,208.00
Labor Subtotal		10	68	4	18	172	38	16	16	0	\$58,746.00
EXPENSES:		Cost		Ground		Trip	Total				
Travel:		Per Unit	Units	Trips		Miles	Miles				
Mileage (from office)		\$0.63		8		80	640				\$400.00
Mileage (surveys)		\$0.63		2		80	160				\$100.00
Travel Total											\$500.00
Sub-Consultants:									Mark-up		
Real Estate Agent			\$2,500.00						1.1		\$2,750.00
Aspect Consulting			\$7,000.00						1.1		\$7,700.00
Sub-Consultants Total:											\$10,450.00
									Subtotal - Labor		\$58,746.00
									Subtotal - Expenses		\$10,950.00
Reservoir Siting Study TOTAL											\$69,696.00



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: Craig's Hill Pressure Zone Improvements Agreement for Professional Services

Submitted by: Josh Mattson Public Works & Utilities

Recommended Action or Motion: Authorize the City Manager's signature on the Craig's Hill Pressure Zone Improvements Agreement for Professional Services between the City of Ellensburg and HLA Engineering and Land Surveying, Inc.

Background/Summary: The City of Ellensburg is completing the 2020 Water System Plan. The creation of a new Craig's Hill Pressure Zone (1760 Zone) is a noted deficiency in this plan. Numerous service connections on the top of Craig's Hill have pressures of less than 30 pounds per square inch (psi) under existing peak hour demand (PHD) conditions. Low pressures in this area also limit the available fire flow in the 1740 Zone and cause a significant portion of the Craig's Hill Reservoir volume to be unusable storage.

The project will create a new 1760 Zone by converting the 1740 Zone on Craig's Hill to the new zone by installing a booster pump station with a parallel high-pressure water main and closing isolation valves along the pressure zone boundary. City staff reviewed 40 statements of qualifications from firms listed in the Municipal Research and Service Center (MRSC) Consultant Roster under the pump station, water system and reservoir professional design categories. Two firms were interviewed. HLA Engineering and Land Surveying, Inc. (HLA) was selected as the most qualified firm. Staff began scope and contract negotiations with HLA for pump station and water system design for this project.

The Utility Advisory Committee has forwarded a favorable recommendation to Council to authorize the City Manager's signature on the professional services agreement for this project with HLA.

Previous Council Action:	September 16, 2019 Regular Council Meeting - Council authorized the City Manager to execute a Professional Services Agreement with RH2 Engineering in the amount of \$349,803.00 to perform the 2020 Water System Plan Update and design of the Illinois Well Outfitting.
Analysis:	Pressure zone improvements at Craig's Hill in support of the new 1760 Zone will increase service water pressure, increase available fire flow, and increase available water storage volume in the Craig's Hill Reservoir. HLA and their subcontractors will accomplish the following project objectives: 1. Provide design engineering services and prepare a bid-ready set of plans and specifications for this project. 2. Provide support for City staff as needed during project bidding.
Financial Impact:	The total cost of this Agreement is \$228,812.00 which will be funded by the Water utility. Adequate expenditure authority exists in the 2022 and proposed Preliminary 2023/2024 Biennial Budget to accommodate these expenditures.
Attachments:	Ellensburg Craig Hill Agreement

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF ELLENSBURG
AND
HLA ENGINEERING AND LAND SURVEYING, INC.**

RELATING TO: CIP PZ1 - CRAIG HILL PRESSURE ZONE IMPROVEMENTS

THIS COST PLUS FIXED FEE AGREEMENT is made and entered into this ____ day of _____, 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 HLA ENGINEERING AND LAND SURVEYING, INC., 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 Craig Hill Pressure Zone Improvements 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 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. Payment shall be on the basis of the CONSULTANT'S standard billing rates multiplied by the actual hours worked, cost for actual labor, overhead and profit plus CONSULTANT'S direct non-salary reimbursable costs for cost plus fixed fee agreements or based on percentage of completed work for lump sum agreements, as set forth in the attached Exhibit C.

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

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

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

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

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

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 13 – 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 \$228,812.00. 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 D. 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. WORK PRODUCT AND DOCUMENTS.

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

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

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

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

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

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

9.2. The CONSULTANT shall comply with all requirements of applicable federal, state or local laws or regulations issued pursuant thereto, relating to the establishment of non-discriminatory requirements in hiring and employment practices

and assuring the service of all persons without discrimination as to any person's race, creed, color, religion, national origin, status as a military veteran, marital status, gender, sexual orientation, disability or other legally protected classification.

10. SUBCONTRACTING.

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

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

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

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

11. SUPERVISION, INSPECTION AND PERFORMANCE.

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

11.2. CONSULTANT represents that it has or will obtain all personnel necessary to perform the Services and that such personnel shall be qualified, experienced, and licensed as may be necessary or required by applicable laws and regulations to perform the Services. All Services shall be performed by CONSULTANT, its employees, or by 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.

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: Josh Mattson, Assistant City Engineer
501 N. Anderson
Ellensburg, WA 98926

HLA Engineering and Land Surveying, Inc.
Michael T. Battle, PE, President
2803 River Road
Yakima, WA 98902

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 – Consultant Labor Costs and Non-salary Reimbursable Costs

Exhibit D – Budget for Each Task

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

CONSULTANT:

By: 

Printed
Name: MICHAEL T. BATTLE, PE

Title: PRESIDENT

Tax ID#: 91-1237188

THE CITY OF ELLENSBURG:

By: _____

Printed
Name: _____

Title: _____

ATTEST: _____
Clerk

Approved as to Form:

City Attorney

EXHIBIT A
SCOPE OF WORK

City of Ellensburg
CIP PZ1 - Craig Hill Pressure Zone (1760 Zone Booster Pump Station)
HLA Project No. 22183E

PROJECT DESCRIPTION:

The City of Ellensburg (CITY) desires to construct a new 1760 pressure zone at Craig's Hill necessary to provide adequate water system pressures and improve available fire flow. The intent is to construct a new 1,500 gallon per minute (gpm) booster pump station (BPS) and associated water main improvements necessary to accomplish the new 1760 pressure zone.

SCOPE OF SERVICES:

At the direction of the CITY, HLA Engineering and Land Surveying, Inc. (HLA), shall provide professional engineering services for the 1760 Zone Booster Pump Station project (PROJECT). HLA services shall include the following:

1.0 Design Engineering

It is anticipated one (1) complete bid package will be prepared for all improvements. If the CITY determines a separate bid package for equipment only is necessary to the PROJECT timeline, then associated work will be considered additional services.

- 1.1 Provide complete project management to deliver the PROJECT within mutually determined expectations.
- 1.2 Attend kick-off meeting with the CITY to identify and confirm the extent of improvements and schedule requirements.
- 1.3 Prepare baseline project design and bidding schedule for CITY review and comment. Provide monthly project status and schedule updates.
- 1.4 Assist CITY with State Environmental Review Process requirements, including preparation of a SEPA checklist and associated site plan exhibit. An Environmental Impact Statement (EIS) is not anticipated to be required for this PROJECT.
- 1.5 Review existing CITY utility map records and confirm extent of required utility locate areas with CITY prior to field topographic survey.
- 1.6 Perform field topographic survey of the proposed PROJECT area as required to complete design, plans, and specifications for the improvements. The survey area is generally bounded to the west by the top of slope of Craig Hill, by the eastern curb line of Craig Avenue, to the south by N. Maple Street, and to the north by the Craig Hill

Reservoir. Obtain spot elevations at extents of proposed 1760 pressure zone to confirm hydraulic model assumptions.

- 1.7 Perform field investigations necessary to design the identified improvements. It is assumed that CITY staff will work with HLA to field verify and confirm isolation valve locations and operation, and potential connection points for new BPS piping. CITY will provide vacuum truck, equipment, and crew necessary to pothole at critical design point locations.
- 1.8 Perform geotechnical site investigation and reporting to include observation of test pit excavations, site map preparation, seismic risk assessment (in accordance with IBC), complete geotechnical engineering analysis, and final geotechnical report. Test pit excavation and utility locating will be completed by CITY crew.
- 1.9 Review and identify public and private utilities within the PROJECT area.
- 1.10 Research and identify existing easements and right of way limits for the PROJECT.
- 1.11 Prepare informational flyer for distribution to affected property owners detailing the need for improvements and anticipated timeline. CITY to provide mailing list for affected properties identified by HLA. CITY to pay for and distribute flyers.
- 1.12 From the CITY's existing hydraulic water system model, consultant will verify Craig Hill water system demands and Water System Plan recommendations for need and size of the new booster pump station. CITY to provide the most recent calibrated water system model for the consultant's use to perform this work. Hydraulic analysis to include evaluation of system hydraulics under peak hour demand scenario and a steady state fire flow analysis under maximum day demand conditions. An extended period simulation is not included in the scope of services.
- 1.13 Prepare 30% design plans to include recommended location and size of new booster pump station, and list of available building appurtenances for selection by the CITY. Review and discuss preliminary plans with the CITY.
- 1.14 Coordinate design with utility companies; prepare power service request; meet with utility company representatives on site to review proposed improvements.
- 1.15 Incorporate CITY comments from 30% design review and prepare 60% design plans to include booster pump station design layout, system connection recommendations and associated project cost estimate. Review and discuss 60% design plans with the CITY.
- 1.16 Submit 60% design plans to the Department of Health (DOH) for review and comment. Incorporate DOH review comments into design documents.
- 1.17 Prepare preliminary electrical design, including electrical gear layout, VFD sizing, and generator selection. Electrical design services will include power, lighting, control, instrumentation, and SCADA equipment. Pumps will utilize VFDs for starting and control. Control panel and telemetry equipment will be designed for integration into

the CITY's existing SCADA system. PLCs will be Allen Bradley. PLC and HMI programming services are not included in the scope of services.

- 1.18 Incorporate CITY comments from 60% design review and prepare 90% design plans to include booster pump station design layout, electrical and control systems, system connection design, project equipment and material specifications and associated project cost estimate. Review and discuss 90% design plans with the CITY.
- 1.19 Submit 90% design plans to the Department of Health (DOH) for review and comment. Incorporate DOH review comments into design documents.
- 1.20 Provide quality control and assurance review for each level of design completion (30%, 60%, and 90%).
- 1.21 Based on approved preliminary plans, perform the final design, and prepare complete plans and specifications for publicly bid improvements, as authorized by the CITY.
- 1.22 Prepare the Engineer's Estimate of construction cost.
- 1.23 Submit final plans to the Department of Health.
- 1.24 Prepare updated informational flyer for distribution to affected property owners detailing the scope of improvements and anticipated construction timeline. CITY to provide mailing list for affected properties identified by the consultant. CITY to pay for and distribute flyers.
- 1.25 Furnish one (1) electronic copy of final plans and specifications for bidding and construction contracts.
- 1.26 Transmit plans and specifications to dry utility companies, including power, cable, natural gas, and telephone to advise them of pending construction.
- 1.27 Answer questions and supply information requested by prospective bidders.
- 1.28 Prepare and issue addenda to contract documents, if necessary.
- 1.29 Attend bid opening, participate in bidder qualifications and evaluation process.
- 1.30 Make recommendation to the CITY of construction contract award to the lowest responsible bidder.

2.0 Construction Engineering

Construction Engineering services will be added as a separate Agreement for Professional Services or amendment to this Agreement once the CITY moves forward with construction.

3.0 Additional Services

Provide professional engineering and land surveying services for additional work requested by the CITY that is not included above.

4.0 Items to be Furnished and Responsibility of CITY

The CITY will provide or perform the following:

- 4.1 Provide full information as to CITY requirements of the PROJECT.
- 4.2 Assist HLA by placing at their disposal all available information pertinent to the PROJECT, including previous reports, drawings, plats, surveys, utility records, and any other data relative to design and construction of the PROJECT.
- 4.3 Provide staff and equipment to pothole at specific areas of potential conflict or interest, necessary to confirm the design.
- 4.4 Contact property owners affected by the PROJECT, in coordination with the Consultant, to gain necessary access to property for field investigation, design, and construction of improvements.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by HLA and provide written decisions within a reasonable time as not to delay the work of HLA.
- 4.6 Obtain approval of all governmental authorities with jurisdiction over the PROJECT and approvals and consents from other individuals or bodies as necessary for completion of the PROJECT.

EXHIBIT B

SCHEDULE FOR THE WORK

City of Ellensburg

CIP PZ1 - Craig Hill Pressure Zone (1760 Zone Booster Pump Station)

HLA Project No. 22183E

It is anticipated the following schedule will be followed for the completion of the Project. The schedule may be modified as mutually agreed during the Project Kickoff Meeting between the City and the Consultant:

Approved Consultant Agreement	October 2022
Project Kickoff Meeting	October 2022
Begin Engineering Design	October 2022
30% City Review Meeting	January 2023
60% City Review Meeting	February 2023
90% City Review Meeting	April 2023
Final Design Plans & Specifications	May 2023
Advertise for Bids	June 2023
Bid Opening	July 2023

EXHIBIT C
SCHEDULE OF RATES
FOR

HLA Engineering and Land Surveying, Inc.

Effective January 1, 2022, through December 31, 2022

Senior Principal Engineer	\$235.00 per hour
Licensed Principal Land Surveyor	\$215.00 per hour
Licensed Principal Engineer	\$210.00 per hour
Licensed Professional Engineer	\$189.00 per hour
Other Licensed Professional	\$189.00 per hour
Project Engineer II	\$173.00 per hour
Licensed Professional Land Surveyor	\$170.00 per hour
Project Engineer I	\$155.00 per hour
Contract Administrator III	\$142.00 per hour
Senior Planner	\$140.00 per hour
CAD Technician	\$136.00 per hour
Engineering Technician III	\$128.00 per hour
Resident Engineer	\$128.00 per hour
Surveyor	\$126.00 per hour
Surveyor on Two Man Crew	\$120.00 per hour
Contract Administrator II	\$118.00 per hour
Engineering Technician II	\$110.00 per hour
Surveyor on Three Man Crew	\$105.00 per hour
Contract Administrator I	\$91.00 per hour
Engineering Technician I	\$91.00 per hour
Administrative/Clerical	\$91.00 per hour
Vehicle Mileage	Federal Rate

EXHIBIT C
SCHEDULE OF RATES
FOR

HLA Engineering and Land Surveying, Inc.

Effective January 1, 2023, through December 31, 2023

Senior Principal Engineer	\$245.00 per hour
Licensed Principal Land Surveyor	\$220.00 per hour
Licensed Principal Engineer	\$218.00 per hour
Licensed Professional Engineer	\$198.00 per hour
Other Licensed Professional	\$196.00 per hour
Project Engineer II	\$180.00 per hour
Licensed Professional Land Surveyor	\$175.00 per hour
Project Engineer I	\$161.00 per hour
Contract Administrator III	\$147.00 per hour
Senior Planner	\$145.00 per hour
CAD Technician	\$141.00 per hour
Engineering Technician III	\$133.00 per hour
Resident Engineer	\$133.00 per hour
Surveyor	\$128.00 per hour
Contract Administrator II	\$122.00 per hour
Surveyor on Two Man Crew	\$122.00 per hour
Engineering Technician II	\$114.00 per hour
Surveyor on Three Man Crew	\$108.00 per hour
Contract Administrator I	\$95.00 per hour
Engineering Technician I	\$95.00 per hour
Administrative/Clerical	\$95.00 per hour
Vehicle Mileage	Federal Rate

EXHIBIT D

ENGINEER'S HOURLY ESTIMATE - DESIGN PHASE											
Project Title: CIP PZ1 - Craig Hill Pressure Zone Improvements (1760 Zone Booster Pump Station)											
Client: City of Ellensburg											
HLA Project Number: 22183E											
Date: October 5, 2022											
Design Engineering											
Task No.	Project Task	Senior Principal Engineer \$235.00	Licensed Principal Engineer \$210.00	Licensed Prof. Land Surveyor \$170.00	Project Engineer II \$173.00	Contract Administrator III \$142.00	CAD Technician \$136.00	Surveyor on Two-Man Crew \$120.00	Admin/ Clerical \$91.00	Total Hours	Task Direct Costs
1	Provide complete project management	16	24		16				8	64	\$12,296.00
2	Attend kick-off meeting with CITY	4	4		6		2			16	\$3,090.00
3	Prepare baseline design/bidding schedule, and monthly status updates	4	16		16				4	40	\$7,432.00
4	Prepare SEPA checklist and site exhibit		2		10		4			16	\$2,694.00
5	Review existing utility map records, and confirm extent of utility locate areas		1		6		4			11	\$1,792.00
6	Perform topographic survey and obtain spot elevations at extents of pressure zone			6	2		6	40		54	\$6,982.00
7	Perform field investigations necessary to design identified improvements		4		4		4			12	\$2,076.00
8	HLA coordinate with geotechnical subconsultant (geotechnical analysis to be performed by subconsultant)		2		4					6	\$1,112.00
9	Review and identify public and private utilities within the project area		2		6		4			12	\$2,002.00
10	Research and identify existing easements and right of way limits			8	2		4			14	\$2,260.00
11	Prepare informational flyer for property owners detailing project need and anticipated timeline				2		2		8	12	\$1,346.00
12	Verify Craig Hill water system demand using CITY's hydraulic model. Evaluate peak hour demand and fire flow analysis under max. day demand conditions		16		32					48	\$8,896.00
13	Prepare 30% design plans including location and size of pump station. Review preliminary plans with CITY.		10		48		16			74	\$12,580.00
14	Coordinate with utility companies, prepare power service request, meet with utility on site to review proposed improvement		6		8					14	\$2,644.00
15	Incorporate CITY 30% design review comments and prepare 60% plans. Review and discuss design plans with CITY.		16		80		48			144	\$23,728.00
16	Submit 60% Plans to DOH and incorporate DOH comments in to design documents		2		4		8			14	\$2,200.00
17	HLA coordinate with electrical subconsultant (electrical design to be completed by subconsultant)		2		4		2			8	\$1,384.00
18	Incorporate CITY 60% design review comments and prepare 90% design plans. Review and discuss 90% design plans with CITY.		24		80		24		4	132	\$22,508.00
19	Submit 90% Plans to DOH and incorporate DOH comments into design documents		2		4		4				\$1,656.00
20	Provide quality control for 30%, 60%, and 90% design	12	16		16					44	\$8,948.00
21	Perform final design. Complete final plans and specifications for bid advertisement		28		96		48		8	180	\$29,744.00
22	Prepare Engineer's Opinion of probable construction cost		4		16		4			24	\$4,152.00
23	Submit Final plans to Department of Health		2		2		4			8	\$1,310.00
24	Prepare updated flyer for property owners detailing scope and timeline of improvements				2				8	10	\$1,074.00
25	Furnish one (1) electronic copy of plans for bidding		1		2				2	5	\$738.00
26	Send plans and specs to dry utility companies		1		4				2	7	\$1,084.00
27	Answer questions and supply information to prospective bidders		8		16					24	\$4,448.00
28	Prepare and issue contract document addenda		8		16		4		4	32	\$5,356.00
29	Attend bid opening, participate in bidder qualifications and evaluation process		4		4				6	14	\$2,078.00
30	Make contract award recommendation to CITY		2		2	4				8	\$1,902.00
Labor Subtotal		36	207	14	510	4	192	40	54	1,047	\$179,502.00
EXPENSES:											
Travel:		Cost Per Unit	Units	Ground Trips		Trip Miles	Total Miles				
Mileage (from office)		\$0.63		8		80	640				\$400.00
Mileage (surveys)		\$0.63		2		80	160				\$100.00
Travel Total											\$500.00
Sub-Consultants:									Mark-up		
Connetix Engineering (Electrical)			\$36,000.00						1.1		\$39,600.00
Aspect Consulting (Geotechnical)			\$8,373.00						1.1		\$9,210.00
Sub-Consultants Total:											\$48,810.00
Subtotal - Labor											\$179,502.00
Subtotal - Expenses											\$49,310.00
DESIGN ENGINEERING TOTAL											\$228,812.00



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: Grant Agreement for Ellensburg Fiber Extension and Fixed Wireless Broadband

Submitted by: Ben Faubion Information Technology

Recommended Action or Motion: Authorize the City Manager to sign the Federal Capital Agreement with City of Ellensburg through Washington State Broadband Office (WSBO) for Ellensburg fiber extension and fixed wireless broadband, and approve the necessary budget adjustments.

Background/Summary: The US Department of Commerce, WSBO Broadband Infrastructure Program (BIP) funds are administered by the National Telecommunications and Information Administration (NTIA).

On July 20, 2022, the City received an award letter from WSBO funded through the NTIA-Broadband Infrastructure Program in the amount of \$437,573. On August 19, 2022, the City received an award letter from WSBO's Match Grant Program in the amount of \$109,393. The matching grant contract agreement period of performance will be concurrent with the City's NTIA contract agreement period of performance.

On October 17, 2022, City Council approved Amendment 1 to the Interlocal Cooperation Agreement with NoaNet for the expected expenses of NoaNet's Scope of Work totaling \$118,490.16. The NoaNet expenses are to be covered by the NTIA Broadband Infrastructure Program and the WSBO Matching Grant.

Previous Council Action: The City signed an Amendment 1 to the Interlocal Cooperative Agreement with NoaNet October 17, 2022, to serve as project manager for the broadband infrastructure project.

Analysis: The City Water Utility has long struggled with monitoring the City wells outside the City limits. The Water Division 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 of the City's open access network through collaboration and contracting with local providers.

Financial Impact:

The Ellensburg Fiber Extension and Fixed Wireless Broadband project is grant funded in the amount of \$437,573 through WSBO and a matching grant amount of \$109,393 for a total grant funding in the amount of \$546,966. Although project costs are fully grant reimbursable, these expenditures are not included in the 2022 budget. A portion of these expenditures will be needed before the end of 2022, and the balance of the project budget will be carried forward to 2023.

