CITY COUNCIL AGENDA

September 2, 2025

Ellensburg City Council welcomes and encourages public participation in their public meetings. 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.

To attend the city council meeting virtually register here:
https://us02web.zoom.us/webinar/register/WN_zacj5JsQTqiakYJ_WUC6Mg

The 6 p.m. 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.

Accessibility
The City of Ellensburg strives to make our services, programs, and activities readily accessible.

- Closed Captioning is available to Zoom viewers. To enable closed captioning, you will need to click on the “CC” button at the bottom of your Zoom screen and then select either “Show Subtitle” or “View Full Transcript."
- Members of the public who do not speak English or who have limited proficiency may request an interpreter if they wish to participate in public meetings.
- The City will provide reasonable accommodation for members of the public with disabilities.

Please submit requests for language assistance or reasonable accommodation to the HR Director/ADA Coordinator by calling (509) 962-7222 or by email at ADAcoordinator@ellensburgwa.gov. Five (5) business days' notice is appreciated.

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 "Procedure for Remote Participation During Meeting" below. Once you register, you will be sent a meeting invitation with a phone number for the meeting.

Public comment on Non-Agenda Issues (Item No. 7) is limited to a combined total of thirty (30) minutes unless Council votes to extend the time. 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@ellensburgwa.gov. 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@ellensburgwa.gov. 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. Once registered, you will receive an email with the meeting link and phone number (for those who wish to call into the meeting).***
   a) Anyone wishing to provide public comment on ***Non-Agenda Issues*** (Item No. 7 on the Agenda) must: 1. Register via the Zoom link by no later than 24 hours prior to the meeting; and 2. Provide a description in the Zoom registration form of the topic upon which they wish to speak with sufficient detail to allow the Mayor to determine whether it pertains to City business or a matter over which Council has control.
   b) Anyone wishing to speak on ***all other Agenda items*** where it specifically states "Public Comment Opportunity" must register prior to 7 p.m. the day of 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. If you wish to speak on an agenda item, you must:
   a) Wait to be called upon by the Mayor using your name, e-mail, or phone number used to log in to the teleconference.
   b) 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.
6. Please state your name, whether you live in the City of Ellensburg, Kittitas County or elsewhere, 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, whether you live in the City of Ellensburg, Kittitas County or elsewhere, and whether you are representing only yourself or others.
- Each speaker's comments are to be limited to 3 MINUTES.
- Submit any 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).
4. Speakers providing comments on Item 7, Non-Agenda Issues, may only address the Council on matters which concern the City's business or over which the Council has control, and must announce the topic upon which they wish to speak before making their comments.

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
CITY COUNCIL AGENDA
Council Chambers
501 North Anderson Street
Ellensburg, WA 98926
And remotely via Zoom
Tuesday, September 2, 2025
6:00 PM – Study Session
7:00 PM - Regular Meeting

Study Session

A Board & Commission Meeting Recordings Discussion (No Public Comment)

Pledge of Allegiance

1. **Call to Order and Roll Call**

2. **Proclamations** (No Public Comment)

3. **Awards and Recognitions**

3.A Library Card Design Contest Winner (No Public Comment)

3.B Kittitias County Lodging Tax Small Grant Program (No Public Comment)

4. **Approval of Agenda** (No Public Comment)

5. **Consent Agenda** (No Public Comment)
Items listed below have been distributed to Councilmembers in advance for study and will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Agenda at the request of a Councilmember or at the request of a member of the public with concurrence of a Councilmember. Requests to remove items should be made under Item 4 Approval of Agenda.

5.A Approve Minutes of August 18, 2025 Regular Meeting 6

5.B Acknowledge Minutes of Boards and Commissions 11

5.C Shop & Warehouse Facility Backup Generator 24

5.D Award Bid Call 2025-09 Tree Trimming Contract Utility Electrical Distribution System 34

5.E Taxicab Service Rate Approval for Ellensburg Taxi Service and Rainier Taxi and Courier 36

5.F Approve September 2, 2025 Voucher Listing 39

6. **Petitions, Protests, and Communications**

6.A Planning Commission Appointment - Skylar Bisom-Rapp (Public Comment Opportunity) 40

7. Public Comment on Non-agenda Issues

8. Business Requiring Public Hearings

9. Introduction and Adoption of Ordinances and Resolutions

9.A Ordinance 4969 (2nd reading) - Utility Billing Disconnect Notices (Public Comment Opportunity) 45

9.B Ordinance 4970 (2nd Reading) - Amending the 2025/2026 Biennial Budget (Public Comment Opportunity) 50

9.C Ordinance 4971 (1st Reading) - Amending City Code Regarding Accessory Dwelling Units (ADUs), Street Improvements, and Impact Fees (Public Comment Opportunity) 64

10. Unfinished Business

11. New Business

11.A Addison Place Affordable Housing Agreement with HopeSource (Public Comment Opportunity) 71

11.B Public Facilities District for Funding Recreational Facilities (Public Comment Opportunity) 140

12. Miscellaneous

12.A Manager's Report (No Public Comment) 171

12.B Councilmembers' Reports (No Public Comment)

13. Executive Session

14. Adjournment

CITY OF ELLENSBURG — **Minutes of City Council, Regular Meeting**

Date of Meeting — **August 18, 2025**

Time of Meeting — **7:00 PM**

Place of Meeting — **Council Chambers**
501 North Anderson Street
Ellensburg, WA 98926
And remotely via Zoom

Pledge of Allegiance
The Pledge of Allegiance was led by Councilmember Goodloe.

1. Call to Order and Roll Call
Roll Call Present: Sarah Beauchamp, Rich Elliott, Nancy Goodloe, Nancy Lillquist, David Miller, Delano Palmer, Joshua Thompson

Others present in person: City Manager Behrends Cerniwey, City Attorney Horner, City Clerk Leader, Public Works Director Lyyski, City Engineer Mayo, Transit Manager Dunbar, Finance Director Pascoe, Assistant Finance Director Bassett, HR Director Young, IT Director Goeben and approximately fifteen members of the public

Others present remotely via Zoom: Five members of the public

2. Proclamations

2.A International Overdose Awareness Day 2025

3. Awards and Recognitions

4. Approval of Agenda
Councilmember Goodloe moved to approve the Agenda as presented. **Motion Approved 7-0**

5. Consent Agenda

5.A Approve Minutes of August 4, 2025 Regular Meeting

5.B Approve Minutes of August 4, 2025 Study Session

5.C Maple Street Emergency Water Main Repair

5.D Resolution 2025-22 Approving Foster Subdivision Phase 1A - P25-071

5.E Community Thanksgiving Interagency Agreement Between CWU and the City

5.F City of Ellensburg 2025-2027 Biennium Consolidated Grant Agreement

5.G Interlocal Agreement between City of Ellensburg and the State of Washington Central Washington University.

5.H Planning Commission Resignation - Sigrid Davison

5.I Environmental Commission Resignation - Jess Black

5.J Diversity, Equity & Inclusion Commission Resignation - Teresa Divine

5.K Approve August 18, 2025 Voucher Listing

Councilmember Goodloe moved to approve the Consent Agenda as presented. **Motion Approved 7-0**

6. Petitions, Protests, and Communications

6.A Resolution 2025-23 to Provide Enforcement of the Ellensburg Rodeo's Double Cross (XX) Ordinance (Public Comment Opportunity)
Diana Tasker, Rotary Cowboys representative, presented information regarding the Double Cross Ordinance

Councilmember Palmer moved to adopt Resolution 2025-23 to provide Enforcement of the Double Cross Ordinance. **Motion Approved 7-0**

7. Public Comment on Non-agenda Issues

- Howard Jones, Ellensburg resident, spoke regarding seeking approval

8. Business Requiring Public Hearings

8.A Public Hearing (Legislative) to adopt the 2025-2030 Transit Development Plan and accept the 2024 Annual Report (Public Comment Opportunity)
The Mayor opened the public hearing. Betsy Dunbar, Transit Manager, presented the information in the Plan.

- Jennifer Patteson, County resident, spoke regarding artwork on transit shelters
- Juliann Cleman, County resident, speaking for herself, spoke in favor of the transit system

With no further comments from the public and a question from Council, Mayor Elliott closed the public hearing.