Attachments:

[Federal Capital Agreement - Grant Award](#)
[WSBO Grant Match Award Letter](#)



Federal Capital Agreement with

City of Ellensburg

through

Washington State Broadband Office – National Institute of Standards
and Technology (NIST), Broadband Infrastructure Program

For

Ellensburg Fiber Extension and Fixed Wireless Broadband

Start date: March 1, 2022

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TABLE OF CONTENTS

Special Terms and Conditions	1
Face Sheet	1
1. Acknowledgement of Federal Funding.....	2
2. Annual Report.....	2
3. Audit	2
4. Baseline Project Plan.....	2
5. Billing Procedures and Payment.....	2
6. Change of Ownership or Use for Subrecipient-Owned Property	4
7. Change of Use for Leased Property Performance Measure	4
8. Compensation	5
9. Compliance with Applicable Law and Regulations	5
10. Contracting With Small And Minority Businesses, Women's Business Enterprises, And Labor Surplus Area Firms.....	6
11. Copyright Provisions.....	6
12. Debarment.....	6
13. Domestic Preference For Procurements (Buy American).....	7
14. Environmental Assessment	7
15. Expenses.....	7
16. Federal Exclusion	7
17. Grant Management.....	7
18. Inspection And Testing Of Materials	8
19. Insurance.....	8
20. Modification to the Project Costs.....	9
21. National Historic Preservation Act.....	10
22. Open Network Requirements.....	10
23. Ownership of Project/Capital Facilities.....	10
24. Prohibition On Use For Covered Communications Equipment Or Services	10
25. Property Trust Relationship And Public Notice Filings For Grant-Acquired Property.....	10
26. Reduction In Funds	11
27. Registration with the System for Award Management (SAM)	11
28. Requirements During Construction	11
29. Scheduling Inspection For Final Acceptance	12
30. Subcontractor Data Collection.....	12
31. Subcontractors	12
32. Termination for Fraud or Misrepresentation	12
33. Order of Precedence	12
General Terms and Conditions	13
1. Definitions.....	13
2. Administrative Cost Allocation	13
3. Allowable Costs	13
4. All Writings Contained Herein	13
5. Amendments	13
6. Americans with Disabilities Act (ADA).....	13
7. Approval	13
8. Assignment.....	14
9. Attorney's Fees.....	14

10.	Audit	14
11.	Certification Regarding Debarment, Suspension or Ineligibility or Ineligibility and Voluntary Exclusion	14
12.	Code Requirements.....	15
13.	Confidentiality/Safeguarding of Information	15
14.	Conformance.....	15
15.	Conflict of Interest.....	16
16.	Copyright Provisions.....	16
17.	Disallowed Costs	16
18.	Disputes	17
19.	Duplicate Payment	17
20.	Governing Law and Venue	17
21.	Fraud And Other Loss Reporting	17
22.	Indemnification	17
23.	Independent Capacity of the Subrecipient	18
24.	Industrial Insurance Coverage	18
25.	Laws	18
26.	Licensing, Accreditation and Registration	18
27.	Limitation of Authority	18
28.	Noncompliance With Nondiscrimination Laws.....	18
29.	Pay Equity	19
30.	Political Activities	19
31.	Prevailing Wage Law	19
32.	Procurement Standards for Federally Funded Programs	19
33.	Prohibition Against Payment of Bonus or Commission	20
34.	Publicity	20
35.	Recapture.....	20
36.	Records Maintenance.....	20
37.	Registration with Department of Revenue.....	20
38.	Right of Inspection.....	20
39.	Savings	20
40.	Severability	21
41.	Subcontracting.....	21
42.	Survival	21
43.	Taxes	21
44.	Termination for Cause	21
45.	Termination for Convenience	22
46.	Termination Procedures	22
47.	Treatment of Assets.....	22
48.	Waiver	23
49.	Work Hours and Safety Standards.....	23
	Attachment A- Statement of Work and Project Cost.....	24
	Attachment B- Certification of the Availability of Funds to Complete the Project	26
	Attachment C- Certification of the Payment and Reporting of Prevailing Wages	27
	Attachment D – US Department of Commerce Special Terms and Conditions	

Contract Number: 22-96811-002

**Washington State Department of Commerce
Local Government Division
State Broadband Office
NIST, Broadband Infrastructure Program Grant**

1. Subrecipient City of Ellensburg 501 N Anderson St Ellensburg, WA 98926-3147		2. Subrecipient Doing Business As (optional) N/A	
3. Subrecipient Representative Ben Faubion IT & Telecom Manager 509-925-8612 faubionb@ci.ellensburg.wa.us		4. COMMERCE Representative Jason Freeze Broadband Infrastructure Specialist 564-669-0958 jason.freeze@commerce.wa.gov	
5. Grant Amount \$546,966.00	6. Funding Source Federal: ☒ State: ☒ Other: ☐ N/A: ☐	7. Start Date March 1, 2022	8. End Date February 28, 2023
9. Federal Funds (as applicable) \$473,573.00		Federal Agency US Dept. Commerce	
ALN (CFDA #): 11.031			
10. SWV # 0008367-00	11. UBI # 192-000-016	12. UNIQUE ENTITY ID # SFRMWQVG79M5	
14. Grant Purpose The outcome of this performance-based Grant Agreement is to provide federal funding for a broadband infrastructure project as referenced in Attachment A – Statement of Work and Project Cost.			
COMMERCE, defined as the Department of Commerce and Subrecipient 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: Attachment “A” – Statement of Work and Project Cost, Attachment “B” – Certification of Availability of Funds to Complete the Project, Attachment “C” – Certification of the Payment and Reporting of Prevailing Wages, Attachment D – US Department of Commerce Special Terms and Conditions and the following documents incorporated herein by reference: Subrecipient’s Application for Funding and the Washington State Broadband Office Infrastructure Broadband Infrastructure Grants Handbook 21-23 prepared by Commerce.			
FOR SUBRECIPIENT _____ Heidi Behrends Cerniwey, City Manager _____ Date APPROVED AS TO FORM ONLY _____ Terry Weiner, City of Ellensburg Attorney _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director, Local Government Division _____ Date APPROVED AS TO FORM ONLY Dawn Cortez, Assistant Attorney General Washington State Office of the Attorney General 09/08/22	

DECLARATIONS

CLIENT INFORMATION

Subrecipient Name:	City of Ellensburg
Grant Number:	22-96811-002

PROJECT INFORMATION

Project Name:	Ellensburg Fiber Extension and Fixed Wireless Broadband
Project City:	Ellensburg
Project State:	Washington
Project Zip Code:	98926

GRANT INFORMATION

Grant Amount:	\$437,573.00
Local Match:	\$0.00
State Match:	\$109,393.00

Grant End Date:	February 28, 2023
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Earliest Date for Reimbursement:	March 1, 2022
Time of Performance:	March 1, 2022 to February 28, 2023

FUNDING INFORMATION

Federal Award Agency:	US Department of Commerce, National Institute of Standards and Technology
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Amount of Federal Funds Obligated by this Action:	\$437,573.00
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ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

N/A

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

1. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Identification Number (FAIN): 53-08-I2298

Total amount of the federal award: \$437,573.00

Federal Awarding Agency: US Department of Commerce, National Institute of Standards and Technology

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

The Subrecipient agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Subrecipient 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 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.”

2. ANNUAL REPORTING REQUIREMENTS

Not later than one year after receiving grant funds under the Broadband Infrastructure Program, and annually thereafter until the funds have been expended (unless the federal funding source has granted an extension to Commerce) the Subrecipient shall submit a report that:

- A. describes how the covered Subrecipient expended the funds; and
- B. certifies that the covered partnership complied with the requirements of the Act and the Broadband Infrastructure Program, including:
 - i. a description of each service provided with the grant funds; and
 - ii. the number of locations or geographic areas at which broadband service was provided using the grant funds; and
 - iii. identifies each Subrecipient that received a Subgrant from the covered partnership and a description of the specific project for which grant funds were provided.

3. AUDIT

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

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR § 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

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

The Subrecipient shall send all single audit documentation to auditreview@commerce.wa.gov.

4. BASELINE PROJECT PLAN

Subrecipient shall submit baseline project plans and details regarding key outputs and outcomes from its projects within 45 days of the final approvals from NEPA. NTIA will provide guidance on the format and content of these baseline plans and details for this activity.

5. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Subrecipient for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the Subrecipient shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that

SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS

documents capitalized Project activity performed for the billing period. The Subrecipient 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.

Grant funds are disbursed on reimbursement basis-only for eligible costs within the approved project's scope of work. Grant funds will be reimbursed and Subrecipient's matching funds must be expended by Subrecipient in the amounts and as identified on the Declarations Page.

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. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

The voucher must be certified (signed) by an official of the Subrecipient with authority to bind the Subrecipient. 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 Subrecipient.

COMMERCE will pay Subrecipient 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 Subrecipient.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Subrecipient for services rendered if the Subrecipient 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 Subrecipient 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 Subrecipient shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Subrecipient, to extent that the Subrecipient is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

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

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

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.).

6. CHANGE OF OWNERSHIP OR USE FOR SUBRECIPIENT-OWNED PROPERTY

- A. The Subrecipient understands and agrees that any and all real property or facilities owned by the Subrecipient that are acquired, constructed, or otherwise improved by the Subrecipient using funds under this Grant Agreement, shall be held and used by the Subrecipient 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. The Subrecipient may be required to execute and to record a statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part pursuant to a Broadband Infrastructure Program award is subject to a Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice must be acceptable in form and substance to NTIA and to the NIST Grants Officer and must be placed on record in accordance with Washington State and local law, with continuances re-filed as appropriate. In such cases, the NIST Grants Officer may further require the non-Federal entity to provide NTIA and the NIST Grants Officer with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with Washington State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be promptly returned to the Grants Officer. The non-Federal entity may use model documentation made available by NTIA.
- C. The Recipient must disclose all encumbrances to the NIST Grants Officer. The NIST Grants Officer will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of the project during its estimated useful life.
- D. These provisions shall not be construed to prohibit the Subrecipient 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 original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- E. In the event the Subrecipient is found to be out of compliance with this section, the Subrecipient 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 of the General Terms and Conditions).

7. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The Subrecipient understands and agrees that any facility leased by the Subrecipient that is constructed, renovated, or otherwise improved using funds under this Grant Agreement shall be used by the Subrecipient 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 Subrecipient is found to be out of compliance with this section, the Subrecipient shall repay to COMMERCE 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 35 (Recapture Provision).

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

8. 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.

9. COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS

- B. Federal regulations applicable to this award include, but are not necessarily limited to the following:
 - i. The US Department of Commerce Special Terms and Conditions in Attachment D.
 - ii. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR § 200 Part 200, other than such provisions as NTIA may determine are inapplicable to this Award. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - iii. Universal Identifier and System for Award Management (SAM), 2 CFR § 200 Part 25, pursuant to which the award term set forth in Appendix A to 2 CFR § 200 Part 25 is hereby incorporated by reference.
 - iv. Reporting Subaward and Executive Compensation Information, 2 CFR § 200 Part 170, pursuant to which the award term set forth in Appendix A to 2 CFR § 200 Part 170 is hereby incorporated by reference.
 - v. 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.
 - vi. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 CFR § 200 Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vii. Government wide Requirements for Drug-Free Workplace, 2 CFR § 200 Part 182.
 - viii. New Restrictions on Lobbying, 2 CFR § 200 Part 418.
 - ix. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - x. Generally applicable federal environmental laws and regulations.
 - xi. 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.), 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.), which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

- 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.

10. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Pursuant to 2 CFR § 200.321, the Subrecipient 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.

11. COPYRIGHT PROVISIONS

Per the Scope of Work, Section 16 is not intended to apply to any architectural and engineering work funded by this Grant.

12. DEBARMENT

- A. Subrecipient, 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 Subrecipient is unable to certify to any of the statements in this Grant, the Subrecipient shall attach an explanation to this Grant.
- C. The Subrecipient 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.
- D. The Subrecipient 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 Subrecipient 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 Subrecipient 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, currently available online at [eCFR :: 22 CFR Part 513 Subpart A -- General](https://www.ecfr.gov/current/title-22/chapter-I/subchapter-A/part-513/subpart-A)

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

13. DOMESTIC PREFERENCE FOR PROCUREMENTS (BUY AMERICAN)

Pursuant to 2 CFR § 200.322, the Subrecipient should, to the greatest extent practicable under the BIP award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products). The requirements of 2 CFR § 200.322 must be included in all subawards, including all contracts and purchase orders for work or products pursuant to this program.

14. ENVIRONMENTAL ASSESSMENT

The Subrecipient must comply with all environmental standards and identify to NTIA any impact a proposed infrastructure project may have on the environment. The Subrecipient may not expend any federal infrastructure funds other than for engineering design, permitting and work related to environmental, historical and cultural reviews, and limited, preliminary procurement funds, as described below, prior to the following:

- A. The completion of environmental review and issuance of a Record of Consideration (REC), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.);
- B. The completion of any required consultations, to include consultations with the State Historic Preservation Office (SHPO) and the appropriate federally recognized Native American tribes, under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) (NHPA), and/or consultations with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act (16 U.S.C. 1531, et seq.); and
- C. Demonstration of compliance with all other applicable federal, state, and local environmental laws and regulations.

Project implementation (site preparation, demolition, construction, ground disturbance, or any other project implementation activities) may not begin prior to the completion of the above activities.

15. EXPENSES

Subrecipient shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Subrecipient for authorized expenses shall not exceed the total contract amount listed on the contract Face Sheet.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Subrecipient shall receive compensation for travel expenses at current state travel reimbursement rates.

16. 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 Subrecipient 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 Subrecipient's project records.

17. 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 Subrecipient and their contact information are identified on the Face Sheet of this Grant.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

18. INSPECTION AND TESTING OF MATERIALS

The Subrecipient shall ensure that all materials and equipment used in the completion of the work shall be subject to adequate inspection and testing in accordance with accepted standards. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. The Subrecipient shall ensure that documentation of same is cataloged and retained.

19. INSURANCE

The Subrecipient shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Subrecipient or Subcontractor, or agents of either, while performing under the terms of this contract. Failure to maintain the required insurance coverage may result in termination of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Subrecipient shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Subrecipient shall submit to COMMERCE within fifteen (15) calendar days of a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, if required or requested, the Subrecipient shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Subrecipient shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

The Subrecipient shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Subrecipient is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Subrecipient or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Subrecipient shall maintain Professional Liability or Errors and Omissions Insurance. The Subrecipient shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Subrecipient and licensed staff employed or under contract to the Subrecipient. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Subrecipient for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$100,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

- B.** Subcontractors that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Subrecipient as beneficiary.

Subrecipients and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – Subrecipient may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Subrecipient shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Subrecipient's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Annually Subrecipient shall provide upon written request by COMMERCE a summary of coverages and a letter of self-insurance, evidencing continued coverage under Subrecipient's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Agreement.

20. MODIFICATION TO THE PROJECT COSTS

As provided at 2 CFR § 200.308(f), the Subrecipient may, at its discretion, make modifications not to exceed ten percent (10%) of each cost category item in the ATTACHMENT A: STATEMENT OF WORK AND PROJECT COSTS.

The Subrecipient shall notify COMMERCE in writing when making any budget modifications that would exceed ten percent (10%) of any cost category line item as identified in ATTACHMENT A: STATEMENT OF WORK AND PROJECT COSTS. Nothing in this section shall be construed to permit an increase in the amount of grant as set forth on the declaration page.

21. NATIONAL HISTORIC PRESERVATION ACT

The Recipient may not expend any federal infrastructure funds other than for engineering design, permitting and work related to environmental, historical and cultural reviews, and limited, preliminary procurement funds prior to the following:

- A. The completion of any required consultations, to include consultations with the State Historic Preservation Officer (SHPO) and the appropriate federally recognized Native American tribes, under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) (NHPA); and/or
- B. Demonstration of compliance with all other applicable Federal, State, and local environmental laws and regulations.

Project implementation (site preparation, demolition, construction, ground disturbance, or any other project implementation activities) may not begin prior to the completion of the above activities.

22. OPEN NETWORK REQUIREMENTS

The Subrecipient must comply with NTIA's open network requirements, which allows all other broadband service providers to interconnect with networks and other broadband infrastructure deployed using funds for the grant program on fair and non-discriminatory terms and conditions. The requirement to interconnect will apply to Subrecipient that deploy middle mile networks or submarine cable landing stations and not last mile networks.

- A. **Interconnection:** Subrecipient shall allow interconnection to grant-funded facilities at any technically feasible point along the network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of the Subrecipient's facilities to a requesting party's facilities for the

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

exchange of traffic. In addition, Subrecipient shall connect to the public Internet directly or indirectly and provide requesting parties with an ability to connect to the Internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory.

- B. **Negotiate in Good Faith:** Subrecipient shall negotiate in good faith with all requesting parties (i.e., public, private, non-profit, or other parties) making a bona fide request for interconnection or wholesale services.
- C. **Wholesale Broadband Service:** NTIA encourages Subrecipient to offer wholesale broadband services at rates and terms that are reasonable and nondiscriminatory.

23. 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 performance and funds awarded under this Grant Agreement. For the avoidance of doubt, the foregoing replaces in its entirety the introductory paragraph of Section 46 of the General Terms and Conditions. This provision does not extend to claims that COMMERCE may bring against the Subrecipient in recapturing funds expended in violation of this Grant Agreement.

24. PROHIBITION ON USE FOR COVERED COMMUNICATIONS EQUIPMENT OR SERVICES

A Subrecipient may not use grant funds received under the BIP to purchase or support any covered communications equipment or service (as defined in section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1608). See also CFR § 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment), which also applies to this award.

25. PROPERTY TRUST RELATIONSHIP AND PUBLIC NOTICE FILINGS FOR GRANT-ACQUIRED PROPERTY

In accordance with 2 CFR § 200.316 (Property trust relationship), real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the Subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the NIST Grants Officer in consultation with the NTIA Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). The Subrecipient must comply with all use and disposition requirements and restrictions as set forth in 2 CFR § 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

The NIST Grants Officer will require a Subrecipient to execute and to record (as applicable) a statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part pursuant to a Broadband Infrastructure Program award is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice must be acceptable in form and substance to NTIA and to the NIST Grants Officer and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the NIST Grants Officer may further require the Subrecipient to provide NTIA and the NIST Grants Officer with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be promptly returned to the Grants Officer. The Subrecipient entity may use model documentation made available by NTIA.

Without releasing or excusing the Subrecipient from these obligations, the Subrecipient entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a Subrecipient), authorizes NTIA and/or the NIST Grants Officer to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

Interest in the property. The NIST Grants Officer may elect not to release any or a portion of the Federal award funds until the Subrecipient has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the NIST Grants Officer are made.

26. 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 Period of Performance, 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.

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

By signing this Grant, the Subrecipient 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>). To register in SAM, a valid Unique Entity Identifier (UEI) is required. The Subrecipient 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 Subrecipient must remain registered in the SAM database after the initial registration. The Subrecipient 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 Subrecipient shall provide evidence documenting registration and renewal of SAM registration to COMMERCE.

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

28. REQUIREMENTS DURING CONSTRUCTION

During construction, the Subrecipient is responsible for:

- A. Ensuring project completion in accordance with approved plans and specifications;
- B. Providing for required construction permits and adequate construction inspection.

29. SCHEDULING INSPECTION FOR FINAL ACCEPTANCE

The Subrecipient will schedule a final inspection when all construction has been completed, the architect/engineer has conducted a final inspection, and any deficiencies have been corrected. COMMERCE staff, the architect/engineer, and the contractor(s) will make the final inspection. The NIST Grants Officer must be given advance notice of the final inspection so that the NIST Grants Officer may participate.

30. SUBCONTRACTOR DATA COLLECTION

Subrecipient 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.

31. SUBCONTRACTORS

No prior approval of subcontracting to a Subcontractor of any tier shall be required and the first three paragraphs of Section 41 of the General Terms and Conditions shall be deemed to refer to "subrecipient" rather than Subcontractor or subcontracting. The parties acknowledge and agree that Subrecipient may perform work under this agreement using subrecipients and that Subrecipient is wholly responsible for selection of subrecipients and to ensure their compliance with applicable law.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

32. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the Subrecipient 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 Subrecipient under the Grant.

33. 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
- US Department of Commerce Special Terms and Conditions
- Additional 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
- Attachment D – [US Department of Commerce Special Terms and Conditions](#)

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director of Commerce 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 Subrecipient, 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. "Subrecipient" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Subrecipient.
- 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 Subrecipient, who is performing all or part of those services under this Grant under a separate contract with the Subrecipient. 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 Subrecipient. 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 Subrecipient 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.

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

8. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Subrecipient without prior written consent of COMMERCE.

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

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR § 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

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

The Subrecipient shall send all single audit documentation to auditreview@commerce.wa.gov.

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

- A. Subrecipient, 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 Subrecipient is unable to certify to any of the statements in this contract, the Subrecipient shall attach an explanation to this contract.
- C. The Subrecipient 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 Subrecipient 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:

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

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 Subrecipient by COMMERCE that is designated as "confidential" by COMMERCE;
 - 2. All material produced by the Subrecipient that is designated as "confidential" by COMMERCE; and
 - 3. All personal information in the possession of the Subrecipient 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 Subrecipient shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Subrecipient 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 Subrecipient 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 Subrecipient shall make the changes within the time period specified by COMMERCE. Upon request, the Subrecipient shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Subrecipient against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Subrecipient 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.

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient. 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 Subrecipient 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 Subrecipient 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 Subrecipient warrants and represents that the Subrecipient has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Subrecipient 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 Subrecipient shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Subrecipient 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 Subrecipient.

17. DISALLOWED COSTS

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

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

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 Subrecipient 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. FRAUD AND OTHER LOSS REPORTING

Subrecipient 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. INDEMNIFICATION

To the fullest extent permitted by law, the Subrecipient 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 Subrecipient's obligation to indemnify, defend, and hold harmless includes any claim by Subrecipient's agents, employees, representatives, or any subcontractor or its employees.

Subrecipient expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Subrecipient's or any subcontractor's performance or failure to perform the contract. Subrecipient'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.

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

The Subrecipient 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.

23. INDEPENDENT CAPACITY OF THE SUBRECIPIENT

The parties intend that an independent contractor relationship will be created by this Grant. The Subrecipient and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Subrecipient 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 Subrecipient 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 Subrecipient.

24. INDUSTRIAL INSURANCE COVERAGE

The Subrecipient shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Subrecipient 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 Subrecipient the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Subrecipient to the accident fund from the amount payable to the Subrecipient 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 Subrecipient.

25. LAWS

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

26. LICENSING, ACCREDITATION AND REGISTRATION

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

27. 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.

28. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Subrecipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Subrecipient'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 Subrecipient may be declared ineligible for further contracts with COMMERCE. The Subrecipient 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.

29. PAY EQUITY

The Subrecipient 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. Subrecipient may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:

GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS

(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.

(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 Subrecipient is not in compliance with this provision.

30. POLITICAL ACTIVITIES

Political activity of Subrecipient 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 lobbying or for working for or against ballot measures or for or against the candidacy of any person for public office.

31. PREVAILING WAGE LAW

The Subrecipient 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 Subrecipient shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

32. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Subrecipient 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 Subrecipient'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](#).

33. 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.

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

34. PUBLICITY

The Subrecipient 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.

35. RECAPTURE

In the event that the Subrecipient 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 Subrecipient 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.

36. RECORDS MAINTENANCE

The Subrecipient 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 Subrecipient 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.

37. REGISTRATION WITH DEPARTMENT OF REVENUE

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

38. RIGHT OF INSPECTION

At no additional cost all records relating to the Subrecipient'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 Subrecipient shall provide access to its facilities for this purpose.

39. 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.

40. 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.

41. SUBCONTRACTING

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

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

If COMMERCE approves subcontracting, the Subrecipient 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 Subrecipient to amend its subcontracting procedures as they relate to this Grant;
- B. prohibit the Subrecipient from subcontracting with a particular person or entity; or
- C. require the Subrecipient to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Subrecipient is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Subrecipient 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 Subrecipient to COMMERCE for any breach in the performance of the Subrecipient'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.

42. 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.

43. TAXES

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

44. TERMINATION FOR CAUSE

In the event COMMERCE determines the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Subrecipient or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Subrecipient: (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.

45. 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.

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

46. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Subrecipient 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 Subrecipient the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient, 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 Subrecipient and in which COMMERCE has or may acquire an interest.

47. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Subrecipient, for the cost of which the Subrecipient 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 Subrecipient. Title to other property, the cost of which is reimbursable to the Subrecipient under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of 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 Subrecipient shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

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

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

48. 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.

49. 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.

STATEMENT OF WORK AND PROJECT COSTS

SCOPE OF WORK

Funds awarded under this grant will be used for capital expenditures for the City of Ellensburg Fiber Extension and Fixed Wireless Broadband project.

This project constructs approximately 5 miles of aerial and underground 96ct fiber, installs 24 radios, and deploys approximately 4 arrays with 3x30° horns on four standoffs. 60° horns may be used for less dense coverage.

Households along the fiber run will have the ability to connect at speeds up to 1 Gbps symmetrical. Households connected via wireless will have minimum connection speeds of 50 Mbps symmetrical. The project will connect the following to qualifying broadband service in the proposed service area:

- Households - 708.
- Businesses - 0.
- Community anchor institutions - 0.

The broadband technology funded by this grant will result in minimum service speed to each of the above premises that reliably meets or exceeds 25 megabits per second download (Mbps) and 3 Mbps upload speeds.

Grantee shall require all retail internet service providers using the broadband funded through this grant to either:

- Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP); or
- Provide access to a broad-based affordability program to consumers with low incomes in the broadband infrastructure proposed service area that provides benefits commensurate with those provided under the ACP.

Submit executed Partnership Agreement(s) and/or Indefeasible Rights of Use (IRU), no later than thirty (30) days prior to the anticipated construction completion date or contract end date.

The location of the project is Ellensburg.

Project activities will include and not be limited to:

- **Preliminary Design** Initial project design and planning.
- **Engineering** Includes detailed design engineering, permitting and rights of way, creation of construction documents
- **Procurement** Identification, ordering, receiving, and inventory of all necessary materials and equipment.
- **Marketing** Customer communication and outreach. Includes general awareness campaign, and final customer acquisition.
- **Construction** Advertisement of bids for OSP contractor (or ISP). Contractor Selection. Construction Management. Advertisement of bids for drops contractor, selection. Management
- **Customer Connection/Completion** Installation of network equipment in customer homes. Network connections and provision of internet service.

The project needs to meet all applicable Local, State, and/or Federal standards.

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.

Estimated Project Costs

Cost Category	Grant Amount	WSBO Match	Total
Administrative and Legal Expenses	\$ 0.00	\$ 0.00	\$ 0.00
Site Work	\$ 0.00	\$ 0.00	\$ 0.00
Architectural and Engineering	\$ 32,500.00	\$85,990.00	\$118,490.00
Project Inspection Fees	\$ 0.00	\$ 0.00	\$ 0.00
Construction	\$ 212,837.00	\$4,521.00	\$217,358.00
Equipment	\$ 157,552.00	\$10,358.00	\$167,910.00
Miscellaneous	\$ 34,684.00	\$8,524.00	\$43,208.00
Contingencies	\$ 0.00	\$ 0.00	\$ 0.00
TOTAL PROJECT COSTS	\$ 437,573.00	\$ 109,393.00	\$ 546,966.00

CERTIFICATION PERFORMANCE MEASURE – STATEMENT OF WORK AND PROJECT COSTS

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

 SUBRECIPIENT SIGNATURE
 Heidi Behrends Cerniwey, City Manager

 DATE

CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT

Type of Funding	Source Description	Amount
Grant	NTIA BIP Washington State Department of Commerce	\$437,573.00
Other Grants		
Grant #1	State Match Washington State Department of Commerce	\$109,393.00
Grant #2		\$
Total Other Grants		\$109,393.00
Other Loans		
Loan #1		\$
Loan #2		\$
Total Loans		\$0.00
Other Local Revenue		
Source #1		\$
Total Local Revenue		\$0.00
Other Funds		
Source #1		\$
Source #2		\$
Total Other Funds		\$0.00
Total Project Funding		\$546,966.00

CERTIFICATION PERFORMANCE MEASURE - AVAILABILITY OF FUNDS

The Subrecipient, by its signature, certifies that project funding from sources other than those provided by this Grant Agreement and identified above has been reviewed and approved by the Subrecipient's governing body or board of directors, as applicable, and 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 Subrecipient 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.

 SUBRECIPIENT SIGNATURE

Heidi Behrends Cerniwey, City Manager

 DATE

CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

The Subrecipient, 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. The Subrecipient shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

Subrecipient certifies that "all laborers and mechanics employed by contractors and subcontractors in the performance of the project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate state entity pursuant to a corollary state prevailing-wage-in construction law (commonly known as "baby Davis-Bacon Acts").

Subrecipient certifies that "the indicated project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)).

For any funds are used by the Subrecipient for the purpose of construction, applicable State Prevailing Wages must be paid.

CERTIFICATION PERFORMANCE MEASURE – PREVAILING WAGES

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

SUBRECIPIENT SIGNATURE

Heidi Behrends Cerniwey, City Manager

DATE



DocuSign Routing Form

SBO Unit

Review by (Title):	Name:	Date:	Initials:
Contract Manager	Jason Freeze		
SBO Infrastructure Programs Manager	Connie Rivera		
LGD Deputy Assistant Director (before AD signature)	Tony Hanson		

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Division:

Local Government

Program: WSBO BIP and State Match

ContractNumber: 22-96811-002

DocumentType: Contract

Source Envelope:

Document Pages: 33

Signatures: 0

Envelope Originator:

Certificate Pages: 5

Initials: 0

Jason Freeze

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1011 Plum Street SE

Envelopeld Stamping: Enabled

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Olympia, WA 98504-2525

jason.freeze@commerce.wa.gov

IP Address: 147.55.149.175

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Pool: Washington State Department of Commerce

Location: DocuSign

Signer Events**Signature****Timestamp**

Heidi Behrends Cerniwey

Sent: 10/17/2022 8:47:37 AM

cerniweyh@ci.ellensburg.wa.us

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Terry Weiner

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weinert@ci.ellensburg.wa.us

Viewed: 10/17/2022 8:48:22 AM

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Accepted: 10/17/2022 8:48:22 AM
ID: 6813f8b7-8c4a-42be-bbd4-1f2f6c65c7f4

Jason Freeze

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Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Connie Rivera

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Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Tony Hanson

tony.hanson@commerce.wa.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Signer Events	Signature	Timestamp
Mark Barkley mark.barkley@commerce.wa.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Ben Faubion faubionb@ci.ellensburg.wa.us IT Manager Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 10/17/2022 8:47:36 AM ID: f68e270d-deae-4f59-80ba-90e49351b97e	VIEWED Using IP Address: 64.146.186.2	Sent: 10/14/2022 4:40:30 PM Viewed: 10/17/2022 8:47:36 AM
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	10/14/2022 4:40:30 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Washington State Department of Commerce (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.15 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Washington State Department of Commerce:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: docusign@commerce.wa.gov

To advise Washington State Department of Commerce of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@commerce.wa.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Washington State Department of Commerce

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to docusign@commerce.wa.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Washington State Department of Commerce

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to docusign@commerce.wa.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Washington State Department of Commerce as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Washington State Department of Commerce during the course of your relationship with Washington State Department of Commerce.



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

August 19, 2022

City of Ellensburg
Ben Faubion
IT & Telecom Manager
501 N. Anderson St
Ellensburg, Washington 98926

Sent via email to: cerniweyh@ci.ellensburg.wa.us
faubionb@ci.ellensburg.wa.us

Dear Mr. Faubion,

Congratulations! The City of Ellensburg's application for the Washington State Broadband Office's (WSBO) Match Grant Program, has been approved. The NTIA Match Request received a federal funding award is \$437,573 this will allow WSBO to offer a matching grant amount of \$109,393. The Matching Grant contract agreement period of performance will be concurrent with the City's NTIA contract agreement period of performance.

Staff will be reaching out to establish the pre-contracting step, which may have been completed with your NTIA BIP contracting. Staff looks forward to partnering with you on the Stevens County Broadband Development project.

If you have any questions or need additional information, please contact me at 360-704-9435 or email connie.rivera@commerce.wa.gov. Jason Freeze, Jason.freeze@commerce.wa.gov is joining our office on September 1st and he will be your project manager on this project.

Sincerely,

Connie Rivera, State Broadband Office Infrastructure Programs Manager



CITY COUNCIL AGENDA REPORT

City Council Meeting Date:	November 7, 2022
Item Title/Agenda Subject:	Approval of the Sun Life Stop-Loss Policy for Plan Year 2023
Submitted by:	Lisa Young Human Resources
Recommended Action or Motion:	Authorize City Manager's Signature on the Sun Life Stop-Loss Policy for Plan Year 2023.
Background/Summary:	The City of Ellensburg maintains a stop-loss policy to limit the City's exposure to high-dollar medical claims. High dollar claims are those over \$90,000.
Previous Council Action:	Ongoing support for quality employee benefits while taking precautions to limit financial liability to the City.
Analysis:	The City's stop-loss policy for medical claims will expire on 12/31/2022. The renewal for 2023 requires the policyholder's signature, which has historically been the City Manager.
Financial Impact:	The renewal for the Sun Life Stop Loss Policy is 8.8%. According to our Broker, Alliant, this is a good renewal compared to others they are seeing in their book of business.
Attachments:	SunLife Stop Loss Renewal-010123



SECTION FOUR

Renewal options

October 25, 2022

To accept the renewal proposal, please do the following:

- At the bottom of this page, select a renewal option and sign where indicated.
- Email, fax, or mail this page to me by December 1, 2022, in order to avoid a lapse in coverage.
- Please Note: Your signature constitutes your acceptance of the terms, conditions assumptions and contingencies set forth within all pages of this proposal.

Policyholder name: City of Ellensburg
 Policyholder Address: 501 North Anderson Street
 Ellensburg, WA 98926
 Situs State: WA
 Renewal Eff. Date: January 1, 2023

Account number: 936957
 Renewal status: Open
 TPA Name: FIRST CHOICE ADMINISTRATORS
 PPO Name: First Choice Health Network

Current and renewal rate summary

Tier	Employees
Single	54
Family	57
Total	111

Specific Stop-Loss policy details and renewal options

Plan thresholds	Current	Renewal option 1	Renewal option 2	Renewal option 3
Individual Specific deductible	\$90,000	\$90,000	\$100,000	\$110,000
Aggregating Specific deductible	\$45,000	\$45,000	\$45,000	\$45,000
Annual maximum	Unlimited	Unlimited	Unlimited	Unlimited
Lifetime maximum	Unlimited	Unlimited	Unlimited	Unlimited
Specific rates	Current	Renewal option 1	Renewal option 2	Renewal option 3
Claims basis	12/15 gapless	12/15 gapless	12/15 gapless	12/15 gapless
Gapless Renewal		Included	Included	Included
Benefits covered	Medical and Rx	Medical and Rx	Medical and Rx	Medical and Rx
Single	\$216.82	\$236.36	\$219.00	\$209.26
Family	\$559.90	\$610.37	\$565.52	\$540.37
Total monthly premium	\$43,622.58	\$47,554.53	\$44,060.64	\$42,101.13
Renewal rate action as a % increase to current monthly premium		9.0%	1.0%	-3.5%

Aggregate Stop-Loss policy details and renewal options

Aggregate rates	Current	Renewal option 1	Renewal option 2	Renewal option 3
Aggregate Benefit Maximum	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Per employee per month rate	\$21.97	\$23.07	\$23.07	\$23.07
Total monthly premium	\$2,438.67	\$2,560.77	\$2,560.77	\$2,560.77
Renewal rate action as a % increase to current monthly premium		5.0%	5.0%	5.0%

Aggregate thresholds and rates	Current	Renewal option 1	Renewal option 2	Renewal option 3
Claims basis	12/15	12/15	12/15	12/15
Benefits covered	Medical/PDP	Medical/PDP	Medical/PDP	Medical/PDP
Corridor	125%	125%	125%	125%
Minimum Attachment Point %	90%	90%	90%	90%
Single Aggregate deductible factor	\$881.33	\$895.35	\$918.41	\$934.66
- Medical	\$657.89	\$625.00	\$648.06	\$664.31
- Rx Drug	\$223.44	\$270.35	\$270.35	\$270.35
Family Aggregate deductible factor	\$2,467.73	\$2,506.96	\$2,571.54	\$2,617.03
- Medical	\$1,842.10	\$1,749.99	\$1,814.57	\$1,860.06
- Rx Drug	\$625.63	\$756.97	\$756.97	\$756.97
Minimum Attachment Point	\$169,427.19	\$172,121.06	\$176,554.73	\$179,678.12
Estimated monthly renewal liability	\$188,252.43	\$191,245.62	\$196,171.92	\$199,642.35
Renewal rate action as a % increase to current monthly aggregate deductible factors.		1.6%	4.2%	6.1%

Total estimated annual plan costs

Total costs	Current	Renewal option 1	Renewal option 2	Renewal option 3
Total annual premium	\$552,735.00	\$601,383.60	\$559,456.92	\$535,942.80
Annual Aggregate Attachment Point	2,259,029.16	2,294,947.44	2,354,063.04	2,395,708.20
Total estimated self-funded plan costs	\$2,811,764.16	\$2,896,331.04	\$2,913,519.96	\$2,931,651.00
Renewal rate action as a % increase to total estimated annual plan cost.		3.0%	3.6%	4.3%

Select renewal option

Please indicate the renewal option you have selected by initialing one of the three boxes above. The premium rates agreed upon as part of the renewal will be effective on the Policy Renewal Effective Date. Your signature on the renewal proposal constitutes your acceptance of the terms, conditions, assumptions and contingencies set forth in it.

Please acknowledge your acceptance of the renewal proposal, which includes all pages of the proposal, by signing below and returning the signed page to Brian Partridge.

Policyholder Signature: _____

Date: _____

Printed Name: **Heidi Behrends Cerniwey**Printed Title: **City Manager**

Policyholder name: City of Ellensburg
 Account number: 936957
 Renewal status: Open
 Renewal Eff. Date: January 1, 2023

Specific Stop-Loss coverage

The following options and programs are included in your policy:

Options:

- **No New Lasers at Renewal option with Renewal Rate Cap of 50%**

This option prevents new lasers from being added to the new policy if it renews. The rate cap applies to Specific Benefit rates and the Aggregating Specific deductible (if applicable), and it assumes there are no material changes to the underlying plan, the Sun Life Stop-Loss policy, or the covered group.

- **Mirroring Endorsement**

This option is subject to review and approval by Sun Life and may affect the quoted rates. To include this endorsement with your policy, within 90 days of the policy effective date, we need your plan document and an executed Renewal Options signature page.

- **Advance Funding option**

This option enhances the cash flow of your self-funded plan by advancing the stop-loss funds to you or your administrator up front, before you pay the provider.

- **Retiree coverage**

- **Rx claims are included and bundled with the administration (no carve-out PBM)**

This proposal assumes that your stop-loss insurance will include coverage for prescription drug claims and that the standard large claimant reporting from your medical administrator will include both medical and prescription drug claims. Based on the information provided, your PBM vendor is CVS/CareMark.

- **Experience Rating Refund**

On each Policy Anniversary, a retrospective Experience Rating Refund process is applied to the Specific Benefit.

If the Loss Ratio Percentage for the Policy Year is less than 65% then 50% of the Surplus --- up to a maximum 15% of the Net Premium paid -- will be returned to the policyholder as an Experience Rating Refund.

The Experience Rating Refund Endorsement is subject to the following conditions:

- Surplus will equal 65%, less the loss ratio percentage for the policy year, multiplied by the Net Premium Paid by the policyholder.
- The "Loss Ratio Percentage" will equal the total dollar amount of all Specific Benefit claims paid by Sun Life divided by the net premium paid for the policy year.
- "Net Premium" will equal the premium paid to Sun Life for the Policy Year, less the commission paid by Sun Life for the Policy Year.

The total dollar amount of Specific Benefit claims paid by Sun Life will be determined after the end of the Policy Year and the Run-Out Period, if any. The calculation to determine whether an Experience Rating Refund is payable will be made 6 months after the end of the of the Specific Benefit Claims Basis (including any Run-Out Period).

If an Experience Rating Refund is payable, it will be paid within 30 days after the calculation is made.

Programs:

- **SunElite™ medical document review service**

SunElite is a medical plan document review service for Sun Life Stop-Loss clients. Your custom SunElite report will analyze the plan's cost-containment, federal law compliance and discretionary authority.

- **SunExcel® transplant program**

The SunExcel program includes access to a stop-loss Specific Benefit deductible reduction when an approved transplant contract is placed.

- **SunResources® preferred network program**

SunResources is our preferred cost-containment vendor program. On a voluntary basis, Sun Life clients gain access to an extensive network of cost-containment vendors that have gone through a rigorous vetting process to ensure quality service and performance. SunResources can help lower costs both before and after a catastrophic claim occurs.

The following are not included in your policy:

- **Clinical Trials option**
- **Electronic Funds Transfer**
- **Terminal Liability option**

Producer commissions

Sun Life pays the following commission percent to the Stop-Loss producer: 10.0%.

Specific Benefit Stop-Loss renewal acceptance

Acceptance of your Specific Benefit Stop-Loss renewal by Sun Life is subject to timely receipt of a signed renewal proposal and contingent upon a review of large claims over \$45,000 with diagnosis/prognosis for the period of January 1, 2022, through September 30, 2022, with accompanying required information. For large claims, the required information includes paid claims, pending claims, and notification of known situations. Upon review of your large claims information, we reserve the right to recalculate quoted rates.

Sun Life will not reimburse for claims expenses incurred outside the Policy Year parameters.

Policyholder name: City of Ellensburg
Account number: 936957
Renewal status: Open
Renewal Eff. Date: January 1, 2023

Aggregate Benefit Stop-Loss

- **Features**
Monthly Aggregate Accommodation is not included.
Terminal Liability option is not included.

Minimum Attachment Points		
Renewal Option 1	Renewal Option 2	Renewal Option 3
\$2,065,452.70	\$2,118,656.74	\$2,156,137.38

- **Aggregate Stop-Loss renewal acceptance**
Renewal acceptance of Aggregate Benefit coverage by Sun Life is subject to timely receipt of a signed renewal proposal and contingent upon a review of monthly claims and lives, by line of coverage, for the period of January 1, 2022, through September 30, 2022. Upon review of that information, we reserve the right to recalculate the Aggregate Benefit Attachment Point.

General coverage

- **Captive coverage**
Any Stop Loss policy issued to a policyholder that is part of a captive program, is excluded from any and all Sun Life incentive, bonus or override programs.
- **Affordable Care Act accommodations**
This renewal proposal represents Sun Life's efforts to work with you to meet your requirements under the Affordable Care Act (ACA), including, but not limited to, the dependent age provisions of the ACA. It is the selffunded medical plan's responsibility to keep its census data up to date at all times. If the plan inadvertently does not remove a terminated participant, Sun Life may deny any claims from the participant. However, in that situation, the self-funded medical plan is responsible for the claim.

Proposal for City of Ellensburg
GSLOT-2551, SLPC 24342 05/21 (exp. 05/23)

Disclosures

1. Sun Life book of business data through March 2020.
2. For complete financial ratings, visit www.sunlife.com/financialratings.
3. Sun Life renewal statistics data from 2018 to 2020.
4. Health Research Institute Medical Trend "Behind The Numbers" report 2021.

Producer licensing

All Sun Life companies require producers using insurance quotes we issue for the purpose of soliciting, selling, or negotiating insurance to be licensed both by the state where the prospective client is located and by any state where the solicitation, sale, or negotiation of insurance occurs, if different. This requirement pertains to all forms of solicitation, sales or negotiation of insurance, including but not limited to solicitation, sale, or negotiation conducted in person, by telephone, by email, by fax, or otherwise.

Producer compensation

We encourage brokers and their clients to discuss what commission or other compensation may be paid in connection with the purchase of products and services from Sun Life companies. All Sun Life companies may pay the selling broker, agency, or third party administrator for the promotion, sale, and renewal of the products and services offered in this proposal. In addition to our standard compensation, we may make additional cash payments or reimbursements to selling brokers in recognition of their marketing and distribution activities, persistency levels, and volume of business.

For New York situs business, we may pay reduced compensation where fewer services are offered and increased compensation where more services are provided. Producers must comply with the specific compensation disclosure requirements of New York Regulation 194.

Plan and rates

This renewal proposal is based on the employee census information that was provided. Acceptance of the group and final rates will be determined by the Sun Life home office in the United States based on actual enrollment and case experience, if required. Terms and conditions of any coverage under the policy will be determined by all necessary final data and by underwriting rules, policy requirements, and policy provisions in effect on the date coverage begins.

Sun Life Companies

The Sun Life group of companies operates under the "Sun Life" name. In the United States and elsewhere, insurance products are offered by members of the Sun Life group of companies that are insurance companies.

Currently, group underwriting companies include Sun Life and Health Insurance Company (U.S.) and Sun Life Assurance Company of Canada. Sun Life Inc., the publicly traded holding company for the Sun Life group of companies, is not an insurance company and does not guarantee the obligations of these insurance companies. Each insurance company relies on its own financial strength and claims-paying ability.

Group stop-loss insurance policies are underwritten by Sun Life Assurance Company of Canada (Wellesley Hills, MA) in all states, except New York, under Policy Form Series 07-SL REV 7-12. In New York, group stop-loss insurance policies are underwritten by Sun Life and Health Insurance Company (U.S.) (Lansing, MI) under Policy Form Series 07-NYSL REV 7-12. Product offerings may not be available in all states and may vary depending on state laws and regulations.