Councilmember Palmer moved to adopt the 2025-2030 Transit Development Plan and Accept the 2024 Annual Report as presented. **Motion Approved 7-0**

9. Introduction and Adoption of Ordinances and Resolutions

9.A Ordinance 4967 (2nd Reading) - Updating Utility Advisory Committee, Environmental Commission, and Public Transit Advisory Committee Membership and Roles (Public Comment Opportunity)

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

Councilmember Lillquist moved to conduct second reading and adoption of Ordinance 4967, approving changes to roles and memberships of the Utility Advisory Committee, Environmental Commission, and Public Transit Advisory Committee (now Transportation Advisory Committee). **Motion Approved 7-0**

9.B Ordinance 4968 (2nd Reading) Traffic Code Revisions (Public Comment Opportunity)
Derek Mayo, City Engineer, presented information in the staff report.

Councilmember Miller moved to conduct second reading and adoption of Traffic Code Ordinance 4968. **Motion Approved 7-0**

9.C Ordinance 4969 (1st reading) - Utility Billing Disconnect Notices (Public Comment Opportunity)
Jerica Pascoe, Finance Director, presented information in the staff report. Council asked questions of staff.

Councilmember Palmer moved to conduct first reading of Ordinance 4969 Amending Utility Billing Disconnect Notices. **Motion Approved 6-1** ***(Lillquist voted no)***

9.D Ordinance 4970 (1st Reading) - Amending the 2025/2026 Biennial Budget (Public Comment Opportunity)
Keith Bassett, Assistant Finance Director, presented information in the staff report. Heidi Behrends Cerniwey, City Manager, presented additional information in the report. Council asked questions of staff.

Candice Comfort, County resident, spoke regarding a 2018 report concerning the Memorial Pool roof.

Councilmember Palmer moved to conduct first reading of Ordinance 4970, amending the 2025/2026 Biennial Budget. **Motion Approved 7-0**

9.E Resolution 2025-21 for 2025 Kittitas County Multi-Jurisdictional Hazard Mitigation Plan and Ellensburg Annex (Public Comment Opportunity)
Arden Thomas, Kittitas County Water Resource Program Manager, presented a report to Council.

Councilmember Goodloe moved to approve Resolution 2025-21 adopting the Kittitas County Multi-Jurisdictional Hazard Mitigation Plan and Ellensburg Annex. **Motion Approved 7-0**

9.F Resolution 2025-17 Establishing Temporary Staff Resources for ERP Implementation (Public Comment Opportunity)
Lisa Young, HR Director and Jim Goeben, IT Director, presented information in

the staff report.

Councilmember Palmer moved to approve Resolution 2025-17 as presented and approve the necessary budget adjustments. **Motion Approved 7-0**

10. Unfinished Business

11. New Business

12. Miscellaneous

12.A Manager's Report (No Public Comment)
Heidi Behrends Cerniwey, City Manager, presented the report. Councilmembers Goodloe, Miller and Beachamp will serve on the grant subcommittee with Mayor Elliott as a backup.

12.B Councilmembers' Reports (No Public Comment)

- Councilmember Lillquist reported on Yakima Basin Fish & Wildlife Recovery Board, attended Coffee with Council, meeting with Department of Commerce, and the Checkerboard Partnership meeting
- Councilmember Palmer attended the County LTAC meeting, and the Yakima Basin Fish & Wildlife Recovery Board meeting
- Councilmember Goodloe reported on DEI Commission, attended Coffee with Council, and announced there are two openings on the DEI Commission
- Councilmember Beauchamp reported on the KITTCOM Board, Lodging Tax Advisory Committee, Parks & Recreation Commission and attended Shakespear in the Park. She requested an excused absence for the September 2, 2025 meeting.

Councilmember Miller moved to approve an excused absence for Councilmember Beauchamp at the September 2, 2025 regular meeting. **Motion Approved 7-0**

- Mayor Elliott spoke regarding wildfire policy, FEMA and mitigation and recovery funding; reported on the EMS Trauma Council, KITTCOM and the County Lodging Tax process for capital projects will be under review

13. Executive Session

14. Adjournment
Meeting adjourned at 8:48 pm

____
Mayor

ATTEST: ____________________________
City Clerk

CITY OF ELLENSBURG **Minutes of Affordable Housing Commission, Special Meeting**

Date of Meeting **April 30, 2025**

Time of Meeting **4:30 PM**

Place of Meeting **Council Conference Room**
501 North Anderson Street
Ellensburg, WA 98926
And remotely via Zoom

1. Call to Order and Roll Call of Members

Commissioner Bedsaul called the meeting to order at 4:30 p.m.

Present: Kim Funston, Courtney Garzone, Delano Palmer, John Perrie, Peter Stone (arrived 4:37 p.m.), Dan Witkowski, Sarah Bedsaul
Others Present: Dan Carlson-CD Director; Lily Frey-Housing Program Manager; Kathy Boots-Planning Technician; Matt Stalder, Susan Grindle, Bill Hinkle, Kryssi Torgeson

2. Approval of Agenda

Commissioner Garzone motioned to approve the agenda. Motion passed 7-0.

3. Approval of Minutes

3.A Approve April 2, 2025 regular meeting minutes
Commissioner Garzone motioned to approve the April 2, 2025, minutes. Motion passed 7-0.

4. New Business

4.A Consider HopeSource application for sales tax funding
Susan Grindle presented to the Commission a proposal to buy four duplexes currently being constructed by Matt Stalder. HopeSource would contribute an empty lot to the transaction for the duplexes. The duplexes are projected to be used for affordable housing with rent below 60 AMI. Ms. Grindle shared the funding sources, including $250,000 from Kittitas County. HopeSource was requesting $1.2 million dollars from the city. Commissioners inquired why the amount requested from the City was higher than the Kittitas County funding amount. Mr. Hinkle stated the County did not have additional funds. The Commissioners expressed an interest in either the AMI being reduced or lowering rent for a specific period of time. Mr. Hinkle will run the numbers and see if that is possible. HopeSource will also evaluate if they can extend the affordability period.

Commissioner Garzone moved to recommend approval of the proposal for the requested funding amount to the City Council with consideration that the applicant's final proposed rents are set as low as feasible, and the affordability period be extended as long as possible. Motion passed 6-1. Palmer opposed motion.

4.B Catherine Property update - consider wetland monitoring contract
Frey stated that the City received a quote for monitoring the wetland over the summer that will include three visits and a report on the Catherine property. Commissioner Garzone motioned to support use of affordable housing funds for professional monitoring of the wetland for the Catherine property to include three field visits in 2025. Motion passed 7-0.

5. Unfinished Business
None.

6. Public Comment
None.

7. Staff Update/Discussion Items

7.A Updated area median income (AMI) figures for Kittitas County
Staff updated the Commission on the updated figures from HUD for the median income in Kittitas County. The Commission may consider targeting a lower AMI to account for the AMI figures being tallied for the whole County.

7.B Select next meeting date
The next meeting is May 21, 2025.

8. Commission Representative Update
None.

9. Adjournment
The meeting was adjourned at 5:47 p.m.

CITY OF ELLENSBURG — **Minutes of Affordable Housing Commission, Regular Meeting**

Date of Meeting — **May 21, 2025**
Time of Meeting — **4:30 PM**
Place of Meeting — **Council Chambers**
501 North Anderson Street
Ellensburg, WA 98926
And remotely via Zoom

1. Call to Order and Roll Call of Members
Commissioner Witkowski called the meeting to order at 4:30 p.m.

Present: Kim Funston, John Perrie, Peter Stone, Dan Witkowski, Delano Palmer (arrived 4:45 p.m.)
Absent: Sarah Bedsaul (excused); Courtney Garzone (excused)
Others Present: Dan Carlson-CD Director; Lily Frey-Housing Program Manager; one member of the public

Commissioner Witkowski motioned to approve the absence of Commissioner Sarah Bedsaul and Courtney Garzone. Motion passed 4-0. (Palmer not present)

2. Approval of Agenda
Commissioner Perrie motioned to approve the agenda. Motion passed 4-0. (Palmer not present)

3. Approval of Minutes

3.A Approval of April 30, 2025 special meeting minutes
Commissioner Stone motioned to approve the April 30, 2025, special meeting minutes. Motion passed 4-0. (Palmer not present)

4. New Business

4.A Consider cold weather shelter lease opportunity
Lily Frey gave an update on the cold weather shelter. Grace church at 1201 B Street is willing to complete a two-year lease for the cold weather shelter. Frey gave an overview of the lease amount and the space. There are no showers, but there may be an option to add showers. The operations are still being worked out. There is a warming kitchen but doesn't contain laundry facilities or a common space. Commissioner Stone motioned to recommend approval of a two-year contract lease with Grace Church for a cold weather shelter. Motion passed 4-0. (Palmer not present)

4.B ADU open house event planning

Lily Frey followed up on a previous discussion of an Accessory Dwelling Unit (ADU) open house. Guidance will be added to the City webpage. The open house will involve presenters from the Planning Department, realtor, lending, building, contractor, and possibly County staff. Commissions recommended advertising including flyers, social media, and potentially a notice in utility bills. The space, time of year, length, and time of day were discussed. The event will be recorded. Photos of current ADUs and success stories may be included.