Stop-Loss information

The following services are not insurance and carry a separate charge included with the price of coverage: Clinical 360, owned by Sun Life; SunExcel®, owned by Sun Life; SunElite™, owned by Sun Life with services provided by The Phia Group, LLC.

Information

Issuance of a Stop Loss policy is dependent upon meeting underwriting guidelines and participation requirements.

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

10/31/22
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 **7th DAY OF NOVEMBER 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	159400	TO	159632	\$ 1,480,218.42
EFT #'s	5807	TO	5847	\$ 1,061,545.05

Payroll Fund				Total Amounts
Check #'s	95817	TO	95849	\$ 7,389.47
Direct Deposits	70121	TO	70336	\$ 388,780.68

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

ATTEST: _____
CITY CLERK



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: Memorandum of Understanding Between the City of Ellensburg, Ellensburg School District, and Central Washington University

Submitted by: Nicole Klauss City Manager Department

Recommended Action or Motion: Authorize the Mayor and the Diversity, Equity & Inclusion Commission Chair to sign the MOU.

Background/Summary: The City of Ellensburg's Diversity, Equity & Inclusion Commission is co-hosting Belonging in the Burg event with the Ellensburg School District and Central Washington University. The goal for the event is to connect a diverse group of residents for a meaningful conversation about belonging.

Previous Council Action: In March 2021, the City Council approved Ordinance 4871, allowing the establishment of the Diversity, Equity & Inclusion Commission, to assist the Council in promoting diversity, equity and inclusion in the City of Ellensburg through action, education, and guidance.

Analysis: The City of Ellensburg, Ellensburg School District ("ESD"), and Central Washington University ("CWU"), wish to further their long-standing cooperative relationship and increase belonging in Ellensburg. However, the MOU does not impose any legal obligations on the parties.

Financial Impact: None at this time.

Attachments:
[MOU City ESD CWU Belonging](#)

**Memorandum of Understanding
City of Ellensburg
Ellensburg School District
Central Washington University**

Concerning the Relationship Around Diversity, Equity, Inclusion and Belonging in Ellensburg.

This memorandum of understanding entered into by and between the City of Ellensburg, Ellensburg School District (“ESD”), and Central Washington University (“CWU”), each wishing to further their long-standing cooperative relationship and increase belonging in Ellensburg. We invite others to support these efforts.

WHEREAS, the City of Ellensburg’s Diversity, Equity and Inclusion Commission is tasked with advising the Ellensburg City Council on diversity, equity and inclusion matters with the mission to support Ellensburg in celebrating a diverse, equitable, and inclusive community that welcomes and is supportive to all residents and visitors because doing so enriches each individual’s life and the community’s wellbeing and vitality.

WHEREAS, Ellensburg schools pride themselves on being an inclusive environment that enables students to learn, create, do, and prosper through education.

WHEREAS, the CWU strategic plan identifies Inclusivity and Diversity as a key theme and is of respect, committed to providing all faculty, staff, and students a diverse working and learning environment built to support and encourage individual and collaborative excellence. Research clearly indicates that learning is enhanced when students experience a diverse learning and living environment. Inclusiveness is achieved by providing a welcoming, supportive, and empowering environment that encourages individuals to express ideas and identities. A diversely rich community affords depth and dimension in personal and college outcomes.

WHEREAS, the City, ESD, and CWU have common interest in increasing belonging in Ellensburg for residents of all ages and backgrounds.

Now, therefore, the parties agree as follows:

1. The parties hereto affirm the establishment of the Belonging In The Burg World Cafe event, a community-building conversation, that may become an ongoing series.
2. This memorandum imposes no legal obligations. It sets out terms for cooperation to improve the effectiveness of the City, ESD, and CWU in providing community conversations about belonging to promote education around diversity, equity, and inclusion. No portion of this memorandum will be construed to imply that any legal obligations exist among any of the signatories.
3. These entities are committed to work beyond the World Cafe to promote diversity, equity, and inclusion initiatives.

Duration of Agreement

We invite other community agencies to join us in supporting and building belonging in the community.

This agreement shall remain in effect until terminated in writing with 90 days' notice by any party, or by mutual agreement of the parties.

This MOU has been executed by and on behalf of the parties hereto on this ____ day of ____, 2022.

For City of Ellensburg:

Nancy Lillquist, Mayor

Nancy Goodloe, DEI Commission Chair

For ESD:

Jinger Haberer, Superintendent

Jason White, ESD Board Chair

For CWU:

Jim Wohlpart, President of CWU



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: Public Hearing (Legislative) for Proposed 2023 Property Tax Levy Ordinance (First Reading)

Submitted by: Jerica Pascoe Finance Department

Recommended Action or Motion: Consider first reading of the proposed ordinance establishing the Ad Valorem Property Tax Levy for 2023.

Background/Summary: The proposed ordinance reflects the 2023 levy for property taxes to be collected in 2023 for municipal purposes. The ordinance establishes the 2023 regular property tax levy and certifies the 2023 property tax levy to the Kittitas County Commissioners.

RCW 84.55.005 limits the increase in property taxes to the lower of one percent over the prior year levy rate or the Implicit Price Deflator (IPD). The IPD inflation rate for setting 2023 property tax was 6.457%; therefore, the City is limited to 101%.

Tax revenue funds are approximately 69% of the General Fund budget, of which property tax alone accounts for 17%. Because Council has very limited control over revenue/funding sources that support general government activities, without increases in General Fund revenues such as property tax, the City cannot fund the necessary overhead increases without further reducing fund balance. In order for delivery of service to remain consistent from year to year, funding of these services must also remain consistent and thus rise as expenses rise.

This increase in IPD does reflect the overall rate of inflation that we are seeing locally. For example, EMS services are scheduled to increase \$11,694 (15.88%) over the 2022 actual cost, and we have been notified of Kittcom dispatch and cost center user fee increases of \$167,727 (30.46%) over 2022 for the General Fund. In addition, labor contract increases of 2.5% for Teamsters wages in the Parks & Recreation Department, an 8.66% increase in minimum wage, and an anticipated new \$75,000 expenditure to provide for Public Defender

servicers/indigent defense are just a few of the General Fund increases in 2023. Only specifically anticipated cost increases are included in the preliminary budget with no across-the-board increase to supplies and service costs.

Previous Council Action: Council held a public hearing on revenue sources, including property tax, on October 3, 2022.

Analysis: Property tax collections for the City of Ellensburg are estimated to be \$3,510,200.17. This is an increase of \$96,215.32 over the 2022 levy. This increase reflects a one percent (1.00%) increase of \$34,139.85, an increase of \$61,662.83 attributed to new construction, improvements, wind turbines, solar, biomass, and geothermal facilities, \$10.93 for an increase in the value of state-assessed property, \$401.71 from annexations. These numbers may change slightly as updated numbers come in from the county.

Financial Impact: Adoption of the Ordinance at 1.00% will increase the property tax revenue by approximately \$96,215. The proposed 2023 budget includes the 1.00% increase.

Attachments:
[Ordinance 4899 - 2023 Property Tax Levy \(First Reading\)](#)

ORDINANCE NO. 4899

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, LEVYING PROPERTY TAXES FOR THE CITY OF ELLENSBURG FOR THE FISCAL YEAR COMMENCING JANUARY 1, 2023, ON ALL PROPERTY IN SAID CITY WHICH IS SUBJECT TO TAXATION FOR THE PURPOSE OF PAYING SUFFICIENT REVENUE TO CARRY ON GENERAL OPERATIONS, RECOGNIZE VOTER APPROVED LEVIES AND PAY DEBT SERVICE OBLIGATIONS OF SAID CITY AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Ellensburg adopted Ordinance 4592 in 2011 establishing a two-year fiscal biennial budget process as provided in Chapter 35A.34 RCW; and

WHEREAS, the City Council of the City of Ellensburg held a duly advertised public hearing on October 3, 2022 to consider proposed 2023 revenue sources, including property taxes; and

WHEREAS, the City Council of the City of Ellensburg has met and considered its budget for 2023-2024 biennial budget pursuant to RCW 84.55.120; and

WHEREAS, pursuant to RCW 84.55.120, the City Council of the City of Ellensburg held a duly advertised public hearing on November 7, 2022, to consider possible increases in property tax revenue for the calendar year 2023; and

WHEREAS, the City's actual levy amount from previous year was \$3,413,984.85; and

WHEREAS, the population of the city is more than 10,000,

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

Section 1. General Tax Levy for 2023. An increase in the regular property tax levy is hereby authorized for the levy to be collected in the 2023 tax year. The dollar amount of the increase over the actual levy amount from previous year shall be \$34,139.85, which is a percentage increase of 1% from previous year as authorized by RCW 84.55.005. This increase is exclusive of additional revenue resulting from new construction, improvements to property, newly constructed wind turbines, solar, biomass, and geothermal facilities, and any increase in the value of the state assessed property, any annexations that have occurred and refunds made.

Section 2. Majority Approval. This ordinance was passed by a majority of the entire Council.

Section 3. Transmittal to Auditor. A certified copy of this Ordinance shall be transmitted to the Kittitas County Assessor's Office and to the Clerk of the Kittitas County Commissioners, and such other governmental agencies as provided by law.

Section 4. 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 5. 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 6. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of the ordinance or a summary thereof consisting of the title.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 21st 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. 4899 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



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: Public Hearing - Preliminary 2023/2024 Biennial Budget

Submitted by: Keith Bassett Finance Department

Recommended Action or Motion: Conduct a Public Hearing on the Preliminary 2023/2024 Biennial Budget.

Background/Summary: The Preliminary 2023/2024 Biennial Budget has been prepared for a Public Hearing, ahead of Council consideration of first reading of a proposed budget ordinance scheduled for the November 21, 2022 Council meeting.

The Preliminary Budget provides expenditure authority to maintain the City's operations and infrastructure and makes targeted investments to address priorities identified in the Council Strategic Vision and maintains the City's sound financial position including preserving reserve levels as required by City Financial Policies.

Budget enhancements beyond the status quo are listed separately. Requests were developed within the originating departments, evaluated in the context of the entire City operations and infrastructure needs, and aligned with items and initiatives identified by the City Manager.

Previous Council Action: Council held a public hearing for the purpose of receiving public comment on 2023 revenue sources, including consideration of possible increases in property tax revenues, at the October 3, 2022 regular meeting.

Analysis: Total available resources anticipated for 2023, specifically beginning fund balance and forecast revenues, are forecasted 5.05% below the adopted 2022 budget level. Total available resources anticipated for 2024 are 11.28% below the 2023 forecast level. 2022 budgeted anticipated resources include significant federal COVID-19 response dollars, and bond funds and accumulated reserves for capital investments in utility infrastructure. As these designated resources are anticipated to

be spent in the first year of the biennium. Conservative financial forecasting, proactive management, and regular ongoing financial monitoring, analysis, and oversight, including quarterly reports to Council, helps ensure sustainable resource use across the City's funds.

Details of the budget are included in the attached City Manager's Budget Message, 2023-2024 Preliminary Budget Enhancements & Capital Project List, and 2023-2024 Preliminary Budget by Fund.

Financial Impact:

The preliminary 2023/2024 budget, once adopted, would establish the appropriations and positions necessary to authorize the expenditures for each of the City's funds. As drafted, the preliminary budget maintains service levels and infrastructure, makes targeted investments in Council priorities, and maintains fund balances within policy targets.

Attachments:

[2023-2024 Budget Message](#)

[Preliminary 2023-2024 Budget - Enhancements & Capital Project List](#)

[Preliminary 2023-2024 Budget by Fund](#)



CITY OF ELLENSBURG
501 North Anderson Street
Ellensburg, Washington 98926
Telephone: (509) 962-7221 Fax: (509) 962-7143

November 7, 2022

Honorable Mayor, City Council, and Ellensburg Community:

We are pleased to present to you the preliminary 2023-2024 Biennial Budget for the City of Ellensburg. The purpose of this transmittal letter is to provide the Council and public a summary of the general issues addressed in the budget and to highlight significant changes in projected revenues and expenditures. This document as presented represents a continued commitment to provide effective fiscal management and professional service delivery, while maintaining a high quality of life for our community members. The budget reflects a financial plan to move us forward toward achieving the priorities and milestones in the Ellensburg City Council Strategic Vision 2023-2028 and goals identified in the City's Comprehensive Plan. It allocates resources to a variety of programs necessary to protect the community, maintain the city's infrastructure, and continues levels of service that our people have come to expect.

Budget Development

The Biennial Budget preparation takes a significant amount of time and commitment on behalf of all departments every other year beginning in June of even years. As noted below, staff prepare the budget with City Council's Vision and Milestones in mind as the foundation of the budget development. This budget serves as a policy document, an operations guide, a financial plan, and a communications device for the coming biennium. It helps guide our decisions and discussions about operations and capital programs throughout each year of the biennium. This budget maintains current levels of service, programs, and required reserve balances. The budget pursues strategic opportunities to address Council priorities, and to the extent possible, addresses individual department requests.

Financial Opportunities

The long-term revenue picture remains positive, and although national economic forecasts are cloudy, we will continue investing in maintenance and improvement of our infrastructure systems and shaping operations to expand capacity for achieving the Council's vision. The balance of federal COVID-19 relief dollars are directed to fund development of Unity Park, wastewater transmission system improvements and efficiencies, and project management capacity. Bond funded investments continue in wellhouse infrastructure, water distribution system, and wastewater collection and treatment systems.

Circumstances have changed since the last budget was adopted during a transformative global pandemic with uncertainty about economic impact. Recent economic conditions, a City Manager transition, and elucidation of a City Council Strategic Vision present opportunities to move forward.

The City's General Fund ending fund balance policy threshold is set at 15% of ongoing operating expense. For 2023 and 2024, reserve levels are at 25.54% and 15.39% respectively when including the sales tax reserve. While the projected fund balance in 2022 is near the 15% reserve threshold, it is anticipated that prudent management of the General Fund and Sales Tax Reserve Fund will result in a larger cash balance

than budgeted and these expenditures will be closely monitored through continuing oversight activities to ensure a healthy bottom line at the end of 2024.

Budget Summary

The 2023/2024 Biennial Budget totals \$117,210,483 for 2023 and \$106,007,479 for 2024 excluding ending fund balance. The City's General Fund operating revenues are conservatively projected to exceed budgeted 2021 levels, and increase slightly between 2023 and 2024. The projected operating revenue for fiscal years 2023 and 2024 are \$17,312,891 and \$17,491,610 respectively. Combined with the projected carryover from 2022 the total available resources in the General Fund operations are \$21,884,894 for 2023 and \$20,121,770 for 2024.

Total projected tax revenue (property taxes, sales taxes, business and occupation tax, and utility taxes) in for general governmental purposes are \$14,098,111 for 2023 and \$14,565,897 for 2024. Regular property tax receipts incorporate a 1.0% property tax increase as allowed under current law. This increase produces approximately \$34,134. Retail sales tax activity projection for most sectors anticipates taxable sales growth. Taxable sales in the Construction sector are more volatile and are conservatively projected lower based on 2022 experience to date. The 2023/2024 Biennial Budget includes Council adopted increases to customer utility rates.

Budget Highlights

The 2023/2024 Biennial Budget includes a number of important capital projects. We continue to make progress in meeting and enhancing capital investment needs. Utility expansions included in this budget are focused upon preservation of existing systems and expansions to improve resiliency of existing service and ensure redundancy in the event of outages or service interruptions on the various utility systems. The budget for new service connections and development-driven activity is derived from an estimate of anticipated activity.

The personnel portion of the budget includes salary increases governed by the various labor contracts. Non-represented personnel expenditures are budgeted to accommodate a 3% cost of living adjustment in each year. Employees who have not reached the top of the pay scale for their position(s) will receive step increases within the allowable pay range subject to satisfactory performance and available revenue. The budget also funds anticipated health insurance premium increases for the City's self-insured benefits program in 2023 and 2024 of 5% each year. Included in the budget are requests for additional positions to add capacity to meet Council priorities: 1 FTE Crime Analyst position in the Police Department; 1 FTE Arts and Economic Development Manager, 1 FTE Information Technology Director, and 1 FTE Human Resources Specialist in the Administration Department; 1 FTE Financial Analyst position and upward reclassification of an Account Clerk II to Sr. Account Clerk in the Finance Department; two seasonal 0.5 FTE Park Maintenance Tech positions to support athletic field rentals and complete the conversion from AmeriCorps volunteers to Recreation Aide at the Stan Bassett Youth Center in the Parks and Recreation Department; increase of hours for Summer Reading program in the Library Department; 1 FTE Sustainability Coordinator, 1 FTE Facilities & Warehouse, and Engineering Intern and Gas Engineering Intern positions in the Public Works & Utilities Department; and 1 FTE Housing Coordinator/Grants Manager in the Community Development Department.

The 2023/2024 Budget expands capacity and aligns resources with the Council's Strategic Vision 2023-2028 through the following enhancements:

Housing Affordability

- Expands capacity with a Housing Coordinator/ Grants Manager planner position in the Community Development Department. This position focuses on partnerships and projects to implement the Housing Action Plan and track progress on housing and affordability, staffs the Affordable Housing Commission, coordinates City efforts to address homelessness, and manages related grants. This allows the City to be proactive and seek additional funding for projects that could ease the pressures on housing and achieve progress toward goals.
- Funds site improvements for a year-round sleep center in partnership with Kittitas County for people experiencing homelessness.

Economic Vitality

- Infrastructure system maintenance and investment program aligned with utility and transportation system plans to adequately serve forecasted future residential, commercial, and industrial uses.
- Adds an Arts and Economic Development Manager position to advance City economic vitality initiatives. The position would support local efforts to expand the creative sector, staff the Art's Commission, apply for the State's Creative District designation, and coordinate implementation actions outlined in the City/County economic development strategic plan, currently underway. The position coordinates alignment and partnerships with Central Washington University, Kittitas County, Ellensburg Downtown Association, CenterFuse (EBDA), Chamber of Commerce, and other organizations.
- Complete Unity Park construction at the center of downtown Ellensburg funded primarily with federal COVID-19 relief grant dollars.

Safe and Inclusive Community

- Adds capacity with a new Human Resources Specialist to improve safety culture and implement diversity, equity, and inclusion initiatives.
- Provides for modest investment in communications budget to increase accessibility including translation and signing for events as appropriate.
- Updates the Rotary Park Master Plan to include future addition of family-friendly sports and recreation uses in partnership with other entities.
- Funds summer reading program expansion to address demand.
- Supplements Police Department efforts to use data analytics and other administrative processes to facilitate crime reduction with the addition of a Criminal Analyst position.
- Replaces aging portable radios used by the Police Department and partners with other local government agencies to replace the City's current ballistic-rated Peacekeeper vehicle.
- Continues to provide resources to host cultural events and community-building programs.
- Prepares to fund public defense services within the County's new office.

Energy & Resource Management

- Addition of a Sustainability Coordinator position to work across City services to implement actions in the City's Sustainability and Energy Plan, currently underway.

- Structured budgeted operations and infrastructure investments to meet milestones and targets of Clean Energy Transformation Act (CETA), Climate Commitment Act, building codes, and other state and federal mandates.
- Funds preparation of Zero Emissions Transit Plan for Central Transit.
- Anticipates completing replacement of the City's utility billing software in 2023.
- Provides resources for development of a comprehensive Urban Forestry plan, tree inventory, and tree code update.
- Continues renewable energy and conservation incentives in the energy utilities.

Sustainable Infrastructure

- Continues investment in infrastructure to support community's present and future needs.
- Imposes second one-quarter-of-one-percent Real Estate Excise Tax (REET 2) to develop dedicated funding for investments in Parks and Recreation capital facilities.
- Creates a new "General Facilities" Internal Service Fund to structure sustainable funding for general governmental facility maintenance.
- Prepares for and replacement of the City's enterprise resource planning (ERP) software system including intentional investment to improve data management, operational efficiency, and cybersecurity.
- Intentionally budgets for capital project contingencies for transportation infrastructure projects to address unforeseen costs within the adopted financial program.
- Completes Gateway I stormwater investments, plans for Gateway II – Vantage Highway stormwater investments, and Reecer Creek Levee Extension flood mitigation to improve community resiliency.

Other Major Projects, Programs, and Issues

- Maintains service levels for Police, Parks, Library, Transportation, Transit, Community Development, Finance Department, and Utilities.
- Invests in transportation and utility systems, including:
 - o Anderson Road sewer project, funded with federal COVID-19 relief grant dollars
 - o Pfenning Road shared use pathway
 - o Main Street and Wildcat Way pavement overlays
 - o Brick Road improvements
 - o Sidewalk repair programs
 - o Design of Helena Avenue extension – Water Street to Cora Street
 - o Redundancy, safety, maintenance, and reliability investments for utility systems
 - o System expansions as needed
 - o Substation investments for the Electric Utility
 - o Well construction and inspection for the Water Utility
- Additional bus shelters for Public Transit.

A table of all budget enhancements and capital projects is attached, including impacts to the fund and transfers (which amplify some expenditures).

Acknowledgments

The proposed 2023/2024 Biennial Budget is formulated with the intent to grow strategically. Every effort has been made to assure consistency with the leadership vision and direction of the City Council. As the City of Ellensburg moves forward, our focus will continue to be on fiscal stability, effectiveness, efficiency, transparency, accountability, stewardship. I wish to express my sincere appreciation for the teamwork and support provided by department directors, and their staff. A special note of thanks is given to Jerica Pascoe, Finance Director, Keith Bassett, Assistant Finance Director and Finance staff who have served as the main budget preparers and coordinators.

A special thanks to the City Council for their vision and priority setting that forms the framework of the budget. Council's clear direction and policy insight enabled staff to bring forward solid budget proposals, resulting in a sound financial plan for operations of the City in the next biennium and for the long-term future of the community.

Respectfully,

Heidi Behrends Cerniwey
Ellensburg City Manager

Department/Division	2023 Expenditures &		2024 Expenditures &
Item Title	Fund	Transfers-Out	Transfers-Out
Administration			
Budgeted			
*Communications Professional Services	013	\$10,000	\$10,000
*Enterprise Resource Planning (ERP) Software Upgrade	550	\$100,000	\$1,100,000
*HR Specialist	013	\$116,851	\$116,851
*Information Technology Director	550	\$181,882	\$181,882
*Modern Office Renovation	013	\$32,000	\$0
*Professional Services	013	\$50,000	\$0
*Acquire Microsoft Enterprise Mobility + Security Suite	550	\$3,400	\$3,400
Arts and Economic Development Manager	013	\$146,226	\$146,226
	140	\$50,000	\$50,000
	162	\$13,000	\$13,000
	165	\$0	\$0
Increase Virtual Server Acquisition Funding	550	\$19,000	\$19,000
Indigent Defense Cost - Kittitas County	011	\$75,000	\$100,000
*Password Management	550	\$13,000	\$13,000
REET 2 - Recreational Facilities	370	\$0	\$560,000
*Smart Phone Text Message Archive	550	\$5,000	\$2,200
Fiber System - Highway 10 Wells Project	451	\$546,966	\$0
Budgeted Total		\$1,362,325	\$2,315,559
Not Budgeted			
*Network Administrator	451	\$66,562	\$66,562
	550	\$66,561	\$66,561
Library Department			
Budgeted			
Integrated Library System	023	\$1,000	\$1,000
YS Assistant-Summer Hours	023	\$1,057	\$1,057
Budgeted Total		\$2,057	\$2,057
Not Budgeted			
Library Assistants-Increase to .50 FTE	023	\$11,188	\$11,188
Library Assistants-Increase to .50 FTE Summer	023	\$1,506	\$1,506
YS Assistant-.75 FTE position	023	\$40,366	\$40,366
PW & U - Engineering			
Budgeted			
*Engineering Intern	019	\$21,565	\$21,565
*GPS/Surveying Equipment	019	\$15,000	\$15,000
*Sustainability Coordinator Position	461	\$64,996	\$64,996
	471	\$64,996	\$64,996
Budgeted Total		\$166,557	\$166,557
Not Budgeted			
*Engineering Division Executive Assistant	019	\$55,597	\$55,597
	127	\$55,597	\$55,597

Note: Other cost increase drivers include mandated increases for Retirement and Medical Insurance premiums, and bargained wages.

*Costs are reallocated to other funds according to city cost allocation policy or internal service fund rates.

Department/Division	2023 Expenditures &		2024 Expenditures &
Item Title	Fund	Transfers-Out	Transfers-Out
Parks and Recreation Department			
Budgeted			
ADA Sliding Door Package	022	\$21,000	\$0
Add 2 Seasonal Employees to the Parks Maintenance Division	022	\$59,890	\$59,890
Coin Op Locker Replacement	022	\$15,000	\$0
Community Athletics - Tiny Tots Sports Expansion	022	\$9,330	\$9,330
Gutter to Surge Tank Valve Replacement	022	\$13,000	\$0
IRRP Parking Lot Maintenance	022	\$40,000	\$0
KVMP North Window Replacement	022	\$0	\$65,000
Rotary Park Master Plan Update Request	160	\$20,000	\$0
Stan Bassett Youth Center – Recreation Aide Positions	022	\$9,889	\$9,889
Reed Park design documentation	370	\$0	\$200,000
Budgeted Total		\$188,109	\$344,109
Not Budgeted			
1m Diving Board and Tower	022	\$18,000	\$0
Inflatable obstacle course or play feature for KVMP	022	\$6,500	\$0
Main Pool Boiler for Kittitas Valley Memorial Pool	022	\$0	\$25,000
Robotic Athletics Field Painter	022	\$55,000	\$0
Skate Park Relocation/ Parking Lot Transition			
PW & U - Transit			
Budgeted			
2023 Infrastructure Planning	127	\$120,000	\$0
Transit Bus Pullouts and Shelters	127	\$250,000	\$250,000
Zero Emissions Transition Plan	127	\$150,000	\$0
2023-2024 Transit Vehicle (New)	127	\$0	\$53,000
Budgeted Total		\$520,000	\$303,000
PW&U- Natural Gas			
Budgeted			
Gas Division Deep Well Anode Bed Replacement	461	\$80,000	\$80,000
Gas Division GIS Intern	461	\$31,250	\$31,250
Gas Tap Station Safety Improvements	461	\$0	\$350,000
Meter Change-Out Program	461	\$150,000	\$0
No. 6 Rd/Vantage Hwy Loop & Misc. Looping/Improvements (Redundancy/Reliability)	461	\$239,422	\$239,422
Pipeline Safety Management System Program Development	461	\$120,000	\$0
Remote Methane Leak Detector	461	\$21,000	\$0
Vantage Highway Gateway II Project	461	\$0	\$0
Budgeted Total		\$641,672	\$700,672
Not Budgeted			
Gas Engineering Tech Position	461	\$120,000	\$120,000

Note: Other cost increase drivers include mandated increases for Retirement and Medical Insurance premiums, and bargained wages.

*Costs are reallocated to other funds according to city cost allocation policy or internal service fund rates.

Department/Division		2023 Expenditures &	2024 Expenditures &
Item Title	Fund	Transfers-Out	Transfers-Out
Community Dev.			
Budgeted			
Planner Position - Housing Coordinator/ Grants Manager	017	\$110,639	\$110,639
Sleep Center	172	\$300,000	\$0
Budgeted Total		\$410,639	\$110,639
Finance			
Budgeted			
*Reclassify Account Clerk II to Account Clerk III	012	\$3,916	\$3,916
*Financial Analyst	012	\$126,224	\$126,224
Budgeted Total		\$130,140	\$130,140
Police			
Budgeted			
2023 Patrol Vehicle	016	\$22,080	\$22,080
	130	\$69,000	\$0
Anti Crime Vehicle	016	\$5,340	\$5,340
	130	\$57,000	\$0
BEARCAT Armored Vehicle Participation	130	\$150,000	\$0
Crime Analyst Position	130	\$121,917	\$121,917
Line Item Budget Increases (KITTCOM, jail fees, Humane Society, training, etc.)	016	\$241,477	\$241,477
	130	\$56,400	\$56,400
Replacement Portable Radios	130	\$163,542	\$0
Unmanned Aerial Vehicle Program	130	\$0	\$5,957
Budgeted Total		\$886,756	\$453,171
PW & U - Stormwater			
Budgeted			
Reecer Creek Levee Extension	431	\$930,000	\$0
University Way/Gateway – Tree Planting	431	\$200,000	\$0
Urban Forestry Plan	431	\$150,000	\$0
Vantage Highway/Gateway II	431	\$200,000	\$0
Budgeted Total		\$1,480,000	\$0
PW & U - Water			
Budgeted			
24" Water Main Valve Replacement	481	\$40,000	\$40,000
Craig's Hill Pressure Zone	485	\$250,000	\$1,210,000
Memorial Park Water Main Relocation	481	\$50,000	\$0
Miscellaneous Water Main Extensions	481	\$50,000	\$50,000
Miscellaneous Water Main Oversizing	481	\$50,000	\$50,000
New Reservoir Siting Study	481	\$50,000	\$0
Route 10 & Hayward Well Pump Rebuilds	481	\$150,000	\$100,000
Seattle Avenue Water Main Extension	481	\$323,000	\$0
Budgeted Total		\$963,000	\$1,450,000

Note: Other cost increase drivers include mandated increases for Retirement and Medical Insurance premiums, and bargained wages.

*Costs are reallocated to other funds according to city cost allocation policy or internal service fund rates.

Department/Division		2023 Expenditures &	2024 Expenditures &
Item Title	Fund	Transfers-Out	Transfers-Out
PW & U - Shop			
Budgeted			
2023-2024 Shop Capital Equipment Purchases (Replacement)	012	\$3,420	\$3,420
	016		\$23,400
	022	\$5,000	\$2,000
	120	\$23,000	\$139,240
	491	\$10,800	\$10,800
	531	\$483,700	\$605,900
Facilities & Warehouse Staffing - 1 FTE	012	\$1,401	\$1,401
	013	\$824	\$824
	016	\$1,353	\$1,353
	017	\$630	\$630
	019	\$595	\$595
	022	\$7,444	\$7,444
	023	\$508	\$508
	120	\$10,552	\$10,552
	431	\$865	\$865
	461	\$17,963	\$17,963
	471	\$41,768	\$41,768
	481	\$10,857	\$10,857
	491	\$5,239	\$5,239
	531	\$100,000	\$100,000
		\$725,919	\$984,759
PW&U- Electric			
Budgeted			
Berry Rd. Re-conductor	471	\$400,000	\$0
Canyon Rd. I-90 Crossing	471	\$300,000	\$0
Conduit Camera	471	\$15,000	\$0
D1 Dolarway Substation Improvement	471	\$1,832,500	\$1,832,500
Engineering Specialist Position Reclassification	471	\$5,117	\$5,271
Mountain View Re-conductor	471	\$0	\$750,000
South Substation Land Purchase	471	\$500,000	\$0
University Gateway I Project	471	\$1,600,000	\$0
Budgeted Total		\$4,652,617	\$2,587,771
Public Works & Utilities - Wastewater			
Budgeted			
Aeration Process Upgrades at WwTF	491	\$200,000	\$300,000
Anderson Road Sewer	491	\$2,650,000	\$0
Digester/GBT Electrical Upgrades	491	\$500,000	\$0
Miscellaneous Sewer Main Extensions	491	\$50,000	\$50,000
Miscellaneous Sewer Main Oversizing	491	\$50,000	\$50,000
Rebuild Clarifiers at WwTP	491	\$1,700,000	\$0
Sewer Line Rehabilitation/Replacement	491	\$0	\$300,000
Budgeted Total		\$5,150,000	\$700,000

Note: Other cost increase drivers include mandated increases for Retirement and Medical Insurance premiums, and bargained wages.

*Costs are reallocated to other funds according to city cost allocation policy or internal service fund rates.

Department/Division	2023 Expenditures &		2024 Expenditures &
Item Title	Fund	Transfers-Out	Transfers-Out
Public Works & Utilities - Arterial Street/Sidewalk			
Budgeted			
Alley Reconstruction	123	\$80,000	\$0
	366	\$20,000	\$0
Brick Rd. Improvements	123	\$191,000	\$1,485,000
	140	\$0	\$100,000
	366	\$0	\$231,000
Bridge Inspections	123	\$5,000	\$5,000
Capital Projects Contingency	123	\$150,000	\$150,000
	125	\$50,000	\$50,000
	366	\$25,000	\$25,000
CBD Sidewalk -Tree Replacement Project	366	\$60,000	\$60,000
Dolarway Bridge & Levee	123	\$719,433	\$0
	439	\$719,433	\$0
Downtown Micro Slurry	123	\$550,000	\$0
Engineering Transfer	123	\$15,000	\$15,000
Gateway I	120	\$472,390	\$0
	123	\$2,300,000	\$0
	366	\$257,712	\$0
	431	\$200,000	\$0
Gateway II	123	\$825,000	\$0
	140	\$218,000	\$0
	431	\$200,000	\$0
Main Street Overlay	123	\$608,200	\$0
	366	\$40,000	\$0
Mtn. View and Bull Rd. Signalization	123	\$75,000	\$750,000
	125	\$75,000	\$700,000
	366	\$0	\$50,000
On Call Traffic Analysis	123	\$30,000	\$30,000
	125	\$15,000	\$15,000
Pfenning Road Shared Use Pathway	123	\$526,000	\$0
	366	\$153,000	\$0
Signal Optimization	123	\$25,000	\$25,000
Walnut St Bridge Replacement	123	\$65,000	\$500,000
	140	\$65,000	\$500,000
Wildcat Way Overlay	123	\$795,000	\$0
	140	\$695,000	\$0
	366	\$100,000	\$0
Residential Sidewalk Repair Program	366	\$160,000	\$160,000
Helena Avenue Extension – Water Street to Cora Street (Design)	123	\$450,000	\$0
Budgeted Total		\$10,935,168	\$4,851,000
Budgeted Grand Total		\$28,214,959	\$15,099,434

Note: Other cost increase drivers include mandated increases for Retirement and Medical Insurance premiums, and bargained wages.

*Costs are reallocated to other funds according to city cost allocation policy or internal service fund rates.

Preliminary 2023/2024 Budget by Fund

	2022 Budget	2023 Preliminary	2024 Preliminary
General Fund			
Beginning Fund Balance	6,006,798	4,557,003	2,630,160
Revenue	13,818,918	13,954,214	14,052,933
Transfer In	1,775,677	3,373,677	3,438,677
Transfer Out	141,081	141,081	141,081
Expenditure	17,808,539	19,113,654	19,217,654
Ending Fund Balance	3,651,773	2,630,160	763,035
Sales Tax Reserve Fund			
Beginning Fund Balance	3,519,653	4,227,079	3,570,352
Revenue	5,787,000	6,296,280	6,515,811
Transfer In	-	-	-
Transfer Out	5,108,871	6,953,007	6,825,007
Expenditure	-	-	-
Ending Fund Balance	4,197,782	3,570,352	3,261,156
Street Fund			
Beginning Fund Balance	2,040,667	1,119,564	265,711
Revenue	774,491	706,563	816,103
Transfer In	1,868,067	1,850,000	2,000,000
Transfer Out	-	472,390	-
Expenditure	2,858,585	2,938,027	3,057,360
Ending Fund Balance	1,824,640	265,711	24,454
Arterial Street Fund			
Beginning Fund Balance	2,012,891	1,941,904	993,387
Revenue	10,068,281	3,655,581	1,502,151
Transfer In	3,461,488	2,855,535	1,708,000
Transfer Out	110,000	-	-
Expenditure	15,300,301	7,459,633	3,655,000
Ending Fund Balance	132,359	993,387	548,538
Traffic Impact Fees Fund			
Beginning Fund Balance	789,714	294,429	501,317
Revenue	386,618	379,387	372,387
Transfer In	-	-	-
Transfer Out	850,248	140,000	765,000
Expenditure	59,572	32,500	32,500
Ending Fund Balance	266,512	501,317	76,204
Public Transit Fund			
Beginning Fund Balance	2,583,130	3,006,532	2,885,623
Revenue	2,356,529	2,550,929	2,467,505
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	2,131,771	2,671,837	2,482,106
Ending Fund Balance	2,807,889	2,885,623	2,871,023

Preliminary 2023/2024 Budget by Fund

	2022 Budget	2023 Preliminary	2024 Preliminary
Criminal Justice Fund			
Beginning Fund Balance	2,419,459	2,336,095	1,728,919
Revenue	1,439,400	1,532,560	1,556,822
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	1,527,765	2,139,736	1,716,760
Ending Fund Balance	2,331,095	1,728,919	1,568,981
Drug Investigation Fund			
Beginning Fund Balance	31,616	12,570	10,670
Revenue	3,100	3,100	3,100
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	22,146	5,000	5,000
Ending Fund Balance	12,570	10,670	8,770
ECTV Operations Fund			
Beginning Fund Balance	111,769	109,712	108,123
Revenue	99,283	101,998	100,198
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	101,340	103,587	98,646
Ending Fund Balance	109,712	108,123	109,675
Park Acquisition Fund			
Beginning Fund Balance	921,421	587,378	290,039
Revenue	367,261	122,661	102,261
Transfer In	-	-	-
Transfer Out	200,000	-	-
Expenditure	-	420,000	-
Ending Fund Balance	1,088,682	290,039	392,300
Art Acquisition Fund			
Beginning Fund Balance	28,851	16,851	8,851
Revenue	1,000	1,000	1,000
Transfer In	50,000	50,000	50,000
Transfer Out	-	-	-
Expenditure	63,000	59,000	59,000
Ending Fund Balance	16,851	8,851	851
Lodging Tax Fund			
Beginning Fund Balance	565,799	912,486	1,272,173
Revenue	687,000	690,000	687,000
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	330,313	330,313	330,313
Ending Fund Balance	922,486	1,272,173	1,628,860

Preliminary 2023/2024 Budget by Fund

	2022 Budget	2023 Preliminary	2024 Preliminary
Affordable Housing Fund			
Beginning Fund Balance	2,342,278	1,687,778	1,762,438
Revenue	778,000	792,160	820,406
Transfer In	-	-	-
Transfer Out	-	35,000	-
Expenditure	1,432,500	682,500	682,500
Ending Fund Balance	1,687,778	1,762,438	1,900,344
COVID-19 Grants Fund			
Beginning Fund Balance	2,298,554	587,533	-
Revenue	2,946,546	-	-
Transfer In	-	-	-
Transfer Out	2,650,000	-	-
Expenditure	2,595,100	587,533	-
Ending Fund Balance	-	-	-
Capital Improvements Bond Debt Service Fund			
Beginning Fund Balance	362,378	362,378	362,379
Revenue	-	-	-
Transfer In	562,327	562,327	562,327
Transfer Out	-	-	-
Expenditure	562,327	562,326	562,326
Ending Fund Balance	362,378	362,379	362,380
2010 GO Bond Debt Service Fund			
Beginning Fund Balance	60,818	60,818	60,818
Revenue	-	-	-
Transfer In	212,800	187,003	187,003
Transfer Out	-	-	-
Expenditure	212,800	187,003	187,003
Ending Fund Balance	60,818	60,818	60,818
2003 Library Bond Debt Service Fund			
Beginning Fund Balance	90,806	79,806	254,806
Revenue	175,000	175,000	-
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	186,000	-	-
Ending Fund Balance	79,806	254,806	254,806
Capital Improvements Bond - Construction Fund			
Beginning Fund Balance	521,635	-	-
Revenue	-	-	-
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	521,635	-	-
Ending Fund Balance	-	-	-

Preliminary 2023/2024 Budget by Fund

	2022 Budget	2023 Preliminary	2024 Preliminary
Sidewalk Fund			
Beginning Fund Balance	987,297	838,647	517,935
Revenue	316,000	448,000	406,000
Transfer In	110,000	-	-
Transfer Out	155,000	525,712	343,000
Expenditure	501,955	243,000	243,000
Ending Fund Balance	756,342	517,935	337,935
Recreation Facilities Fund			
Beginning Fund Balance	-	-	380,000
Revenue	-	380,000	380,000
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	-	-	760,000
Ending Fund Balance	-	380,000	-
Stormwater Utility Fund			
Beginning Fund Balance	1,185,788	871,586	1,079,660
Revenue	1,613,428	2,900,819	2,099,924
Transfer In	139,045	-	-
Transfer Out	-	-	-
Expenditure	2,536,922	2,902,664	2,069,506
Ending Fund Balance	401,339	869,741	1,110,079
Stormwater Bond Construction Fund			
Beginning Fund Balance	2,119,433	719,433	-
Revenue	-	-	-
Transfer In	-	-	-
Transfer Out	1,539,045	719,433	-
Expenditure	-	-	-
Ending Fund Balance	580,388	-	-
Telecommunications Utility Fund			
Beginning Fund Balance	248,206	256,154	243,516
Revenue	355,901	355,901	355,901
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	347,954	368,539	368,013
Ending Fund Balance	256,154	243,516	231,404
Natural Gas Utility Fund			
Beginning Fund Balance	3,810,759	2,842,378	2,506,652
Revenue	7,048,904	12,432,141	12,656,533
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	8,513,545	12,767,868	13,224,241
Ending Fund Balance	2,346,118	2,506,652	1,938,944

Preliminary 2023/2024 Budget by Fund

	2022 Budget	2023 Preliminary	2024 Preliminary
Electric Utility Fund			
Beginning Fund Balance	11,367,894	10,483,048	7,013,329
Revenue	19,368,781	21,656,195	21,752,965
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	24,830,598	25,125,915	23,355,697
Ending Fund Balance	5,906,077	7,013,329	5,410,597
Water Utility Fund			
Beginning Fund Balance	5,863,862	4,682,092	3,512,686
Revenue	6,147,505	6,530,244	6,555,464
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	8,410,290	7,699,650	7,378,390
Ending Fund Balance	3,601,076	3,512,686	2,689,760
Water Bond Construction Fund			
Beginning Fund Balance	-	3,306,615	1,556,615
Revenue	5,148,461	-	-
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	3,341,846	1,750,000	1,210,000
Ending Fund Balance	1,806,615	1,556,615	346,615
Wastewater Utility Fund			
Beginning Fund Balance	2,248,514	5,423,712	3,202,183
Revenue	9,194,756	5,593,072	6,835,830
Transfer In	2,726,987	2,726,987	76,987
Transfer Out	-	-	-
Expenditure	9,790,722	10,541,588	7,104,576
Ending Fund Balance	4,379,534	3,202,183	3,010,424
Shop/Warehouse Internal Service Fund			
Beginning Fund Balance	10,545,443	10,460,738	10,529,635
Revenue	2,423,410	2,658,820	2,846,320
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	3,173,617	2,589,923	2,534,407
Ending Fund Balance	9,795,237	10,529,635	10,841,548
General Facilities Internal Service Fund			
Beginning Fund Balance	-	-	9,363
Revenue	-	628,554	628,554
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	-	587,129	550,383
Ending Fund Balance	-	41,425	87,534

Preliminary 2023/2024 Budget by Fund

	2022 Budget	2023 Preliminary	2024 Preliminary
Employee Health & Benefits Internal Services Fund			
Beginning Fund Balance	1,316,650	1,106,073	841,894
Revenue	2,551,069	2,423,824	2,533,915
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	2,650,843	2,688,003	2,703,393
Ending Fund Balance	1,216,876	841,894	672,416
Risk Management Internal Service Fund			
Beginning Fund Balance	1,417,745	1,357,068	1,108,072
Revenue	686,902	688,102	688,102
Transfer In	-	-	-
Transfer Out	30,000	-	-
Expenditure	684,107	937,098	937,098
Ending Fund Balance	1,390,540	1,108,072	859,076
IT Internal Service Fund			
Beginning Fund Balance	1,251,995	938,207	898,695
Revenue	1,543,293	1,967,181	2,775,361
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	2,449,314	2,006,693	2,879,734
Ending Fund Balance	345,974	898,695	794,322
GIS Internal Service Fund			
Beginning Fund Balance	-	314,822	46,633
Revenue	-	294,244	309,244
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	-	562,433	352,137
Ending Fund Balance	-	46,633	3,740
Library Trust Fund			
Beginning Fund Balance	322,005	320,705	319,405
Revenue	7,500	4,900	7,500
Transfer In	-	-	-
Transfer Out	-	-	-
Expenditure	8,800	8,800	8,800
Ending Fund Balance	320,705	316,805	318,105
Hal Holmes Trust Fund			
Beginning Fund Balance	129,472	136,431	136,931
Revenue	10,000	10,500	10,500
Transfer In	-	-	-
Transfer Out	10,000	10,000	10,000
Expenditure	-	-	-
Ending Fund Balance	129,472	136,931	137,431

Preliminary 2023/2024 Budget by Fund

		2023	2024
	2022 Budget	Preliminary	Preliminary
Fire Relief and Pension Fund			
Beginning Fund Balance	638,541	692,757	750,585
Revenue	24,088	58,656	49,656
Transfer In	141,081	141,081	141,081
Transfer Out	-	-	-
Expenditure	132,622	141,909	147,594
Ending Fund Balance	671,088	750,585	793,728



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: Second Reading and Adoption of Ordinance 4898 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 second reading and adoption of Ordinance 4898 regarding the Cable Franchise Agreement with Charter Communications, Inc.