5. Unfinished Business

None.

6. Public Comment

None.

7. Staff Update/Discussion Items

7.A HopeSource application follow up

Frey stated that HopeSource was not able to lower rents or extend the length of the affordability. A proforma was provided. Commissioners would like clarification on the reserve amounts and an approximately $150,000 dollar difference between the project cost estimate and purchase price. The City Council approved staff to work on a contract.

8. Commission Representative Update

Commissioner Palmer advised that the Stuart Meadows dedication is July 19, 2025. Habitat for Humanity is in need of volunteers. Federal cuts to the AmeriCorps program will impact the next phase of the Stuart Meadows project.

Frey stated that she met with the Independent Order of Odd Fellows and their consultant. They are interested in applying for pre-development funding.

The next meeting is June 4, 2025.

Commissioner Palmer gave an overview of a planned parcel swap involving the City, County, and Central Washington University. The resultant City property may be used in the future for affordable housing. The City and County discussion of a year-round sleep center has been tabled and the focus will be on offering a seasonal cold weather shelter.

Commissioner Stone advised that the June 2025 meeting would be his last due to relocation.

9. Adjournment

The meeting was adjourned at 5:06 p.m.

CITY OF ELLENSBURG **Minutes of Landmarks & Design Commission, Regular Meeting**

Date of Meeting **May 20, 2025**
Time of Meeting **5:45 PM**
Place of Meeting **Council Chambers**
501 North Anderson Street
Ellensburg, WA 98926
And remotely via Zoom

1. Call to Order and Roll Call of Members
The meeting was called to order by Commissioner Redmon at 5:45 p.m.

Present: Vicki Sannuto, Fred Redmon, Marty Blackson, Jeff Watson, Teresa Chanes
Absent: Julia Stringfellow (excused); Cathy Poshusta (excused)
Others Present: Stacey Henderson-Planning Manager; Kathy Boots-Planning Technician; Scott Carlson, Sadie Thayer, Chace Pedersen, Adam Rynd

Commissioner Watson motioned to excuse the absence of Commissioners Stringfellow and Poshusta. Motion passed 5-0.

2. Approval of Agenda
Commissioner Blackson motioned to approve the agenda. Motion passed 5-0.

3. Approval of Minutes

3.A 3/18/25 LDC Meeting Minutes
Commissioner Sannuto motioned to approve the LDC meeting minutes from 3/18/2025. Motion passed 5-0.

3.B 4/1/25 LDC Meeting Minutes
Commissioner Chanes motioned to approve the LDC meeting minutes from 4/1/2025. Motion passed 5-0.

3.C 4/15/25 LDC Meeting Minutes
Commissioner Watson motioned to approve the LDC meeting minutes from 4/15/2025. Motion passed 5-0.

4. New Business

4.A Public hearing for consideration of a Certificate of Appropriateness (COA), for the restoration of second floor windows, removal of a fabric awning, and removal of a sign at 114 W. 4th Ave, Parcel ID #797033
The appearance of fairness was reviewed. The staff read a staff report. Staff recommended approval with no conditions. Adam Rynd was present and is

excited to restore the windows. Public comment opened. No public comment. Commissioner Redmon asked if the windows would be clear glass. Adam confirmed the glass was clear. Public comment closed. Commissioner Blackson motioned to approve the Certificate of Appropriateness with the findings of fact in the agenda packet for the restoration of the second floor windows, removal of a fabric awning, and removal of a "furniture" sign at 114 W 4th Ave, Parcel ID 797033. Motion approved 5-0.

5. Unfinished Business
None

6. Public Comment
None

7. Staff Update/Discussion Items
Stacey Henderson introduced Scott Carlson, who is interested in becoming a Commissioner on the Landmarks & Design Commission. Mr. Carlson introduced himself.

7.A Preservation Month Updates
Staff gave a summary of the awards ceremony and let the Commission know that the history questionnaire is still open.

8. Commission Representative Update
None

9. Adjournment
The meeting was adjourned at 6:07 p.m.

CITY OF ELLENSBURG **Minutes of Landmarks & Design Commission, Regular Meeting**

Date of Meeting	**June 17, 2025**
Time of Meeting	**5:45 PM**
Place of Meeting	**Council Chambers 501 North Anderson Street Ellensburg, WA 98926 And remotely via Zoom**

1. Call to Order and Roll Call of Members

Commissioner Watson called the meeting to order at 5:45 p.m.

Present: Jeff Watson, Vicki Sannuto, Teresa Chanes,
Absent: Julia Stringfellow (excused)
Others Present: Stacey Henderson-Planning Manager; Chace Pedersen-Associate Planner; Fred Redmon (arrived at the end of roll call) two members of the public

Commissioner Chanes motioned to approve the absence of Julia Stringfellow. Motion passed 3-0.

2. Approval of Agenda

Commissioner Chanes motioned to approve the agenda. Motion passed 3-0.

3. Approval of Minutes

3.A 5/20/25 LDC Meeting Minutes
Commissioner Sannuto motioned to approve the minutes from the May 20, 2025, meeting. Motion passed 3-0.

4. New Business

4.A Public hearing for consideration of a Certificate of Appropriateness (COA), for the installation of new sign graphics at 118 W 5th Ave, Parcel ID #616933
The public hearing was opened. The appearance of fairness was reviewed. Chace Pedersen read a staff report. Staff recommended approval with one condition: that the sign shall only be illuminated from dusk to 10:00 p.m. The applicant was not present. Public comment opened. No public comment. Commissioner Chanes confirmed a building permit would be required. Commissioner Sannuto inquired about the gray piece between the signs. Public comment closed. Commissioner Chanes motioned to approve the Certificate of Appropriateness with the findings of fact in the agenda packet for the installation of the new sign graphics at 118 W 5th Avenue Parcel 616933. Motion passed 3-0.

5. Unfinished Business
None.

6. Public Comment
None.

7. Staff Update/Discussion Items

7.A LDC Commissioner Reappointment/Appointment Status
The re-appointment interviews of Maurice Blackson and Fred Redmon are scheduled for June 25, 2025. The re-appointments are scheduled to go before the City Council on July 9, 2025. Due to the lack of members being able to attend July 1, 2025, the meeting has been canceled.

7.B 2026 Periodic Update - Historic Preservation Chapter
Stacey Henderson presented to the Commission the historic preservation chapter of the Comprehensive Plan. The chapter will be revised during the 2026 periodic update. Commissioners are encouraged to read the current chapter and come up with proposed changes. There is going to be a kick-off meeting scheduled with the new consultants. Henderson reviewed the projected timeline.

8. Commission Representative Update
Commissioner Chanes gave an update on an Ellensburg Downtown Association grant. They received 17 applications and are excited to grant monies to support historic buildings in the downtown.

Fred Redmon asked about the status of the City of Ellensburg Historic Preservation grant. The application window is live.

9. Adjournment
The meeting was adjourned at 6:16 p.m.

CITY OF ELLENSBURG **Minutes of Landmarks & Design Commission, Regular Meeting**

Date of Meeting	**July 15, 2025**
Time of Meeting	**5:45 PM**
Place of Meeting	**Council Chambers 501 North Anderson Street Ellensburg, WA 98926 And remotely via Zoom**

1. Call to Order and Roll Call of Members
Commissioner Redmon called the meeting to order at 5:45 p.m.

Present: Fred Redmon, Jeff Watson, Vicki Sannuto, Julia Stringfellow, Scott Carlson, Marty Blackson
Absent: Teresa Chanes (excused)
Others Present: Stacey Henderson-Planning Manager; Chace Pedersen-Associate Planner; Sadie Thayer, Michelle Prynne, a member of the public

Commissioner Blackson motioned to approve the absence of Teresa Chanes. Motion passed 6-0.

2. Approval of Agenda
Commissioner Watson motioned to approve the agenda. Motion passed 6-0.

3. Approval of Minutes
No minutes ready for review.

4. New Business

4.A Public hearing for consideration of a Certificate of Appropriateness (COA), for the installation of new sign graphics at 118 W 5th Ave, Parcel ID #616933
The public hearing was opened. The appearance of fairness was reviewed. Jeff Watson disclosed that he banks at this location. Chace Pedersen read a staff report. Staff recommended approval with one condition; that the sign shall only be illuminated from dusk to 10:00 p.m. Michelle Prynne was present on zoom as an agent for the applicant. Ms. Prynne stated the staff report was accurate, and she believes the sign is currently illuminated but will make sure the sign is only illuminated at appropriate times by using a timer. No public comment. Ms. Prynne did not have anything to add. Public comment closed. Commissioner Watson motioned to approve the Certificate of Appropriateness with the findings of fact in the agenda packet (page six) for the installation of new sign graphics at 118 W 5th Ave, parcel ID #616933 with one condition: that the sign only be illuminated from dusk to 10:00 p.m. Motion passed 6-0.