Background/Summary: The current cable television franchise is held by Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc., and expired on December 31, 2018. The parties have continued to operate under the agreement during negotiations for a new franchise agreement.

Previous Council Action: None.

Analysis: Franchise negotiations occurred over four years and 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 Biennial Budget. There will be sufficient balance in the City's ECTV operations and maintenance fund for payment of the HD conversion costs.

Attachments:

[4898 \(Second Reading\)-Charter Cable TV Franchise Renewal](#)

ORDINANCE NO. 4898

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO CABLE TELEVISION AND CHAPTER 11.43 OF THE ELLENSBURG CITY CODE, REPEALING AND REPLACING CHAPTER 11.08 OF THE ELLENSBURG CITY CODE RELATING TO THE FRANCHISE PREVIOUSLY GRANTED TO FALCON VIDEO COMMUNICATIONS, L.P., AND APPROVING A NEW 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, AS SET FORTH HEREIN.

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. 4898 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4898 was published as required by law.

BETH LEADER

EXHIBIT A

**CABLE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF ELLENSBURG
AND
SPECTRUM PACIFIC WEST, LLC**

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1: DEFINITIONS.....	2
SECTION 2: GRANT OF FRANCHISE	5
2.1 GRANT OF AUTHORITY	5
2.2 TERM OF FRANCHISE	5
2.3 NON-EXCLUSIVITY	6
2.4 NO WAIVER OF RIGHTS	6
2.5 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS	7
SECTION 3: SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE	7
3.1 TECHNICAL REQUIREMENT	7
3.2 AREA TO BE SERVED.....	7
3.3 CABLE SYSTEM SPECIFICATIONS	8
3.4 TECHNICAL STANDARDS.....	8
3.5 EMERGENCY ALERT SYSTEM.....	8
3.6 REPAIRS AND RESTORATION.....	8
3.7 SERVICE AREA MAPS	9
3.8 DISCONNECTION AND RELOCATION.....	9
3.9 EMERGENCY REMOVAL OF EQUIPMENT.....	10
3.10 TREE TRIMMING.....	10
3.11 CONTINUITY OF SERVICE	10
3.12 PARENTAL CONTROL CAPABILITY	10
SECTION 4: CUSTOMER SERVICE STANDARDS	11
SECTION 5: REGULATION BY THE CITY	11
5.1 RIGHT TO INSPECT.....	11
5.2 RESERVED AUTHORITY.....	11
5.3 POLICE POWERS	11
5.4 NO LIMITATION ON TAXING OR FEE AUTHORITY	12
5.5 SUBSCRIBER COMPLAINT REPORTS	12
5.6 CONFIDENTIALITY.....	12
SECTION 6: COMPENSATION TO THE CITY	12
6.1 FRANCHISE FEES.....	12
6.2 QUARTERLY PAYMENTS.....	12
6.3 QUARTERLY REPORTS.....	13
6.4 FRANCHISE FEE AUDIT.....	13
6.5 BUNDLED SERVICES.....	14
SECTION 7: PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) PROGRAMMING	14
7.1 PEG CHANNEL.....	14
7.2 PEG CHANNEL RETURN LINE.....	14

7.3	ADDITIONAL PEG CHANNEL REQUIREMENTS	15
7.4	PEG CAPITAL GRANT	15
7.5	PEG COMPETITIVE EQUITY	16
SECTION 8: ENFORCEMENT, INSURANCE AND INDEMNIFICATION		16
8.1	VIOLATIONS AND OPPORTUNITY TO CURE.....	16
8.2	REVOCATION.....	17
8.3	OTHER PUBLIC HEARINGS.....	17
8.4	INSURANCE.....	18
8.5	INDEMNIFICATION.....	18
SECTION 9: MISCELLANEOUS		19
9.1	FORCE MAJEURE	19
9.2	REMOVAL OF SYSTEM.....	19
9.3	NOTICES.....	20
9.4	EQUAL EMPLOYMENT OPPORTUNITY	20
9.5	CAPTIONS	21
9.6	GOVERNING LAW; VENUE	21
9.7	TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL	21
9.8	ENTIRE AGREEMENT.....	22
9.9	SEVERABILITY	22
9.10	CHANGE OF LAW.....	22
9.11	COMPLIANCE WITH LAWS.....	22
9.12	THIRD-PARTY BENEFICIARIES	22
9.13	APPLICABILITY OF AGREEMENT	22

CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed to be effective as of the 15th 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: November 7, 2022

Item Title/Agenda Subject: Resolution 2022-36 Updating the Personnel Policies for the City of Ellensburg

Submitted by: Lisa Young Human Resources

Recommended Action or Motion: Review and approve Resolution 2022-36.

Background/Summary: The City of Ellensburg has established Personnel Policies; however, the current policies do not address remote work.

Previous Council Action: Previous Council actions have supported the City's Personnel Policies, including the addition of Juneteenth as a recognized holiday earlier this year.

Analysis: The COVID-19 pandemic has been a challenging time for employers and employees alike. In 2020 it forced many employers to quickly find ways to continue serving customers in the midst of quarantine, isolation, and closure mandates. Remote work suddenly became a necessity instead of an option that had previously been more prevalent in the private sector. However, public agencies succeeded, and for weeks to months, employees worked from their home offices, dining tables, and couches. In some areas of the state, remote work options at public agencies became permanent.

Remote work has now become a sought-after benefit in the recruitment and retention arena, and for some an expectation.

While remote work is not a viable long-term option for many positions, especially in public service, it can be for positions that do not require in-person interactions with customers. It can also help alleviate office space shortages.

For these reasons, the City Manager would like to provide department directors with the ability to determine which positions might be eligible for remote work and allow employees in eligible positions the opportunity to request the

ability to do so. The attached policy provides the guidance necessary to implement remote work as an option.

Financial Impact:

There should be very little to no financial impact from a wages and benefits perspective, with the exception of a few employees who received prior approval to work remotely from outside the State of Washington. The new policy will prohibit new out-of-state remote work requests due to financial and administrative complications caused by varying state rules and regulations.

Allowing an employee to work remotely may create one-time costs, such as the need to switch from a desktop computer to a laptop and monitor. Each department will need to take this into consideration when determining whether remote work is best for their operation.

Attachments:

[RESOLUTION - 2022-36 - Personnel Policy Update - Remote Work](#)
[Exhibit A - Remote Work Policy](#)

RESOLUTION NO. 2022-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG updating the Personnel Policies for the City of Ellensburg.

WHEREAS, the City of Ellensburg's Personnel Policies Manual does not contain a policy for remote work; and

WHEREAS, the City of Ellensburg, like most other agencies and businesses in our community and across the world, faced many challenges during the COVID-19 pandemic, forcing them to quickly find alternate ways of serving their customers; and

WHEREAS, remote work became a sudden reality in 2020, which brought to light how some governmental services can be successfully conducted from a remote worksite, in either a full-time or hybrid manner; and

WHEREAS, allowing remote work has the potential to increase recruitment and retention success when the position and the employee are eligible for a remote work arrangement; and

WHEREAS, the City of Ellensburg faces workspace challenges, particularly in City Hall, as our community grows, increasing the need to expand staff in order to sustain quality customer service.

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

Section 1. Section 4 of the City's Personnel Policies Manual will be updated to include 4.10 – "Remote Work," attached hereto as Exhibit A.

Section 2. This policy is effective for non-represented employees upon approval of this Resolution.

Section 3. This policy will be effective for represented employees after notification and an opportunity to bargain is provided to the Unions.

All remaining terms and conditions of the City's Personnel Policies Manual remain in full force and effect.

ADOPTED by the City Council of the City of Ellensburg at a regular meeting on the _____ day of _____, 2022.

Mayor

Attest:

City Clerk

REMOTE WORK POLICY

The COVID-19 pandemic taught us a great deal about our capacity to perform many of our functions through remote work, flexible scheduling, and use of technology. As we look to the future, we understand some essential work must still be done onsite in our facilities and offices. However, a combination of onsite and remote work—a hybrid model—may be the best option for the City as we consider space limitations, recruitment/retention, and technological capacity.

Determining Eligibility

There are two primary factors to consider for remote work eligibility.

The Position

A position that is eligible for remote work must have responsibilities that can be fulfilled from a remote work location without diminishing service quality or agency operations. When considering eligibility, there are several criteria that must be examined.

- 1) The work that needs to be done to meet the needs of the organization and the community, including the level of confidentiality and access to confidential records required.
- 2) The logistics – what tools and technology are necessary to work productively from a remote location.
- 3) The impact of remote work on individual and team engagement.

If the position is approved for remote work, the next step is to evaluate the employee's ability to work remotely.

The Employee

The employee must be self-motivated, capable of independent work, communicative, technologically proficient, and be able to maintain or improve their level of productivity when working from a remote location. They must have excellent time-management skills and a strong ability to stay focused. Working from a remote location requires an environment that provides a distraction-free, safe workspace, adequate network capability, etc. Any employees currently under any type of performance improvement plan or disciplinary action will not be eligible for remote work.

Each employee who is given the option to request a remote work arrangement and will be working from their home should take time to reflect on whether they benefit more from a separation of work and home, or if they can find balance when work and home become one. Employees considering remote work should take the assessment at the end of this policy.

Probationary employees are generally not eligible for remote work authorization.

The Process

Each department Director will perform a remote work analysis of their department at least once per year. If there are positions identified as eligible for remote work, they may accept requests for remote work from the employees in those positions, or they may opt to assign certain positions to remote work. The

annual assessment will be submitted to HR for review. HR will then submit the assessment to the City Manager for approval. Individual requests for remote work shall be routed in the following manner:

- 1) HR – for compliance with policies and/or Union contracts
- 2) IT – for completion of training, review of technology requirements, and recommendations
- 3) Finance – for review of payroll-related concerns
- 4) City Manager – final approval

Remote Work Schedule

Remote work comes with the expectation that the employee will adhere to their standard work schedule. However, requests for a flexible work schedule – temporary or ongoing – may be considered. The request must be made using the Remote Work Request & Agreement form. It is important to remember that we are public employees and as such, we must be mindful of public perception.

Employees may be required to report to their regular work location as determined by their supervisor. The supervisor should provide as much advance notice as possible, but in some cases notice may be minimal. Travel to the employee's regular work location is considered commute time and is not paid time unless the employee is required to report to the work location mid-shift.

Employees working remotely must also follow the required meal and break periods, as established by policy and/or Union contract, and as required by the Department of Labor & Industries.

Employees are expected to use paid leave in accordance with the City's policies. If an employee has been approved to utilize a flexible schedule, they need to accurately report their time and communicate fluctuations with their supervisor. For transparency and to prevent misunderstanding and/or conflict, communicating schedule fluctuations to coworkers or using a shared calendar is also recommended.

All overtime must be approved in advance for non-exempt employees. Remote work employees will record their time using the standard protocols for their department or as agreed to by the department Director.

Communication Expectations

Employees working remotely will be expected to respond to calls and emails promptly during their regularly scheduled hours. A regular check-in schedule will be documented on the Remote Work Request & Agreement Form, along with the communication methods that are acceptable – phone, email, virtual meeting, and/or in person. This may also include check-ins with other team members to maintain team relations and ensure continuity of workflow. This schedule indicates the minimal amount of communication expected; the supervisor may check in with the employee more frequently. If an employee misses multiple check-ins the Remote Work Request & Agreement may be rescinded.

Communication by email, Teams messaging, etc. must be done thoughtfully. It is common for these forms of communication to be misinterpreted when the recipient does not have the benefits of face-to-face conversation such as tone, facial expressions, and body language. It is often too easy to quickly hit "send" without thinking about how the message may be received, especially when working in the more casual environment of one's home. Employees should try to avoid making assumptions. If in doubt, ask for clarification. If conflict develops that cannot be resolved, the employee should share their concerns with

their supervisor. If the conflict involves the supervisor, the employee should report their concerns to the department Director and/or HR.

Virtual Meetings

Remote work provides the ability for employees to dress more casually; however, when employees are engaged in a virtual meeting, the following will be expected:

- Turning on video is preferred; the employee should utilize the blurred virtual meeting background or other background as directed by their supervisor to minimize distractions. Other environmental noises should also be minimized (turning the TV/music off, etc.).
- Proper attire – Employees should be dressed in business casual attire, especially if the meeting involves outside parties such as contractors, outside agencies, etc.
- Eating a meal (unless it is a lunch meeting), smoking, and vaping are not allowed.
- Avoid multi-tasking.

Technology and Other Tools, Supplies, and Expenses

City-owned technology (computer, keyboard/mouse, printer, etc.) will be provided as determined necessary by the department Director, IT Manager, and City Manager, and in a manner that complies with the Washington Public Records Act as well as standard security requirements and best practices. The employee must ensure that they are able to secure City-owned equipment and records to the extent required by policies, applicable laws, and best practices. At minimum, this would include a City-issued laptop. Other devices that may be authorized and issued by the City, if necessary to perform job responsibilities, may include a Multi-Function Printer (MFP), docking station, monitor(s), and/or a tablet. Other specialty equipment may be considered on a case-by-case basis. The employee shall only use equipment issued and/or approved by IT, and properly licensed software for City business. The equipment supplied by the City will be maintained by the City, however it is the employee's responsibility to handle in an appropriate manner to prevent damage. A reduction in productivity/efficiency may result in the Remote Work Request & Agreement being rescinded. It will be up to the Department Director to determine what consumable supplies will be provided and how they will be replenished. All expenses must be approved in advance.

Communications, Internet, and Cybersecurity

The employee, at their expense, will be responsible for ensuring they have a phone and adequate private/secure internet connection to perform the duties of their job as efficiently and securely as if they were at the office. The employee must be able to obtain an internet connection that meets the minimum “Broadband” standards¹ and is approved by the IT Manager. If the employee is sharing their internet service with others at their work location and the shared usage is impacting the employee’s ability to have adequate video and internet service, then a second internet service must be obtained by the employee, or the employee must ensure their internet service is dedicated for remote work use only during their assigned work hours. Demonstrating adequate “Broadband” service is a pre-requisite to receiving approval from the IT Manager for remote work. Additionally, the employee, with guidance from IT, must

¹ Washington State Broadband Office defines “Broadband” within 2SSB 5511 as 25/3Mbps Link: [Broadband in Washington | Data.WA | State of Washington](#)

complete a test of the remote work location internet service to ensure their service meets the requirements for both voice and video.

The employee is responsible for security while conducting remote work and is the first line of defense to protect the City's information systems and data. The employee is responsible for ensuring that their remote work environment is secure and safe to reduce the chances of compromising or causing a Cyber Security risk to the City's data, systems, or exposing City's security credentials. Only the authorized City employee is allowed to use the City equipment or access the City systems. The employee must not allow any non-City personnel to access equipment or systems for any purpose. If any unauthorized person accesses City equipment the employee must report the unauthorized access to the IT personnel immediately for evaluation and any necessary remediation.

To assist the employee with understanding their role and responsibility with cyber security, they must complete the IT remote work training course(s) and successfully pass the remote work knowledge benchmarks. This training will be updated annually by the IT department, reviewed, and approved by the IT Manager, and will become part of the annual requirement for the employee to maintaining eligibility for remote work. Remote access may be suspended without notice, and the employee may lose remote work eligibility if they create a cyber-security event, possible cyber-security event, are unable to successfully pass regular knowledge challenges, or demonstrate a disregard for the security of the City's systems and data.

Employee Safety and Working Conditions

State and Federal safety regulations require that employers provide a safe and healthy work environment. Employees approved to work from a remote location should ensure that they have an ergonomically correct workstation available. It is expected that employees will exercise the same precautions in their remote workspace as they do at their City workspace. Employees authorized to work remotely will be required to pay for any equipment and/or furniture needed to ensure their workspace is ergonomically correct. Employees may be required to participate in an in-person safety assessment of their workspace or may be required to provide photos of their remote workspace. Poor positioning can cause muscle strains and repetitive motion injuries – employees who will work from a remote location will be assigned the Office Ergonomics online training through HSI (formerly VIVID), which must be completed prior to working remotely, or as soon as possible. Should a work-related injury occur, the employee must report it to their supervisor right away. Please review the additional ergonomic reference materials at the end of this policy. There are many resources offered through the Department of Labor & Industries, including additional online training [[Ergonomics Essentials \(wa.gov\)](#)], a computer workstation checklist, push/pull and lift/carry calculators, and more.

Out-of-State Work Locations

Employees who wish to work remotely must live in the state of Washington². Many laws and regulations are based on the state of residence and not the state where the employer is headquartered. It's extremely important that any employee authorized to work remotely notifies their supervisor and the City's Finance

² Employees who were authorized to work remotely from another state prior to the implementation of this policy will be allowed to continue to work remotely until such time the City determines it is no longer feasible, or until the employee separates from employment. Should that employee subsequently move to a different state, other than Washington, the Remote Work Authorization will be rescinded.

Director as soon as possible if they plan to move out of Washington State. Moving out of state will necessitate ending the employment relationship. Failure to report this information could result in possible disciplinary action, up to and including termination, and possible financial consequences due to variances between different State laws and regulations.

Performance

Employees who work remotely will continue to be evaluated based on their performance. Communication and collaboration are critical to successful remote work. Failure to meet the expectations of the employee's job description may result in discontinuing the remote work assignment, implementation of a Performance Improvement Plan (PIP), or potential disciplinary action. Employees who feel that remote work is hindering their success should notify their supervisor as soon as possible. The supervisor and employee can then discuss potential solutions.

General Expectations

- The City's personnel policies and work rules continue to apply at remote work locations.
- Professional and courteous behavior is expected at all times when performing work on behalf of the City.
- Inviting customers to conduct business at the employee's home is prohibited.
- Working from a remote location creates no expectation of privacy with respect to the City's property – an employee may be required to return City property or allow inspection of City property without advance notice.
- Consumption of alcohol or other controlled substances (including marijuana) during work hours is never acceptable. Employees who have prescriptions that could impair the employee's ability to perform their job safely/effectively must notify their supervisor and may be prohibited from working while using the medication.
- Non-exempt employees must only conduct work-related activity during authorized work hours – this includes checking email. All overtime must be approved in advance and in writing.
- Employees are expected to be dedicated to their duties and responsibilities while “on the clock” – personal distractions must be limited to ensure productivity is maximized.
- Remote work is not a mandated benefit and may be rescinded at any time.



CITY COUNCIL AGENDA REPORT

City Council Meeting Date: November 7, 2022

Item Title/Agenda Subject: Resolution 2022-37 to Reject All Bids for Bid Call No. 2022-20 Pad-Mounted Switch Cabinets

Submitted by: Dan Davis Public Works & Utilities

Recommended Action or Motion: Adopt attached Resolution 2022-37 deeming all bids for Bid Call 2022-20, Pad-Mounted Switch Cabinets, as non-responsive.

Background/Summary: The Light Department routinely budgets and publishes a bid for electrical pad-mounted switch cabinets. These switch cabinets are used for capital construction projects and to replenish inventory. Bid Call 2022-20 consisted of one schedule for pad-mounted switch cabinets. Staff received two bids: one from Anixter, Inc. and one from General Pacific, Inc. Upon review, the bid from Anixter, Inc. did not include all of the required material(s) in the Unit Bid Price(s) as specified in the Bid Documents and the bid contained other irregularities. The bid from General Pacific, Inc. did not include all of the required material(s) in the Unit Bid Price(s) as specified in the Bid Documents; one form did not include the required notary stamp; the supplier included a statement that they would not take responsibility for liquidated damages; the supplier did not provide a copy of the warranty; and the bid contained other irregularities. Due to these issues, staff deems these two bids to be non-responsive. It's requested that Council reject these bids as non-responsive and direct staff to request quotes directly from suppliers for the purchase of the pad-mounted switch cabinets.

Previous Council Action: None

Analysis: The bid call was published on October 6 and October 13, 2022, with bids opened on October 20, 2022. Staff received two bids: from Anixter Inc. and from General Pacific, Inc. Staff has deemed that both bids are non-responsive and is requesting City Council adopt attached Resolution 2022-37 deeming all bids for Bid Call 2022-20 Pad-Mounted Switch

Cabinets as non-responsive and directing staff to request quotes directly from suppliers for the purchase of the switch cabinets. The quotes will include specifications identical to the bid requirements.

Financial Impact: None

Attachments:

[Resolution 2022-37 Rejecting All Bids for Bid Call 2022-20](#)

RESOLUTION NO. 2022-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, rejecting all bids for Bid Call 2022-20 Pad-Mounted Switch Cabinet Bid.

WHEREAS, the City of Ellensburg (“City”) has caused the preparation of certain Bid Documents, entitled City of Ellensburg Bid Call 2022-20 for PAD-MOUNTED SWITCH CABINETS; and

WHEREAS, the City has invited proposals from Suppliers, has received said proposals, analyzed the same; and

WHEREAS, on October 20th, 2022, two bids were received and opened by the City; and

WHEREAS, both bids received were deemed non-responsive by City staff due to an incomplete bid package received from each bidder; and

WHEREAS, one bid received was deemed non-responsive due to Unit Bid Price(s) not including all of the required material(s) as specified in the Bid Documents and the bid containing other irregularities; and

WHEREAS, the other bid received was deemed non-responsive due to Unit Bid Price(s) not including all of the required material(s) as specified in the Bid Documents, one form not including the required notary stamp, a statement that the supplier would not take responsibility for liquidated damages, not providing a copy of the warranty and the bid containing other irregularities; and

WHEREAS, pursuant to RCW 35.23.352(1), the City Council may, by resolution, reject all bids and authorize staff to request quotes directly from suppliers; and

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

Section 1. All bids received for Bid Call 2022-20 Pad-Mounted Switch Cabinets, are hereby rejected and the Public Works and Utilities Director is hereby authorized to request quotes directly from suppliers.

ADOPTED by the City Council of the City Ellensburg this 7th day of November, 2022

Mayor

Attest:

City Clerk



CITY COUNCIL AGENDA REPORT

City Council Meeting Date:	November 7, 2022
Item Title/Agenda Subject:	2022 Third Quarter Financial Status and Investment Reports
Submitted by:	Jerica Pascoe Finance Department
Recommended Action or Motion:	Accept 2022 Third Quarter Financial Status and Investment Reports as presented.
Background/Summary:	Attached are the 2022 Third Quarter Financial Status and Investment Reports for the period ending September 30, 2022. The 2022 Third Quarter Financial Status report represents General Fund status, Governmental fund type tax revenues, and citywide revenues and expenditures. The City's Financial Management Policy provides that Council will receive updated information relating to the City's Financial Reports on a quarterly basis.
Previous Council Action:	The Third Quarter 2022 Financial Status and Investment Reports were presented to the Finance Committee at the October 27, 2022, meeting.
Analysis:	Year-end projections were made based on current situation on September 30, 2022. Projections were made assuming economic recovery through 2022. Key items – 2022 Third Quarter: • General Fund revenues are expected to come in above budget while expenditures are projected to come in below budget. (Table 1, Page 1) • Revenue remitted from State of Washington Sales Tax Activity is up 7% over 3rd quarter 2021 (Table 2 Page 2) ◦ City Assistance is up 18% ◦ Hotel/Motel Lodging is up 38% ◦ Liquor Excise Tax is <u>down</u> 5% ◦ Local Criminal Justice is up 14% ◦ Marijuana Excise Tax is up 23% ◦ Motor Vehicle Fuel Tax (MVFT) is <u>down</u> 4% ◦ Public Safety is up 13% ◦ Public Transportation Tax is up 5% ◦ Sales & Use Tax is up 5%

- Year-End tax revenue is projected to come in approximately 5.32% above budget. (Table 3, Page 3)
 - Sales tax revenue projected .16% above budget. (Table 3, Page 3)
 - Local Criminal Justice .1% – \$52,878 above budget (Table 4, Page 4)
 - Retail Sales for Public Transit .2% - \$59,419 above budget
 - Retail Sales for Public Safety .3% - \$134,982 above budget
 - Regular Retail Sales .85% – \$253,074 above budget
 - Retail Sales for Housing .1% – \$30,838 above budget
 - Retail Sales for Housing (State Credit) - at budget
 - B&O Tax revenue projected 2.27% above budget. (Table 3, Page 3)
 - Other Tax revenue projected 40.94% above budget. (Table 3, Page 3)
 - Property Tax revenue projected at budget. (Table 3, Page 3)
 - January through September 2022 sales tax receipts were 5% higher than January through September 2021 receipts. (Table 5, Page 5)
 - The majority of this increase was in Accommodation and Food Services.
 - Utility tax revenues were .8% higher than 3rd quarter 2021. (Table 6, Page 6)
 - General Fund revenues are expected to come in above budget and expenditures are projected to come in below budget. Revenues projected approximately \$246 thousand above budget. Expenditures projected approximately \$2.3 million below budget. (Table 7, Page 7)
 - The total excess revenues over expenditures for all funds through 3rd quarter was \$13 million. \$8.8 million of the excess of revenue over expense is from the enterprise and internal service funds in which rates are set to provide for replacement and capital projects. \$2.6 million can be attributed to receiving the second half of our Coronavirus State

and Local Fiscal Recovery Funds (CSLFRF). (Table 9, Page 9)

- The City had \$76,672,021.43 in excess cash invested. (Investment report, page 1)

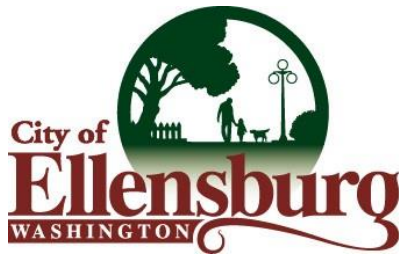
Financial Impact: None

Attachments:

[3rd Quarter 2022 Financial Status Report](#)

[3rd Quarter 2022 Investment Report](#)

City of Ellensburg Washington



Quarterly Financial Status Report

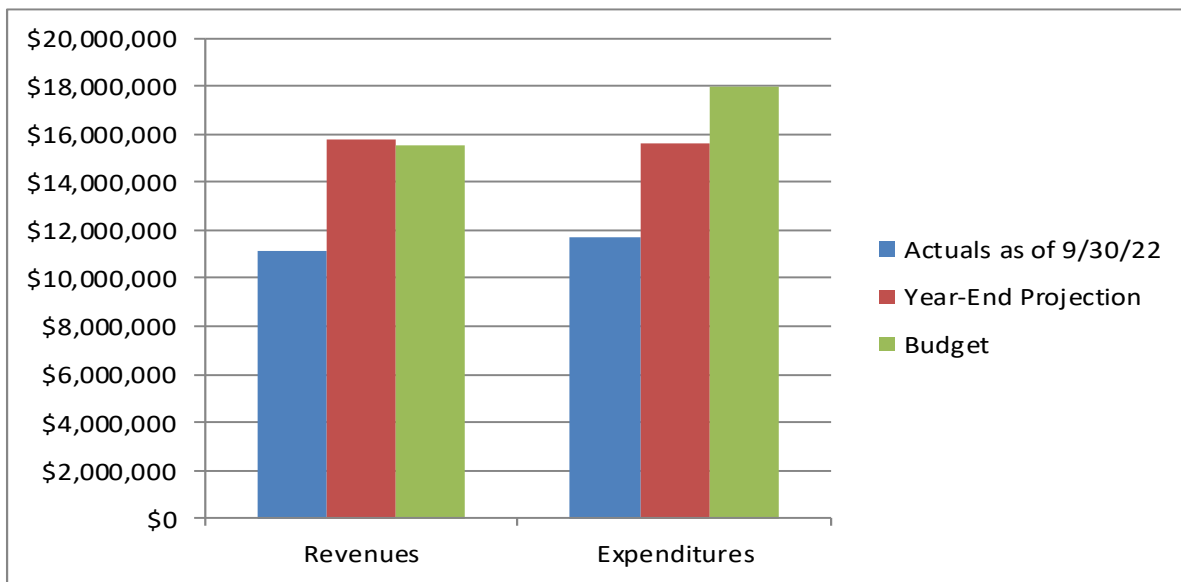
For the Quarter Ending September 30, 2022

AS OF 10/08/22

General Fund

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

Table 1



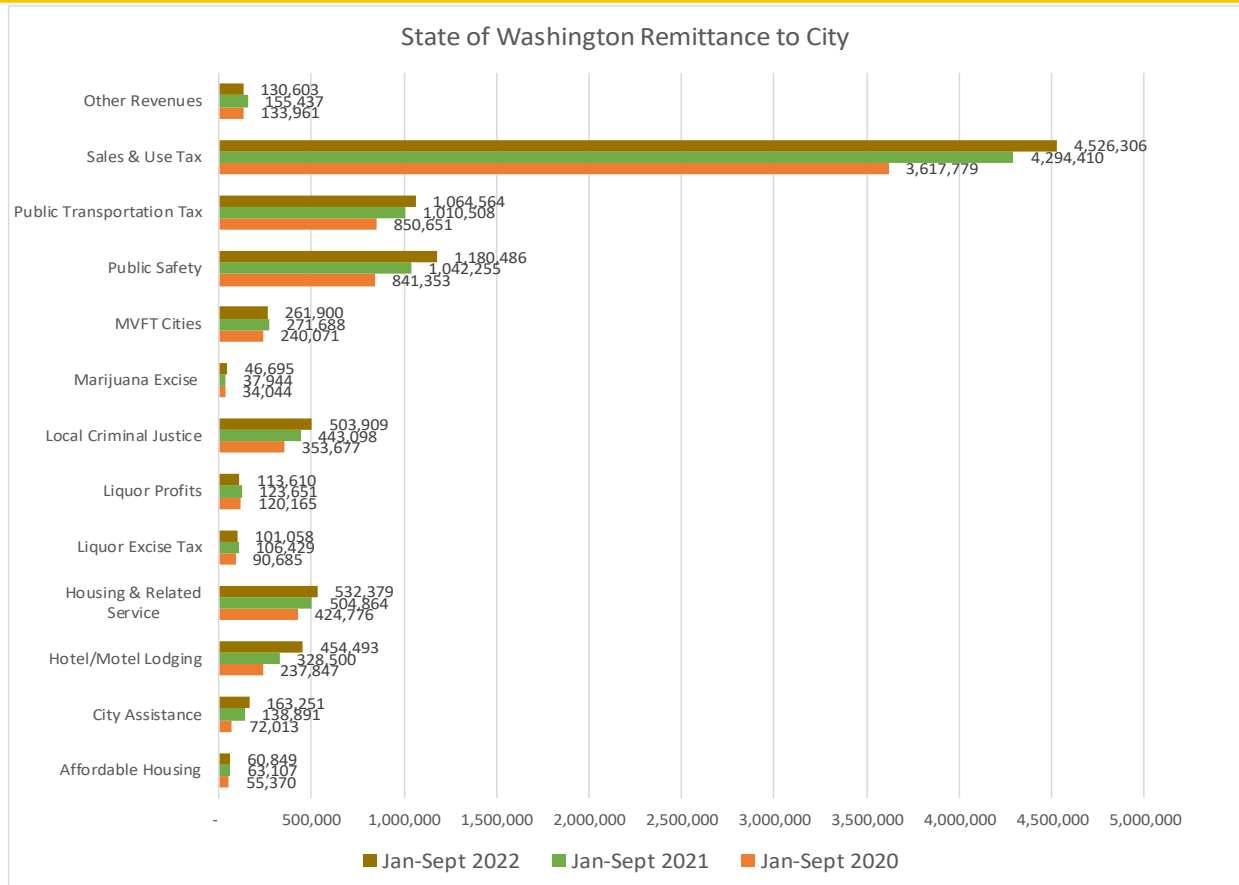
NOTE: The above graph illustrates the difference between year-to-date actuals through September, year-to-date projections as of 9/30/22, and revised budget through September.

Third quarter projections were made as of the current situation on 9/30/2022. Projections were made assuming continued economic recovery through 2022. Please keep in mind, these projections were based on the limited information known by local governments as of the end of September. General Fund expenditures are expected to come in below budget as required by Chapter 35.33 RCW. Budgeted expenditures reflect all adjustments that were taken to Council for approval through May of 2022. Revenue projections were done on an individual basis and will be discussed further in this report. The original '2022 Budget' amounts were set in 4th quarter of 2020. During the time this budget was built many numbers were down and projected to stay down due to the uncertainty of COVID19. In May of 2022 we brought forward 2022 supplemental budget requests and updated the 2022 revenue budget numbers for many of the following revenues.

Governmental Funds Tax Revenue

Table 2

CITY OF ELLENSBURG Year-to-Date Revenue Remitted from State of Washington Sales Tax Activity - Cash Jan-Sept Comparison for 2020 - 2021 - 2022 Table 2



	Receipts Dates <u>Jan-Sept 2020</u>	Receipts Dates <u>Jan-Sept 2021</u>	Receipt Dates <u>Jan-Sept 2022</u>	Increase/ (Decrease)	% Inc (Dec)
Affordable Housing	55,370	63,107	60,849	(2,258)	0%
City Assistance	72,013	138,891	163,251	24,360	18%
Hotel/Motel Lodging	237,847	328,500	454,493	125,993	38%
Housing & Related Service	424,776	504,864	532,379	27,515	5%
Liquor Excise Tax	90,685	106,429	101,058	(5,371)	-5%
Liquor Profits	120,165	123,651	113,610	(10,041)	0%
Local Criminal Justice	353,677	443,098	503,909	60,811	14%
Marijuana Excise	34,044	37,944	46,695	8,751	23%
MVFT Cities	240,071	271,688	261,900	(9,788)	-4%
Public Safety	841,353	1,042,255	1,180,486	138,231	13%
Public Transportation Tax	850,651	1,010,508	1,064,564	54,056	5%
Sales & Use Tax	3,617,779	4,294,410	4,526,306	231,896	5%
Other Revenues	133,961	155,437	130,603	(24,834)	-16%
Totals	7,072,392	8,520,782	9,140,103	619,321	7%

Table 3



	Actuals as of 09/30/22	Year-End Projection	Budget	% Projected Over/(Under) Budget
Sales Tax *	\$7,868,492	\$10,509,192	\$9,978,000	5.32%
B&O Tax **	2,763,231	3,646,951	3,565,980	2.27%
Other Tax ***	983,560	1,446,030	1,026,000	40.94%
Property Tax	2,150,617	3,588,984	3,588,984	0.00%
	\$13,765,899	\$19,191,157	\$18,158,964	5.68%

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

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

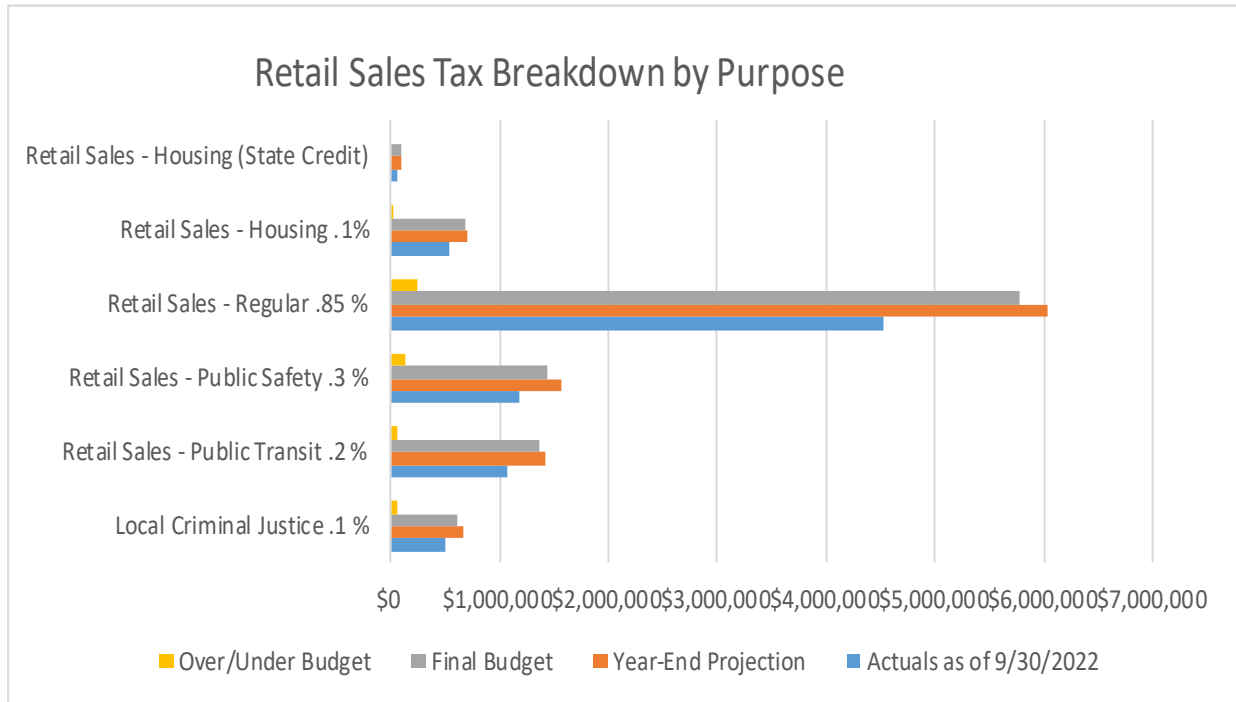
*** OTHER TAX includes leasehold and other excise taxes including hotel/motel tax

Overall governmental fund tax revenue is projected to come in approximately \$1 million or 5.68% above budget. Hotel/Motel Tax was the hardest hit governmental fund tax revenue with COVID-19 shutdowns and saw the longest comeback. However, Hotel/Motel Tax revenue has finally exceeded pre-covid levels. In 2020 Hotel/Motel Tax Revenue came in at 61.15% of 2019. In 2021 Hotel/Motel Tax revenue came in at 89.48% of 2019. January thru September 2022 revenues are 13% higher than January thru September 2019 revenues.

Sales Tax

Table 3 breaks down the difference of budgeted less projected by tax purpose. It is important to note that this includes retail sales and use tax that is restricted for public transit, public safety, and affordable housing purposes. Sales tax revenue received in January is for November 2021 activity. We used the average trend of sales tax over the past 9 months in order to project through year-end. Budgets were updated in May of 2022.

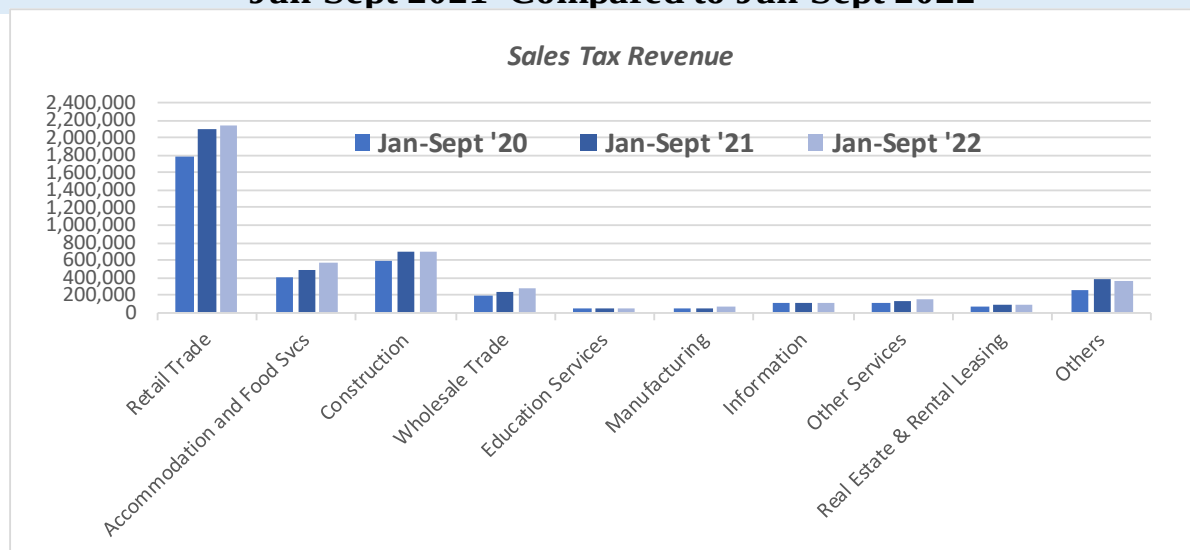
Table 4



	Actuals as of 9/30/2022	Year-End Projection	Final Budget	Projected Over/Under Budget
Local Criminal Justice .1 %	\$503,909	\$671,878	\$619,000	\$52,878
Retail Sales - Public Transit .2 %	1,064,564	1,419,419	1,360,000	\$59,419
Retail Sales - Public Safety .3 %	1,180,486	1,573,982	1,439,000	\$134,982
Retail Sales - Regular .85 %	4,526,306	6,035,074	5,782,000	\$253,074
Retail Sales - Housing .1%	532,379	709,838	679,000	\$30,838
Retail Sales - Housing (State Credit)	60,849	99,000	99,000	\$0
	\$7,868,492	\$10,509,192	\$9,978,000	\$531,192

Table 5

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



	Receipts Dates Jan-Sept '20	Receipts Dates Jan-Sept '21	Receipt Dates Jan-Sept '22	Increase/ (Decrease)	% Inc (Dec)
Retail Trade	1,794,277	2,097,526	2,142,877	45,351	2%
Accommodation and Food Svcs	405,949	481,890	579,807	97,917	20%
Construction	588,727	690,371	699,190	8,819	1%
Wholesale Trade	199,160	237,713	280,337	42,624	18%
Education Services	49,265	41,740	57,405	15,665	38%
Manufacturing	52,877	50,441	60,018	9,577	19%
Information	106,286	117,779	113,351	-4,428	-4%
Other Services	104,362	123,030	150,488	27,458	22%
Real Estate & Rental Leasing	59,149	81,010	83,903	2,893	4%
Others	257,728	372,910	358,930	-13,980	-4%
Total	\$ 3,617,780	\$ 4,294,410	\$ 4,526,306	\$ 231,896	5%

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

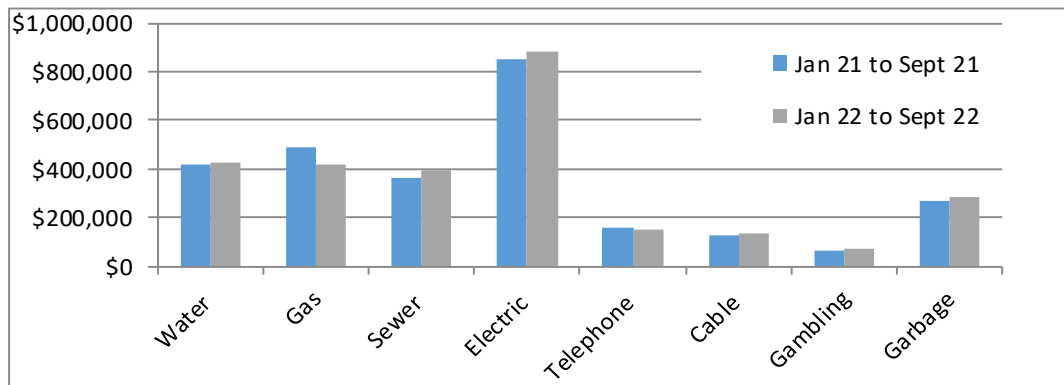
Retail sales tax is distributed monthly reflecting 20 different categories. The above graph reflects the top nine categories with 11 categories being identified within the “Others” category. “Education showed the highest percentage increase over 3rd quarter 2021 with “Accommodation and Food Services”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

Utility Tax

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

Table 6

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



	Receipt Dates Jan 21 to Sept 21	Receipt Dates Jan 22 to Sept 22	Increase/ (Decrease)	% Inc (Dec)
Water (10.5%)	\$422,018	\$427,698	\$5,680	1.35%
Gas (6%)	486,785	415,590	(71,195)	-14.63%
Sewer (10.5%)	363,487	397,795	34,308	9.44%
Electric (6%)	853,768	879,491	25,723	3.01%
Telephone (6%)	158,078	149,769	(8,310)	-5.26%
Cable (1.075%)	124,821	135,275	10,454	8.38%
Gambling (varies 2%-8%)	65,897	74,909	9,012	13.68%
Garbage (8.1%)	266,353	282,702	16,349	6.14%
Total	<u>\$2,741,209</u>	<u>\$2,763,231</u>	<u>\$22,022</u>	<u>0.80%</u>

Revenue was recorded as cash basis for this report.

Telephone and cable taxes will continue to decrease as landlines and cable television have become less common. Residents using cell phone numbers from out of the area are not paying this local telephone tax. A significant amount of the increase for city owned utility taxes can be attributed to the collection of past due utility accounts. Many accounts were past due and were previously uncollectable during the Governors' order. The Gas utility saw a significant natural gas storage sale in 2021 that accounted for approximately \$50,000 in utility taxes for 2021.