5. Unfinished Business
None.

6. Public Comment
None.

7. Staff Update/Discussion Items

7.A 2025 PLACES Conference
Chace Pedersen let the Commission members know about the 2025 PLACES conference on October 8-10, 2025. The City of Ellensburg is able to pay for the Commissioner's registration but not lodging.

7.B 2026 Periodic Update - Historic Preservation Chapter
Chace Pedersen showed the Commissioner's Chapter 8 of the Comprehensive Plan. Chapter 8 is the Historic Preservation chapter. This chapter will be updated if needed during the 2026 periodic update. Pedersen would like the Commission to review the goals, policies, and programs of the Comprehensive Plan and bring suggestions to next month's meeting. After ideas/suggestions are voted for by the Commission, they will be brought to the consultant for assistance with a draft. Commissioner Sannuto had read Chapter 8 and wanted to know the status of Policy B-Program B regarding educational materials. Since the last Comprehensive Plan update, brochures and pamphlets have been created. Sannuto looked at Spokane, Washington's Comprehensive Plan and suggested adding reuse of historic building materials, gateway identification, and urban tree and landscape guidelines, and design elements for neighborhoods. Stacey Henderson agreed that the guidelines need to be clearer. Watson would like primary corridors identified and have a more strict design requirement. Topics should be brought to the next meeting and will be voted on by the end of the year. Topics selected will be given to the consultants to create a draft for the Commission to review. A public participation plan was recently approved by the City Council. September 17, 2025, there will be a Comprehensive Plan open house.

8. Commission Representative Update
The next meeting will be August 5, 2025, or August 19, 2025.

9. Adjournment
The meeting was adjourned at 6:30 p.m.

CITY OF ELLENSBURG **Minutes of Public Transit Advisory Committee, Regular Meeting**

Date of Meeting	**July 15, 2025**
Time of Meeting	**3:30 PM**
Place of Meeting	**CouncilConference Room** **501 North Anderson Street** **Ellensburg, WA 98926** **And remotely via Zoom**

1. Call to Order and Roll Call of Members

1.A

Call the July 15, 2025, PTAC Meeting to Order.

Vice Chair Spitznas called the July 15, 2025, PTAC Meeting to order at 3:35 PM.

1.B

Roll Call of PTAC Members.

The following PTAC members were in attendance: Vice Chair Spitznas, Joey Bryant, Jim Hurson, Ann Miner, Deja Blanchard.
Chair Miller was absent.

Also in attendance: Betsy Dunbar - COE, Keiko Walsh - HopeSource, Spencer Klewin - HopeSource

Several Staff members and 1 member of the community were in attendance.

2. Approval of Agenda

2.A

Motion to Approve the July 15, 2025, PTAC Agenda.

A motion to approve the July 15, 2025, PTAC Meeting Agenda was made by commmittee member Bryant.

The motion carried 5-0.

3. Approval of Minutes

3.A

Motion to Approve the June 24, 2025, PTAC Meeting Minutes.

A motion to approve the June 24, 2025, PTAC Meeting Minutes was made by committee member Hurson with the following edits to section 7.A
"Motion made by committee member Hurson to approve, with the following suggested changes, the section of the proposed ordinance as it relates to PTAC:

- Rename the combined committee to be the Transportation Advisory Committee (TAC); and
- Amend section 5 to provide for an alternate committee member as follows: F. One alternate member from the community. In the absence of one or more committee members at any meeting, the alternate shall serve as a member for that meeting, including quorum requirements and voting. G. Members of the....."

The motion carried 5-0.

4. Guest Speakers

5. Follow Up Items

6. Ridership Stats

6.A

Review June 2025 Ridership Stats.

The June 2025 Ridership Stats were reviewed.

7. Agenda Items

7.A

2025 - 2030 Transit Development Plan and 2024 Annual Report Draft

A motion to approve and recommend the 2025-2030 Transit Development Plan and 2024 Annual Report to the City Council was made by committee member Hurson on the condition of updating Table 3 Capital Expenditure section regarding the costs of expanding route times.

The motion carried 5-0.

7.B

Amendment 3 to the Dial A Ride Agreement

A motion to approve and recommend the Amendment to the Dial A Ride Agreement to the City Council subject to legal review was made by committee member Hurson.

The motion carried 5-0.

7.C

Amendment 3 to the Upper County KCC Agreement

A motion to approve and recommend the Amendment to the KCC Agreement was made by committee member Hurson.

The motion carried 5-0.

8. Transit Marketing Updates

8.A

Rodeo Program Ad

The 2025 Rodeo Program Ad was shared.

9. Transit Updates

9.A 2025 ADA Transition Plan's Capital Project Update.

An update of the ongoing capital projects was shared with the committee.

10. Member Updates

Member updates if time permits.

10.A

Member Updates if Time Permits.

Several updates and discussion subjects occurred within the committee, which included: reviewing the status of the operating grants, updating transit services within the city limits, Rural Transit Day, adding colored squares to the front, back and side of the buses, creating a subcommittee to focus on route updates.

11. Next PTAC Meeting

11.A

August 19, 2025

12. Adjournment

The meeting adjourned at 4:47 PM

Agenda #5.C

Meeting Date: September 2, 2025
City of Ellensburg
City Council Agenda Report

Agenda Subject: Shop & Warehouse Facility Backup Generator
Submitted by: Hunter Slyfield, Shop & Warehouse Manager
Department: Public Works

Suggested Motion/Action:
Authorize the City Manager to sign the Contract with Catlin Electric, Inc.

Background/Summary:
The City's Shop & Warehouse Facility provides critical support for City crews to perform their functions. There is currently no backup generator to power the facility and if an outage occurs, staff must manually run generators to power critical loads within the building. In order to maintain continuity of operations in the event of a sustained power outage or emergency situation, a backup generator with automatic transfer switch has been identified as a necessary and critical piece of equipment. Previous electrical upgrades within the building make this project straightforward with very little electrical rework required.

Previous Council Action:
None

Analysis:
A proposal for the installation was provided by Catlin Electric, Inc. It consists of furnishing and installing a 45-kilowatt 208V 3-phase generator and 800-amp automatic transfer switch along with all conduit and wiring necessary to feed the existing facility. Catlin Electric, Inc. is a licensed electrical contractor and are listed on the MRSC Small Works Roster. Catlin Electric, Inc. has a documented history of successful projects with the City of Ellensburg and can meet the short timeframe of the project.

Financial Impact:
The project is estimated to cost $79,684.77 including Washington State Sales Tax and permitting fees. There is adequate budget available in the Shop Fund for Facilities- Building & Structures Improvements.

Budget Adjustment: No

Attachments:
1. Shop Facility Backup Generator Contract

CONTRACT FOR THE CITY OF ELLENSBURG SHOP & WAREHOUSE FACILITY BACKUP GENERATOR PROJECT
BETWEEN
THE CITY OF ELLENSBURG
AND
CATLIN ELECTRIC, INC.

This agreement, made and entered into this _____ day of _____________, 2025 by and between the City of Ellensburg, Washington, hereinafter called the "Owner" and Catlin Electric, Inc. called the "Contractor."

WITNESSETH:

WHEREAS, the City desires to have Contractor perform installation of a 3-phase backup generator and automatic transfer switch to provide emergency backup power to the City Shop & Warehouse facility as outlined in Attachment A, within Ellensburg WA: and

WHEREAS, the City has solicited quotes from the Contractor, registered with the City's small works roster and awarded a Contract to the contractor as herein set forth and as stated more in detail in the Scope of Work attachment, all of which Contract Documents are made a part hereof and which constitute the whole Contract between the City and Contractor, and

WHEREAS, the Contractor has offered its proposal and has been selected by competitive bid and/or quote as the "lowest responsible bidder submitting the lowest responsive bid" as that term is defined in Ch. 39.04 RCW,

NOW THEREFORE, the City and Contractor mutually agree as follows:

1. Description of the Work

The Contractor shall do all work and furnish all materials, tools, and equipment for to complete this Contract.

The Contractor shall provide and bear the expense of all equipment, work and labor any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work mentioned in the specifications in a professional and workmanlike manner. Any additional materials needed to complete the work will be billed to the Owner at the Contractors expense.

The Contractor shall complete its work in a timely manner and in accordance with the allowable working days submitted by the Contractor and approved by the City.

2. Contract Documents

The Contract between the parties is expressed in the Contract Documents, which includes Attachment A: the scope of work and accepted proposal, L&I Statement of Intent to Pay

Prevailing Wages-Public Works Contract; Copy of Contractor's state contractor license and UBI number; Copy of Contractor's city business license and this Contract.

3. Contract Amount

The City hereby agrees to pay the Contractor according to the Contractor's Bid/Quote in the amount of **$72,944.55** plus Washington State Sales Tax and permit fees in the amount of **$6,740.22**, at the time and manner and upon the conditions provided for in this contract.

4. Performance and Payment

The Contractor shall submit properly certified invoices for the work performed. The City agrees to pay the Contractor for the actual work completed to the satisfaction of the City and in conformance with this Contract. Upon acceptance of payment, Contractor waives any claims against the City related to the work covered by the invoice. The City shall pay the Contractor for services satisfactorily rendered within thirty days of receipt of such invoice.

Pursuant to RCW 39.08.010 for projects valued at thirty-five thousand dollars ($35,000) or less, at the option of the Contractor, the City may, in lieu of a performance and payment bond, retain 50% of the compensation forth e project for a period of thirty (30) days after final acceptance of the project or until receipt of all necessary releases from the Department of Revenue and Department of Labor and Industries and settlement of any liens filed under RCW 60.28 whichever is later.

5. Contract Time

Time is of the essence in the performance of this Contract. The Contractor agrees to work promptly and fully to complete the work within the limits described by 12/31/2025.

6. Prevailing Wage

The work under the Contract may be subject to the prevailing wage requirements of Chapter 39.12 RCW, as amended or supplemented. If this Contract is subject to prevailing wage requirements, the Contractor, each of its subcontractor(s) and other person(s) doing any work under the Contract shall pay all laborers, workers, mechanics not less than the prevailing rate of wage for an hour's work in the same trade of occupation in the locality within the State of Washington where such labor is performed as required by law. The prevailing rate of wage to be paid to all workman, laborers and mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of the prevailing wage rates for the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this contract as though fully set forth herein. These rates may be accessed on the internet at https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx.

The Contractor shall provide an Intent to Pay Prevailing Wages prior to commencement of work and a Labor & Industries Affidavit of Prevailing Wages Paid upon completion. No payments will be made until the Intent to Pay is received and no final payment made until the Affidavit of Wages Paid is received.

7. Hold Harmless and Indemnification

The Contractor 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 in connection with the 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor'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. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Insurance

A. Insurance Term

The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation

The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial

General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance

The Contractor shall maintain the following insurance limits:

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

2. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate and $2,000,000 products-completed operations aggregate limit.

E. Full Availability of Contractor Limits

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

F. Other Insurance Provision

The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

G. Acceptability of Insurers

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

H. Verification of Coverage

The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured and primary coverage endorsements, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.

I. Subcontractors' Insurance

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

K. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

9. <u>Termination</u>

If the contractor should neglect to prosecute the work properly or should fail to perform any other provision of this contract, the City may, without prejudice to any other remedy it may have, serve upon the contractor written notice specifying such failure and stating that if it is not corrected within three (3) days, or such longer period as the City may determine, the City may, among such other remedies (1) terminate all or part of the contract or (2) take over and do all or part of the work by contract or otherwise. The action taken under this paragraph by the City shall not relieve the contractor from liability arising from his/her failure to perform the contract. In the event the City terminates the contract pursuant to this paragraph, the contractor shall not remove any material or equipment from its location at the time of termination without the written consent of the City.

10. <u>Non-Waiver of Rights</u>

The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of this Contract, does not constitute a waiver of such provisions for future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

11. Independent Contractor

The Contractor shall perform this Contract as an Independent Contractor and not as an agent, employee or servant of the City. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the City. Contractor shall comply with all laws regarding workers' compensation.

The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in this Contract. Furthermore, the Contractor shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the Contractor shall be or deem to be or act or purport to act as an employee, agent, or representative of the City, unless otherwise directed by the terms of this Contract.

The Contractor agrees to immediately remove any of its employees or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the City's Representative or designee.

12. Nondiscrimination

The Contractor, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, the presence of any disability, or for any other reason prohibited by state or federal law.

13. Choice of Law, Jurisdiction and Venue

Any action at law, suit in equity, or judicial proceeding for the enforcement of this contract or any provisions thereof shall be instituted and maintained only in the superior court of the State of Washington, Kittitas County. It is mutually understood and agreed that this contract shall be governed by the laws of the State of Washington, both as to interpretation and performance.

14. Successors And Assigns

The City, to the extent permitted by law, and the Contractor each bind themselves, their partners, successors, executors, administrators, and assigns to the other Party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants of this Contract.

15. Severability

If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If it should appear that any provision of this Contract is in conflict with any statutory provision of the United States or the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

16. Entire Agreement

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

17. Modification.

No provisions of this Contract may be amended or modified except by written agreement signed by the Parties.

18. Notices

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 3. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective upon receipt during working hours. If a facsimile is sent after working hours, it shall be effective at the beginning of the next working day.

19. Standard Specifications

The Standard Specifications of the City of Ellensburg are the City of Ellensburg Standard Details, the 2014 Standard Specifications for Road, Bridge and Municipal Construction and amendments thereto, prepared by the Washington State Department of Transportation and the Washington State Chapter, American Public Works Association, and shall control in the preparation of the bidder's documents and contract completion unless otherwise amended herein.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first herein above written.

CITY OF ELLENSBURG

By: ______________________________
City Manager

Attest:

By: ______________________
City Clerk

Approved as to form:

____
City Attorney

CONTRACTOR

By: ___________________________

Printed name: ___________________

Title: __________________________

Attachment A

CATLIN ELECTRIC, INC.
WASH ST CONT LIC# CATLIEI978BU
4240 VANTAGE HWY
ELLENSBURG, WA 98926
(509) 925-4460

PROPOSAL

August 4, 2025

City Of Ellensburg
501 N Anderson Street
Ellensburg, WA 98926

We hereby submit specifications and estimates for the following work:

Supply and install 800-amp ATS and a 45-KW 208 3-phase generator to feed maintenance building. Generator will sit under the roof at the SE corner of the building. ATS will be mounted to the right of the main service. Install conduit from the ATS to the generator through ceiling. ATS will become main service so bonding and grounding will be moved, and neutrals will be floated in existing service.

Sheetrock repair, if needed, is not included and to be done by others.

Labor & Material	$72,944.55
Electrical Permit	430.00
Tax	6,310.22
TOTAL	$79,684.77

Terms: Total due at completion.

We have done our best to comply with the new code requirements in our bid but since each electrical inspector has his own interpretation of the code, any additional upgrades to existing wiring and/or service panel that he may require are not included.

Thank you,
Brent Catlin

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will become an extra charge over and above the estimate. Customer acknowledges that accounts owed by customer to Catlin Electric, Inc. shall be payable in full 30 days from date of billing and that interest shall accrue at one and one-half percent (1.5%) per month on any account more than 30 days' delinquent. Customer further acknowledges that in the event any action is necessary to enforce collection of the obligation on behalf of customer, that customer shall pay a reasonable allowance for costs and expenses including attorney fees incurred by Catlin Electric, Inc. and that the venue for any proceedings shall be in Kittitas County, Washington.

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. **Please sign and return a copy if accepted.**

Signature:

Agenda #5.D

Meeting Date: September 2, 2025
City of Ellensburg
City Council Agenda Report

Agenda Subject:	Award Bid Call 2025-09 Tree Trimming Contract Utility Electrical Distribution System
Submitted by:	Paul Meyer, Electrical Engineer
Department:	Energy Services

Suggested Motion/Action:
Award Bid Call 2025-09 for Tree Trimming Contract Utility Electrical Distribution System to Basin Tree Service & Pest Control Inc, the lowest responsive and responsible bidder.

Background/Summary:
The Energy Services Department solicits bids for our annual tree trimming contract. This service provides clearance for the City's overhead electrical distribution system and is necessary to reduce power outages, for safety and reliability. The City sent the bid document to all contractors on the City's Small Works Roster for this type of work and also advertised and posted the bid on the City's website.

Staff previously received bids for bid call 2025-08 Tree Trimming Contract. Staff rejected all bids at the July 21st, 2025 city council meeting and modified the tree trimming specifications. Staff then rebid for tree trimming with Bid Call 2025-09 Tree Trimming Contract Utility Electrical Distribution System.