Table 7

General Fund Revenues and Expenditures - Budget and Projected For the Period Ending September 30, 2022				
	2022 Budget	2022 Projected	2022 Actual YTD	Budget less Projected
Revenues				
Taxes	\$7,559,681	\$7,760,264	\$5,315,054	-\$200,583
Licenses & Permits	797,483	\$436,759	338,987	\$360,724
Intergovernmental	556,424	\$690,407	465,946	-\$133,983
Charges For Fees	4,502,485	\$4,590,975	3,294,026	-\$88,489
Fines & Forfeits	149,400	\$211,627	159,726	-\$62,227
Misc.	200,874	\$322,079	211,480	-\$121,205
Transfers	1,775,677	\$1,775,677	1,331,758	\$0
Other Receipts	0	0	0	\$0
Total	\$15,542,024	\$15,787,788	\$11,116,976	-\$245,764
Expenditures by Dept				
NonDept	\$1,485,043	\$1,426,866.67	\$1,070,150	\$58,176
Finance	2,203,453	1,925,719	1,444,289	277,734
City Manager	1,335,634	1,198,423	898,817	137,211
Police	5,427,836	4,873,516	3,655,137	554,320
Community Develop.	1,798,756	1,178,101	883,576	620,655
Engineering	1,189,962	837,765	628,324	352,197
Parks & Recreation	3,163,810	3,011,572	2,258,679	152,238
Library	1,270,126	1,123,040	842,280	147,086
Economic Development	75,000	75,000	49,000	\$0
Total	\$17,949,620	\$15,650,003	\$11,730,252	\$2,299,617
Excess of Revenues over	-\$2,407,596	\$137,785	-\$613,276	-\$2,545,381
Beginning Balance	5,303,136	5,303,136	5,303,136	\$0
Other Receipts	0			\$0
Ending Fund Balance	\$2,895,540	\$5,440,922	\$4,689,860	\$2,545,381

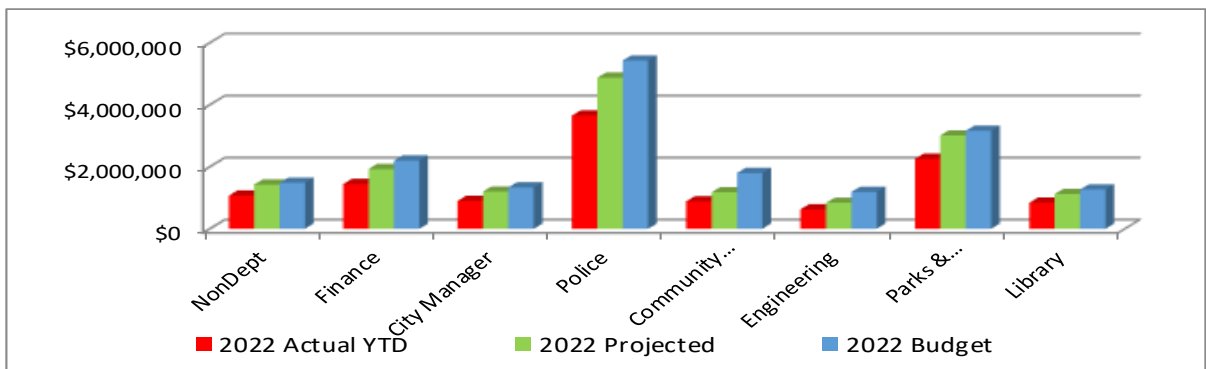


Table 8

DEBT ACTIVITIES	Issued Date	Maturity Date	Original Amount	Balance as of 09/30/22	2022 Debt Payment
General Obligation					
Library Bonds *	2003/2014	2022	1,905,000	180,000	185,400
Maintenance Bond - Pool	2010	2030	2,935,000	1,522,006	212,200
2017 GOI Bond - Public Safety Bldg.	2017	2037	7,200,000	6,899,229	562,326
Telecom Utility - LTGO Taxable **	2016	2036	290,243	226,029	19,072
			12,330,243	8,827,264	978,998
Revenue Bonds					
Stormwater Bond *****	2020	2039	3,000,000	5,000,000	216,501
Water Sewer *****	2016	2029	6,990,000	5,490,000	761,819
Gas	2016	2036	859,015	655,460	52,115
Electric- Refunding***	2005/2014	2025	3,650,000	1,455,000	396,200
Electric	2014	2033	4,540,000	4,450,000	205,925
Water	2013	2022	2,416,431	119,142	241,643
Water/Sewer *****	2021	2040	51,000	2,741,344	0
			21,506,446	19,910,946	1,874,203

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

** LTGO Taxable 20 year bonds in 2016

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

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

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

Citywide Report

The table on the next page- Revenues and Expenditures-Actual shows that the City brought in approximately \$13 million more than it spent in 2022 YTD. \$8.8 million of the excess of revenue over expense is from the utility and internal service funds. General Fund (including managerial funds) saw a net gain of \$2.69 million. However, \$2.6 million of that can be contributed to receiving the second half of our State and Local Fiscal Recovery Funds (previously called American Rescue Act or ARPA funds). Water and Sewer utilities made revenue bond draws of approximately \$2.7 million in June and will be drawing another \$2 million in October. The draw period ends November 30, 2022. Table 9 reduces utility revenues by the outstanding utility receivable amounts to convert revenue amounts to cash basis.

Investment Report

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

Table 9

All City Funds			
Revenues and Expenditures- Actual			
For the Quarter Ending September 30, 2022			
	Revenue	Expenditures	Excess of Revenue Over Expenditures
General Fund	\$11,116,976	\$11,730,252	(\$613,276)
Special Revenue Funds			
Street	1,892,865	1,582,340	310,525
Arterial	2,735,489	3,023,369	(287,880)
Traffic Impact	95,433	376,704	(281,271)
Ellensburg Public Transit	2,032,096	1,195,806	836,290
Criminal Justice	1,198,652	945,328	253,324
Drug Fund	3,276	5,466	(2,190)
Sales Tax	4,539,954	4,037,935	502,019
CATV	76,008	66,904	9,104
Parks Acquisition	72,683	409,202	(336,519)
Arts Acquisition	50,713	13,537	37,176
Lodging Tax	458,151	176,977	281,174
Housing & Related Service	607,186	750,000	(142,814)
COVID-19 Funds	2,949,425	302,769	2,646,656
Debt Funds			
Public Safety Bond	562,327	281,163	281,164
Maintenance Bond	212,800	10,859	201,941
Library Bond	104,522	2,700	101,822
LID Guarantee Fund	973	0	973
Capital Funds			
Capital Const. Bond Projects	0	1,362	(1,362)
Sidewalk	492,329	167,164	325,165
Enterprise Funds			
Stormwater	1,152,750	1,009,761	142,989
Telecommunications	377,359	163,325	214,034
Gas	6,570,480	6,202,594	367,886
Electric	16,882,027	12,434,213	4,447,814
Water	5,891,803	5,096,687	795,116
Sewer	5,461,643	3,394,014	2,067,629
Internal Service Funds			
Shop	1,958,507	1,243,362	715,145
Health Insurance	1,722,678	1,807,257	(84,579)
Risk Management	697,238	673,140	24,098
IT	1,156,682	1,028,681	128,001
Library Trust	2,615	2,216	399
Hal Holmes	7,412	0	7,412
Fire Relief	193,424	82,655	110,769
Total	\$71,276,476	\$58,217,742	\$13,058,734
Managerial Funds of the General Fund			
* Utility Revenue amounts have been converted to cash basis			

CITY OF ELLENSBURG - Investment Report As of 9/30/2022

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

Funds invested \$ 76,672,021.43

Bench Marks

1-year Treasury Constant Maturity - 4.03%

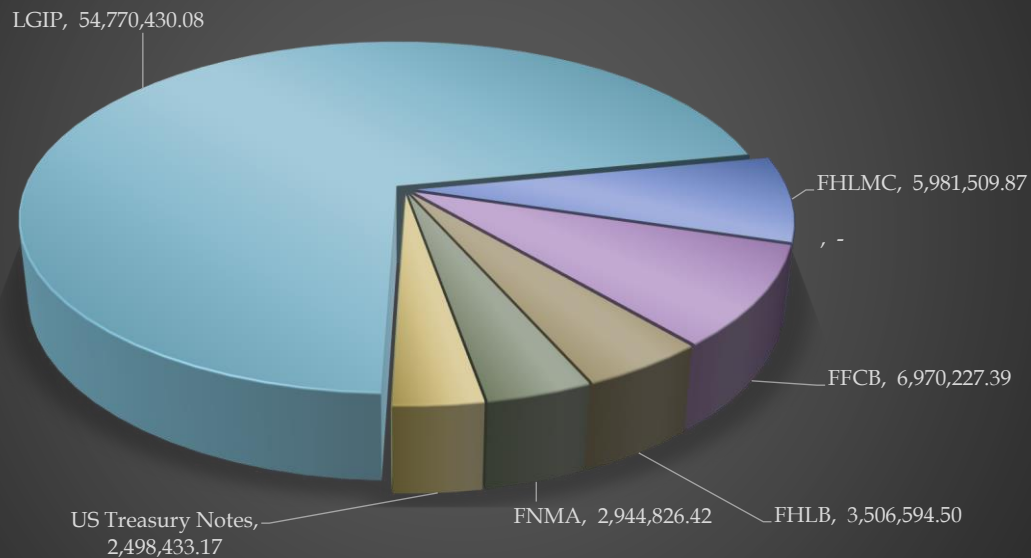
2-year Treasury Note - 3.96%

External Investments - 1.36%

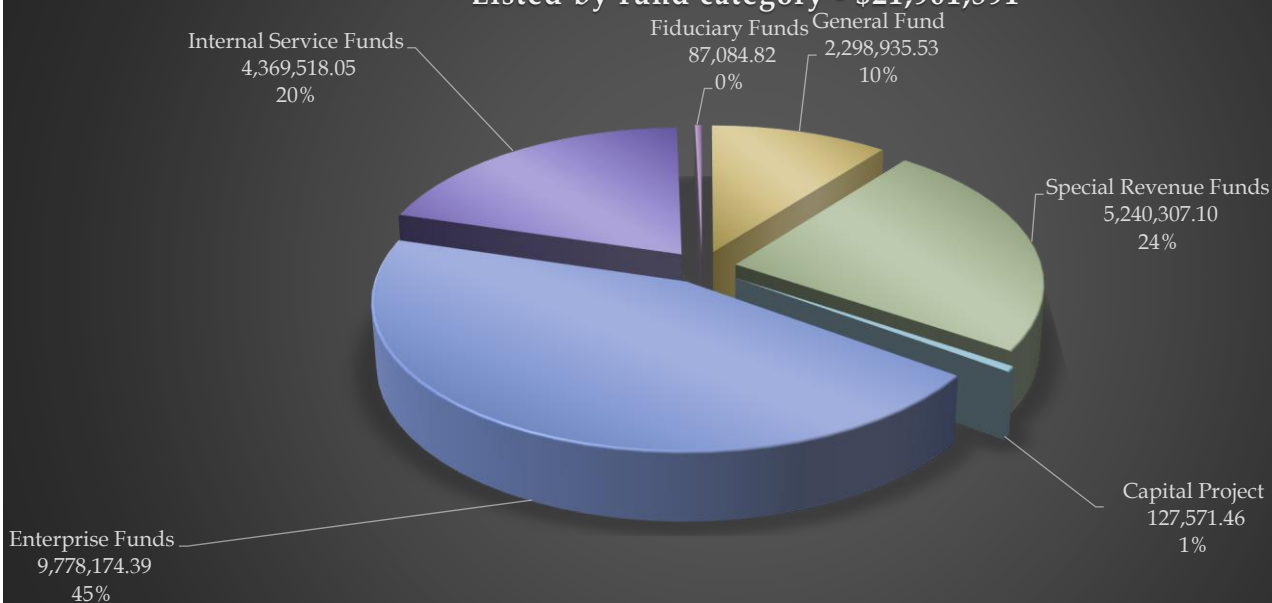
Local Govt. Investment Pool (LGIP)-Gross Earnings Rate - 2.5662%

Interest earned in September - \$136,079

**Total Funds Invested
Listed by Instrument - \$76,672,021**



**Investments with other Institutions
Listed by fund category - \$21,901,591**



CITY OF ELLENSBURG - Investment Report As of 9/30/2022

Investments with other Institutions

Type of Authorized Security	Maximum Holdings and Issuer Limitations	maximum \$ amount that can be invested	% limitation per issuer	% of portfolio invested	Current Investment Holding Amount	Name	Amount Invested w/Issuer	% of Issuer Holding	Yield to Maturity	Expected Annual Earnings
U.S. Treasury Bills, Notes, Bonds or Certificates	100% of Portfolio	\$76,672,021	no limitation	29%	\$21,901,591	#48 FFCB3133EJGU7 Settled 10/5/18 purchase: \$996,823.28 Matures 12/16/2022	996,823	1%	3.03%	27,100
						#49 FHILB 3130AFW94 Settled 3/11/19 purchase: \$1,003,640.56 Matures 2/13/24	1,001,092	1%	2.46%	25,000
						#53 FFCB 1.85 Settled 7/19/19 purchase: \$1000925. Matures 02/01/23	1,000,116	1%	1.85%	18,500
						#54 FFCB 1.6 8/14/23 Corp Settled 10/10/19 purchase: \$505,345.94. Matures 08/14/23	501,337	1%	1.38%	8,000
						#56 US Treas Strip 1.55 Settled 01/08/2020 purchase: \$999,741.04 Matures 11/15/23	999,741	1%	1.55%	15,500
						#57 FNMA corp Settled 01/08/2020 purchase: \$1,003,603.11 Matures 10/15/24	1,001,802	1%	1.63%	16,250
						#58 Matures 9/6/2022	-	0%	1.53%	0
						#59 FHLMC Settled 06/15/20 purchase: \$998,312.89 Matures 05/27/25	998,313	1%	0.54%	5,000
						#63 FHLMC Settled 07/15/2020 purchase: \$ 1,000,131.94 Matures 6/26/23	1,000,044	1%	0.25%	2,500
						#65 Treasury Strip.45 Settled 02/11/21 purchase: \$ 499,619.01 Matures 2/15/26	499,619	1%	0.45%	2,250
						#66 FNMA Settled 06/14/21 purchase: \$995,948.42 Matures 8/25/25	995,948	1%	0.50%	5,000
						#67 FFCB Settled 06/14/21 purchase: \$2,000,000 Matures 6/14/24	2,000,000	3%	0.32%	6,400
						#68 FHILB Settled 8/9/21 purchase: \$1,006,671.67 Matures 6/12/26	1,005,337	1%	0.65%	7,500
						#69 FHLMC Settled 08/9/21 purchase: \$3,985,346 Matures 3/30/26	3,983,153	5%	0.63%	20,400
						#70 FHILB Settled 11/4/21 purchase: \$1,500,192.5 Matures 1/2/25	1,500,165	2%	0.77%	11,550
						#71 FNMA Settled 3/17/22 purchase: \$947,076.44 Matures 11/07/25	947,076	1%	2.07%	20,700
						#72 US Treas Settled 3/18/22 purchase: \$999,073.12 Matures 8/31/24	999,073	1%	1.95%	19,500

CITY OF ELLENSBURG - Investment Report As of 9/30/2022

#73 FFCB Settled 9/22/22 purchase: \$1,476,304.88 Matures 9/15/27	1,476,305	2%	3.74%	36,250
#74 FFCB Settled 9/22/22 purchase: \$995,647.11 Matures 3/6/24	995,647	1%	4.05%	50,625
Subtotal Funds	21,901,591.35	\$ 298,025.00		
		External Investments 1.36% AAY		

Investment in State of Washington Investment Pool

State of WA Investment Pool	100% of Portfolio	\$76,672,021	no limitation	71%	54,770,430.08	State of WA Local Government Investment Pool	54,770,430.08	71%	2.5662%	\$ 1,405,518.78
							State Investment Pool 2.57% AAY			

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

Sorted by Maturity

Security	Description	Rate	Par	Maturity	Months Left to Maturity	Investment #
3135gow33	FNMA NONCALLABLE	1.53	1,500,000	9/6/2022	9	58
3133EJGU7	FFCB NONCALLABLE	3.03	1,000,000	12/16/2022	13	48
3133EKUA2	FFCB NONCALLABLE	1.85	1,000,000	2/1/2023	14	53
3137EAES4	FHLMC	0.25	1,000,000	6/26/2023	19	63
3133EKZK5	FFCB	1.6	500,000	8/14/2023	20	54
912833LP3	US TREASURY NONCALLABLE	1.55	1,061,000	11/15/2023	24	56
3130AFW94	FHLB NONCALLABLE	2.5	1,000,000	2/13/2024	26	49
3133EMH62	FFCB Callable starting 12/14/2021	0.32	2,000,000	6/14/2024	30	67
9128282U3	US TREASURY NONCALLABLE	1.9522	1,000,000	8/31/2024		72
3135GOW66	FNMA NONCALLABLE	1.62	1,000,000	10/15/2024	35	57
3130APKD6	FHLB Callable starting 4/28/2022	0.77	1,500,000	1/28/2025	38	
3134GVYP7	FHLMC	0.54	1,000,000	5/27/2025	42	59
3135GO5X7	FNMA NONCALLABLE	0.375	1,000,000	8/25/2025	45	66
3135GO6G3	FNMA NONCALLABLE	2.0706	1,000,000	11/7/2025		71
912833LY4	US TREASURY NONCALLABLE	0.45	511,000	2/15/2026	51	65
3134GWWP7	FHLMC CALLABLE starting 3/30/23	0.63	4,000,000	3/30/2026	52	69
3130AMF56	FHLB NONCALLABLE	0.65	1,000,000	6/12/2026	54	68
Total Par			21,072,000			

Investment by Fund/Category	
General Fund	2,298,935.53
Special Revenue Funds	5,240,307.10
Capital Project	127,571.46
Enterprise Funds	9,778,174.39
Internal Service Funds	4,369,518.05
Fiduciary Funds	87,084.82
Total	21,901,591.35
LGIP	54,770,430.08
	-
Total	76,672,021.43

Investment by Instrument	
US Treasury Notes	2,498,433.17
State of WA Bonds	-
LGIP	54,770,430.08
FHLMC	5,981,509.87
	-
FFCB	6,970,227.39
FHLB	3,506,594.50
FNMA	2,944,826.42
	-
Total	76,672,021.43

- difference



MANAGER'S REPORT

DATE: November 7, 2022

To: Ellensburg City Council

FROM: Heidi Behrends Cerniwey, City Manager

1. Approve Letter to Kittitas Board of County Commissioners for Event Center Funding

Council is scheduled to discuss revenue options at the study session on November 7, 2022 to fund a share of improvements at the Kittitas Valley Event Center (KVEC). Council will be asked to consider approval of the Mayor's signature on the attached letter to the Board of County Commissioners.

2. Community Thanksgiving on November 23

The annual Community Thanksgiving Dinner will take place on Wednesday, November 23, 2022, from 3-6 p.m. at the Armory at the Kittitas Valley Event Center, 701 E 7th Ave. Multiple volunteer shifts and duties are available. Please contact the Adult Activity Center at 509-962-7242 to sign up or to make monetary or food donations. The seated dinner is free to the public and hosted by the City, FISH, and Rotary clubs. All are welcome to attend.

3. Belonging in the Burg World Café Community Discussion on November 12

The City has partnered with Ellensburg School District and Central Washington University to host a community-building conversation about Belonging in Ellensburg. The event will take place on Saturday, November 12 from 3-5 p.m. at the Hal Holmes Community Center, 209 N. Ruby Street. English-Spanish translators will be in attendance. Participants are encouraged, but not required, to register in advance.

4. Reed Park Master Plan Meeting on November 16

The City will host a community-wide Reed Park master planning meeting on November 16 at 6 p.m., in the City Hall Council Chambers. The goal of the master planning effort is to develop a park master plan focused on improving park safety by expanding non-motorized access opportunities to and within the park, while still maintaining existing park elements that make Reed Park unique to our community. A remote option will be scheduled too.



CITY OF ELLENSBURG
501 North Anderson Street
Ellensburg, WA 98926
Ph: (509) 962-7221 Fax: (509) 962-7143

November 7, 2022

Commissioner Laura Osiadacz
Commissioner Brett Wachsmith
Commissioner Cory Wright
Kittitas County Board of County Commissioners

RE: Future Distressed County Sales and Use Tax Grant Funds for Kittitas Valley Event Center Improvements

Dear Commissioners:

On May 2, 2022, County staff Kady Porterfield and Patty Stacey; Brian Twardoski and Carl Jensvold of the Rodeo Board; and Commissioner Wachsmith reviewed the urgent need for capital improvements at the Kittitas Valley Event Center (KVEC). At that time, they also requested a commitment from the City Council to partner to fund those capital improvements with an estimated annual debt service from the City's portion to be \$250,000.

The Ellensburg City Council recognizes the economic impact of the KVEC activities and Ellensburg Rodeo and the importance of maintaining safe and attractive facilities to enhance local recreation and tourism activities. At the meeting, the Council expressed interest in exploring funding options to support facility improvements, including a commitment to opt out of requesting future Distressed County Sales and Use Tax (.09%) Funding for a period of ten (10) years.

Since that time, City staff and Council have considered revenue options that may support KVEC facility improvements and have determined that other councilmanic revenue sources such as City lodging tax or admissions tax were insufficient to consistently fund annual debt service over a ten-year period. Without current dialog to explore a regional partnership to implement new revenue for public recreation facilities, the most efficient source of revenue the City can commit to fund these improvements would be the Distressed County Sales and Use Tax.

Please accept this letter as an open offer to the Commissioners for the City of Ellensburg to forgo any economic development project funding requests for future Distressed County Sales and Use Tax Grant Funds for a period of ten (10) years to provide capacity for debt service payments for improvements to KVEC facilities.

We welcome additional dialog or formal agreement to memorialize this commitment. As a Council, we are willing to explore other partnerships for new revenue options to achieve mutual interests. We would also offer our advocacy at the State level to invest in this regional asset.

Sincerely,

Nancy Lillquist, Mayor

Belonging In The Burg

Join a community-building conversation about belonging in Ellensburg, using the World Cafe discussion model.

Saturday, November 12 from 3–5 p.m.

Hal Holmes Community Center, 209 N. Ruby St.

Free to participate. Includes refreshments & snacks.



Scan to RSVP



The goal for the event is to connect a diverse group of residents for a meaningful conversation about belonging.

**Brought to
you by:**



DISPUTE RESOLUTION CENTER 213
of yakima and kittitas county