Staff received a total of (3) three bids. The bid from Arbor Works LLC was deemed non-responsive due to the fact that the Bidder was not, at the time of bid submittal, a licensed contractor in the state of Washington. The other (2) two bids submitted included bids from Basin Tree Service & Pest Control Inc, and Uribe's Tree Service LLC. Basin Tree Service & Pest Control Inc was the lowest responsive and responsible bidder.

Staff recommends that City Council award the contract for Bid Call 2025-09 for Tree Trimming Contract Utility Electrical Distribution System to the lowest responsive and responsible bidder, Basin Tree Service & Pest Control Inc, for a total of 500 hours at a unit cost of $477.91 per crew/equipment hour or not to exceed $238,955.00, including Minor Change of $22,000 for a total contract not to exceed $260,955.00.

Previous Council Action:
Award of previous Tree Trimming bids:
Bid 2025-08 reject all bids resolution 2025-19 7/21/25;
Bid 2024-16 awarded 7/1/24;
Bid 2023-15 awarded 11/6/23;
Bid 2022-15 awarded 9/6/22;
Bid 2021-10 awarded 9/16/21;

Bid 2020-21 awarded 8/17/20;
Bid 2019-22 awarded 8/19/19.

Analysis:
The quoted price received is for hourly rates and includes a 3-person crew, lift truck, chipper and dump truck. The bid included (2) two bid schedules. Schedule A includes a total of 420 hours, starting on September 22, 2025, to be completed by March 31, 2026 and Schedule B for additional On Call Tree Trimming of 80 hours starting on January 1, 2026, to be completed by Sept. 18, 2026. The total bid amount shown is based on the contracted scope of work, which is estimated at a combined 500 hours of tree trimming, and includes $22,000 for minor changes.

The City received a total of (3) three bids this year. The bid from Arbor Works LLC was deemed non-responsive. The responsive and responsible bidders are listed as shown:

- Basin Tree Service & Pest Control Inc $260,955.00
- Uribe's Tree Service LLC $262,985.00

The engineer's estimate for this year is $281,350.00. The bid submitted by Basin Tree Service & Pest Control Inc is approximately 7.5% less than the engineer's estimate.

The electrical system tree trimming is critical and needs to be completed within the working days, as identified in the bid documents, to maintain the safety and reliability of the City's overhead electrical distribution system. Therefore, staff recommends City Council award bid 2025-09 for Tree Trimming Contract Utility Electrical Distribution System to Basin Tree Service & Pest Control Inc.

Financial Impact:
Funding for the proposed tree trimming is included in the adopted 2025/2026 Electric Utility Fund budget.

Budget Adjustment: No

Attachments:
None

Agenda #5.E

Meeting Date: September 2, 2025
City of Ellensburg
City Council Agenda Report

Agenda Subject:	Taxicab Service Rate Approval for Ellensburg Taxi Service and Rainier Taxi and Courier
Submitted by:	Beth Leader, City Clerk
Department:	City Clerk

Suggested Motion/Action:
Approve the updated rates for Ellensburg Taxi Service and Rainier Taxi and Courier.

Background/Summary:
Under Ellensburg City Code Chapter 6.46, Section 6.46.430, which was updated by Ordinance 3197 in October 1978, taxi services shall have a rate schedule on file with the City Clerk and shall not be changed until it has been approved by the City Council.

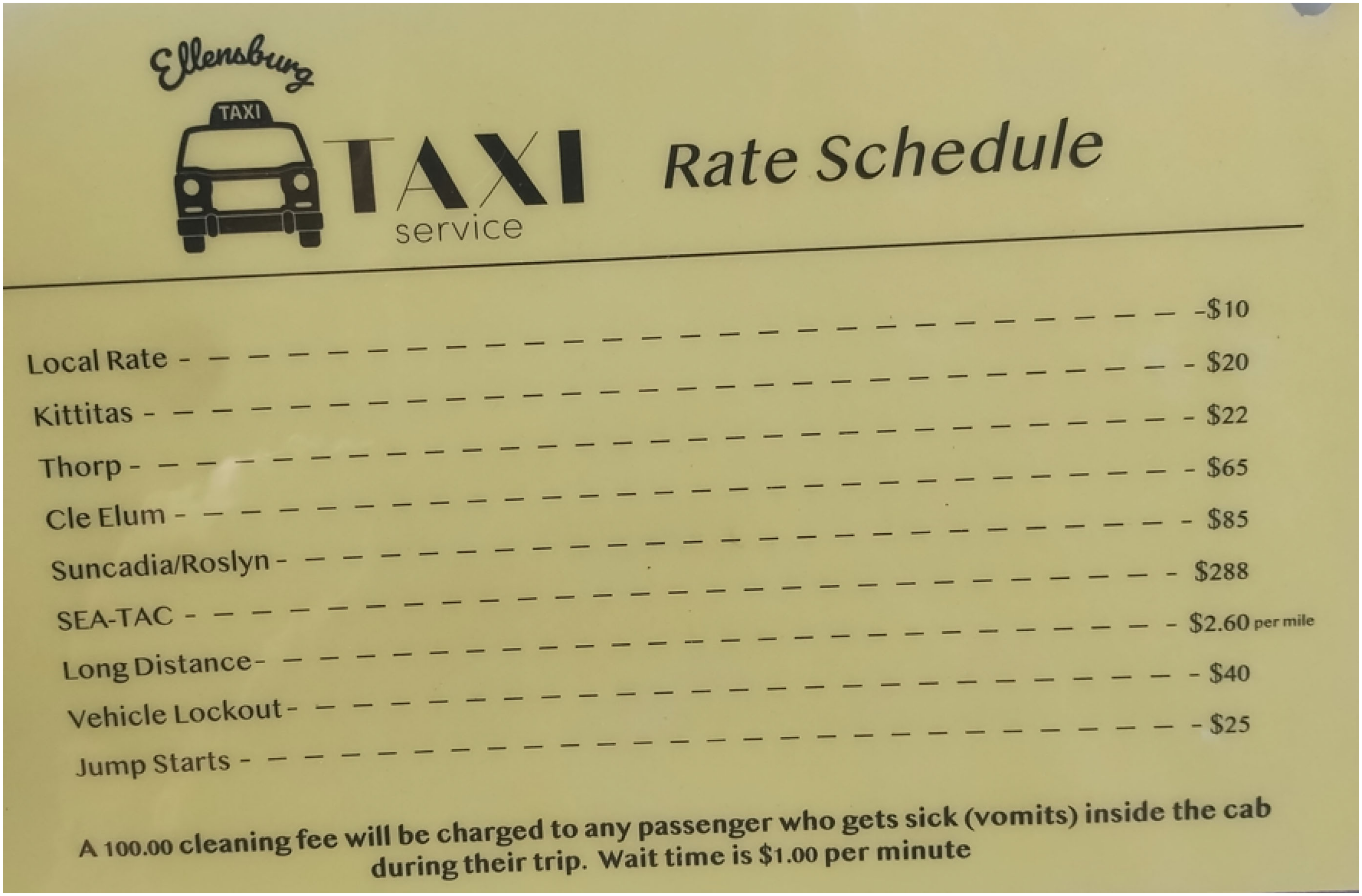
Previous Council Action:
Approval of updated rates at the May 6, 2024 meeting.

Analysis:
Most Sections of Ellensburg City Code Chapter 6.46 have not been updated since 1971. It's still the intention of city staff to revise this Chapter in the future to better accommodate the service providers and staff that oversee this public service.

Financial Impact:
No financial impact to the city with this action.

Budget Adjustment: No

Attachments:
1. Ellensburg Taxi Service 2025 Rate Card
2. Rainier Taxi Rate Schedule 8.25.25


Ellensburg
TAXI
TAXI
service
Rate Schedule
Local Rate - $10
Kittitas - $20
Thorp - $22
Cle Elum - $65
Suncadia/Roslyn - $85
SEA-TAC - $288
Long Distance - $2.60 per mile
Vehicle Lockout - $40
Jump Starts - $25
A 100.00 cleaning fee will be charged to any passenger who gets sick (vomits) inside the cab during their trip. Wait time is $1.00 per minute

Rate Schedule

- ➔Ellensburg Trip < 5 miles: $12
- ➔Mileage Rate: $3.50 / mile
- ➔Additional Passengers: $2.00
- ➔Wait Time: $1 / min
- ➔Deliveries: $12
- ➔Jump starts: $45
- ➔Over 65 years old or CWU student: $1 off
- ➔Lock out service: $80

RAINIER
TAXI & COURIER

3% Credit Card Processing Fee can be added at transaction

$200 cleaning fee to any passenger who Vomits inside the cab

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 CONTRACTIUAL 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.

Jerica Pascoe Digitally signed by Jerica Pascoe Date: 2025.08.22 11:40:46 -07'00'

AUDITING OFFICER 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 **2ND DAY OF SEPTEMBER 2025.** THE COUNCIL, BY A VOTE, HAS APPROVED FOR PAYMENT THE VOUCHERS INCLUDED IN THE AB OVE LIST AND FURTHER DESCRIBED AS FOLLOWS:

Claims Fund				**Total Amounts**	
Check #'s	**171263**	TO	**171423**	$	1,301,814.31
EFT #'s	**7575**	TO	**7586**	$	277,096.46
Treasure Cash				**Total Amounts**	
EFT #'S	**1327**	TO	**1328**	$	17,059.63
Check #'s	**34404**	TO	**34413**	$	8,012.67
Payroll Fund				**Total Amounts**	
Check #'s	**96469**	TO	**96473**	$	4,680.02
Direct Deposits	**87464**	TO	**87734**	$	590,753.34

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

ATTEST: ______________
CITY CLERK

Boards and Commissions	Affordable Housing Commission	Arts Commission	Civil Service Commission	Diversity, Equity & Inclusion Commission	Environmental Commission	Landmarks and Design Commission	LEOFF Board	Library Board	Lodging Tax Advisory Committee	Parks and Recreation Commission	Planning Commission	Public Transit Advisory Committee	Utility Advisory Committee
MEMBERS	**7**	**7**	**3**	**9**	**7**	**7**	**5**	**7**	**7**	**7**	**7**	**7**	**7**
Residency Requirements	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y
Current Members within City Limits	5	3	3	7	5	6	3	7	3	6	6	6	6
Current Members Outside City Limits	1	2	0	0	1	1	1	0	3	1	0	1	0
Current Members Outside but in UGA	0	0	0	0	0	0	0	0	0	0	0	0	0
VACANCIES	**1**	**2**	**0**	**2**	**2** **1-EHS**	**0**	**1**	**0**	**1**	**0**	**1**	**0**	**1** **(1-Tele)**
APPLICANTS:													
Skylar Bisom-Rapp											1st		

From:	noreply@civicplus.com
To:	Gretchen Delaford
Subject:	[Ext] Online Form Submittal: Application for Appointment
Date:	Tuesday, July 22, 2025 9:54:30 AM

Application for Appointment

Application for Appointment

For volunteering to serve on a Board or Commission

Boards & Commissions	Planning Commission
Have you attended a meeting for the board or commission you are applying to?	No
Name of Applicant:	Skylar Bisom-Rapp
Address	[redacted]
Mailing Address (If Different)	*Field not completed.*
City	Ellensburg
State	WA
Zip	98926
Email Address	[redacted]
Phone Number	[redacted]
Length of Residency in Kittitas County	4.5 years
Do you live within the city limits?	Yes

ECC 1.12.120 Residency qualification. Except where a commission, board or committee specifically requires city residency as a condition of appointment, members of all other commissions, boards and committees shall maintain

residency within the Kittitas County limits. “Residency,” as used herein, means residing within the city or county limits, as applicable, both at the time of appointment and for at least 270 days within each calendar year for the duration of the member’s term, but shall not include any period for which a member is absent due to military service.

Occupation Status and Background:	Employed, Manastash Architecture Planning + Development (MAPD) Background in architecture, planning (including master planning, community engagement, economic development, zoning analysis, and development entitlements), real estate development (affordable housing).
Organization Affiliations:	American Planning Association, American Institute of Certified Planners, Kittitas County Homelessness and Affordable Housing Committee (current member), Kittitas County Pride (current volunteer), HopeSource Upper County Food Bank (volunteer 2020-2022), Mayor's Housing Task Force, Jersey City, NJ (Advisory Committee Member 2014-2015)
Why are you seeking appointment?	Housing affordability and development policy issues are what drew me to architecture, growing up watching farmland in northern San Diego County get swallowed by development while housing became more and more expensive. Having lived in Kittitas County for the last 4.5 years, I've been heartened to see the community taking these complex issues seriously. As the largest city in the county, the onus is on Ellensburg to lead in our area's growth. This means not only taking a forward-thinking, proactive approach to our own land use policy but also coordinating with the county. As a planning commissioner, I would look forward to lending my expertise to both the current comprehensive planning process and individual land use decisions. I would also seek to open (or build on) lines of communication between Ellensburg's Planning Commission and the county's, as well as with the Ellensburg Affordable Housing Commission and the county's Homelessness and Affordable Housing Committee. We need coordinated planning and policy decisions that incentivize development within the city limits, building on existing infrastructure and services while taking a serious and critical account of the impacts of subdivisions replacing farmland in unincorporated areas of the county. This is crucial for the economic health of our region, the maintenance of our quality of life in terms of traffic and utility provisions, and protecting the county's agricultural heritage. Smart growth and affordable housing can and should transcend partisan politics.
Will you be able to attend meetings regularly if appointed?	Yes

If your first choice, as listed above, is not available, which other boards or commissions would you be interested in serving on?

Boards & Commissions	Affordable Housing Commission
Boards & Commissions	*Field not completed.*

Email not displaying correctly? [View it in your browser.]()

TO: City Council

FROM: Planning Commission

DATE: September 2, 2025 – Council Meeting Date

RE: Recommendation of Appointment

The Planning Commission currently has one vacancy. Skylar Bisom-Rapp submitted an Application for Appointment to the Planning Commission on July 22, 2025. He attended the August 14, 2025 Planning Commission meeting. Due to lack of quorum, the commission waited for 10 minutes and adjourned. Although adjourned, Skylar informally spoke with the present commission members Sathy, George, and Ed, as well as reviewed the agenda packet with staff which discussed upcoming code updates and Periodic Update events.

On Friday, August 22, 2025 an interview subcommittee conducted an interview with Skylar. The subcommittee consisted of Councilmember David Miller, PC Chair Ed Harrell, and PC member Sathy Rajendran, and was facilitated by Planning Manager Stacey Henderson.

Based on the interview, Skylar's professional background, including a Bachelor and master's degree in Architecture and a Master of Science in Real Estate Development, as well as current service on the County Homelessness and Affordable Housing Committee, make him qualified to serve on this commission. He is passionate about planning and serving his community and hopes to do so on the Planning Commission. The subcommittee recommends that City Council appoint Skylar Bisom-Rapp to the vacant Planning Commission position.

Agenda #9.A

Meeting Date: September 2, 2025
City of Ellensburg
City Council Agenda Report

Agenda Subject:	Ordinance 4969 (2nd reading) - Utility Billing Disconnect Notices (Public Comment Opportunity)
Submitted by:	Jerica Pascoe, Finance Director
Department:	Finance

Suggested Motion/Action:
Move to conduct second reading and adoption of Ordinance 4969 Amending Utility Billing Disconnect Notices

Background/Summary:
The City provides utility services to approximately 11,000 customers, across six municipal utilities. The City is responsible for timely and accurate reading of the utility meters, timely and accurate billing of customers, and cashiering and collections of utility billings. On December 11, 2023, the City implemented the Origin SmartCity utility billing software to align with industry best practices and update procedures previously limited by the legacy utility billing software.

Current city code enforces that monthly utility accounts are due and payable within 22 calendar days following the date of the mailing of the utility bill. If not paid by the due date, the entire account shall be deemed delinquent. A final notice is sent by regular mail, United States Postal Service (USPS), within seven (7) business days after the billing due date, and a $10 late fee is assessed. If there is no response received to the mailed final notice of account delinquency within fourteen (14) business days, a door tag for disconnect is delivered within the next seven business days with a disconnect notice fee of $25.00 assessed to the customer.

Currently two (2) part-time meter readers are responsible for hanging door tag notifications. The number of disconnects incured by City utility customers has significantly increased and the meter readers are unable to maintain their workloads with hanging increased number of door tag notifications while trying to keep meter reads on schedule.

Previous Council Action:
Council approved amendments to the utility billing policies and procedures, allowing for a temporary pause in deeming accounts delinquent to allow for changes to city utility billing and payment technology processes with adoption of Ordinance 4933 at its December 4, 2023, meeting. Council approved Ordinance 4956 at the February18, 2025 meeting extending bill due and final notice dates, and allowing for fixed monthly due dates. Council gave first reading to Ordinance 4969 at the August 18, 2025 meeting.

Analysis:
The Finance Department's Utility Billing Division would like to be more efficient in notifying utility customers prior to disconnect by using telephone notifications in place of physical door tags. If the notice of disconnect call cannot be confirmed (answered by person or voicemail), a tag for disconnect shall be delivered to the service address.

Financial Impact:
These updates to utility billing policies and procedures are anticipated to decrease meter reader workload while having minimal impact on City finances.

Budget Adjustment: No

Attachments:
1. Ordinance 4969- Utility Billing Disconnect Notices

ORDINANCE NO. 4969

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO CHAPTER 2.12 COLLECTION OF ACCOUNTS – UTILITIES AND AMENDING SECTION 2.12.020 OF THE ELLENSBURG CITY CODE.

WHEREAS, prior to utility disconnection for nonpayment, a tag for disconnect is delivered to the service address of the utility customer giving at least seven (7) calendar days' notice of pending disconnection; and

WHEREAS, currently two (2) part-time meter readers are responsible for hanging door tag notifications for utility customers; and

WHEREAS, the number of disconnects incurred by City utility customers has significantly increased; and

WHEREAS, the part-time meter readers are unable maintain their workloads with hanging increased number of door tag notifications while trying to keep meter reads on schedule; and

WHEREAS, the finance department would like to be more efficient in notifying utility customers prior to disconnect by using telephone notifications in place of door tags;

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

Section 1. Section 2.12.020 of the Ellensburg City Code, as last amended by Section 1 of Ordinance 4956, is hereby amended to read as follows:

2.12.020 When due—Monthly utility accounts.

Monthly utility accounts are due and payable within twenty-two ~~calendar~~ (22) calendar days following the date of mailing of the utility bill or electronic notification that the utility bill is available has been sent to the customer. If not paid by the due date, the entire account shall be deemed delinquent. The finance director/treasurer may temporarily pause deeming accounts as delinquent to facilitate changes to city utility billing and payment technology or processes. The finance director/treasurer may allow a customer to pick a fixed monthly due date, which may not extend their due date beyond thirty-six (36) calendar days following the date of the mailing of the utility bill or electronic notification that the utility bill is available has been sent to the customer. When a monthly utility account becomes delinquent:

A. A final notice shall be sent by regular mail within seven (7) calendar days after the billing due date, and the delinquent charges must be paid and received by the city within fourteen (14) calendar days of the date of the final notice.

B. If there is no response received to the mailed final notice of account delinquency within seven (7) calendar days after the final notice due date, a tag for disconnect shall be delivered or a notice of disconnect telephone call will be placed to the primary telephone number on file ~~within the next seven (7) business calendar days~~ to the ~~service address of the~~ utility ~~consumer~~customer giving at least seven (7) calendar days' notice of pending disconnection for said service address. If the notice of disconnect telephone call cannot be confirmed (which means the telephone call was answered by a person or staff was able to leave a voicemail), a tag for disconnect shall be delivered to the service address.

C. If the delinquent charges and penalties are still unpaid after seven (7) calendar days following a confirmed disconnect telephone call or the property being tagged for disconnection as provided in subsection (B) of this section, utility service shall be disconnected for said service address.

(Ord. No. 4956, § 1, 2025 Ord. No. 4933, § 1, 12-4-2023; Ord. 4649 § 2, 2013; Ord. 3434 § 2, 1984; Ord. 3411 § 1, 1983)

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

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

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

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 2nd day of September, 2025.

____

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. 4969 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4969 was published as required by law.

____
BETH LEADER

Agenda #9.B

Meeting Date: September 2, 2025
City of Ellensburg
City Council Agenda Report

Agenda Subject:	Ordinance 4970 (2nd Reading) - Amending the 2025/2026 Biennial Budget (Public Comment Opportunity)
Submitted by:	Keith Bassett, Assistant Finance Director
Department:	Finance

Suggested Motion/Action:
Move to conduct second reading and adoption of Ordinance 4970, amending the 2025/2026 Biennial Budget.

Background/Summary:
The proposed supplemental budget is a routine budget amendment, and principally amends the 2025/2026 Biennial Budget to reflect changes in operational requirements and adjustments to capital project plans approved through prior Council action since the prior supplemental budget, along with other modifications to the Biennial Budget as proposed by the City Manager.

Previous Council Action:
Council adopted the 2025/2026 Biennial Budget via Ordinance 4950 on December 2, 2024, appropriating funds and providing expenditure authority for the two-year period beginning January 1, 2025. Council amended the budget via Ordinance 4958 on March 17, 2025. Council regularly reviews and approves additional budget adjustments as part of its ongoing review and approval of contracts and purchases. Council conducted first reading of Ordinace 4970 at the August 18, 2025 regular meeting.

Analysis:
Since the final biennial budget was adopted, items have been approved by City Council that require a supplemental budget adjustment in order to be implemented. The anticipated budget impacts are presented as part of the City's standard agenda reports that accompany the initial request. The proposed ordinance will officially authorize expenditures in support of previously approved projects and program changes.

Previously approved projects and program changes that have come before Council since the approval of the first supplemental budget include: professional services to support the periodic comprehensive plan development work, a grant anticipation interfund loan for the Arterial Street Fund, downtown garbage receptacle replacement and tourism web calendar in the Lodging Tax Fund, affordable housing acquisition award in the Affordable Housing Fund, and general facility investments toward the low slope roof replacement and lobby HVAC replacement at Kittitas Valley Memorial Pool and Fitness Center and replacement of the library HVAC systems.

Additional items in the proposed ordinance include budget impacts of changing the model the City uses to obtain prosecutor services, funding for security cameras at Unity Park, additional plan review services offset with additional development fees, support for the Wood Products Business Plan from the Economic Development Investments Fund, additional budget to accommodate unexpected repairs to University Way at Alder St. in the Street Fund, budget to support emergent investments in water and wastewater infrastructure and equipment, and allocating general facilities resources to design and construct a roof replacement for the sloped roof at Kittitas Valley Memorial Pool and Fitness Center.

Several other items are budget housekeeping, shifting the funding source for the Council-approved park system plan, closing out the federal COVID-19 grant funding budget, which had been budgeted for 2025 to ensure every dollar could be spent, and correcting a mistake in the prior ordinances, which omitted Park Acquisition Fund expenditure authority from Exhibit A which was otherwise described and identified in the presentation of the budget.

This supplemental budget maintains budgeted services and makes intentional investments in city facilities. It sets the table for continuing work toward funding desired new facilities and to address the structural imbalance between the growth of costs of providing services and maintaining infrastructure and the inherently constrained growth of revenue to support those services and maintenance activities. City staff will prepare the statutorily required "Mid-Biennial Review" between now and the end of the year with a methodical focus on addressing those challenges.

Since first reading, one item has been added, increasing the 2026 budget to accommodate Kittitas County EMS fee forecast provided by the EMS division in mid-August.

Detailed figures for each item, by fund, are included in Table 1. A summary of all items by fund are identified in Tables 2 & 3.

Financial Impact:
The proposed ordinance increases total budgeted 2025 expenditures by approximately $3.5 million, revenue by approximately $3.2 million and budgeted beginning fund balance by approximately $4.8 million. The effect of the proposed ordinance increases the anticipated 2025 ending fund balance by approximately $4.5 million.

The proposed ordinance decreases total budgeted 2026 expenditures by approximately $4.6 million, and decreases total budgeted 2026 revenue by $4.64 million and increases anticipated 2026 ending fund balance by $4.46 million. The proposed amendments maintain anticipated 2025 and 2026 ending fund balances within required fund balance thresholds. Budget stability for the transportation system depends on voter approval of transit funding and continued work to address structural funding needs for preserving City infrastructure and services.

Budget Adjustment: No

Attachments:
1. Table 1 - Supplemental Items by Fund
2. Tables 2 & 3 - Supplemental Item Summary by Fund

3. Ordinance 4970- 2025-2026 Second 2025 Supplemental Budget (Second Reading)
4. Exhibits A & B - 2025-2026 Biennial Budget as Amended

Table 1 - Supplemental Items by Fund (Second Reading)

Fund/Item	Bud. Beg. Fund Balance	2025 Revenues	2025 Expenditures	Bud. Ending Fund Balance	Bud. Beg. Fund Balance	2026 Revenues	2026 Expenditures	Bud. Ending Fund Balance
General Fund								
Beginning Fund Balance Update	2,190,557	-	-	2,190,557	1,873,227	-	-	1,873,227
SLFRF Closeout Adjustments	1,000,000	(1,000,000)	-	-				
2026 Comprehensive Plan Periodic Update		-	149,521	(149,521)				
Resolution 2025-11 Pay Plan Amendments		-	7,170	(7,170)		-	7,170	(7,170)
Transportation Funding Adjustments						(700,000)	-	(700,000)
Park System Plan		-	100,000	(100,000)				
Additional Plan Review/ Permit Services		25,000	25,000	-				
Unity Park Security Cameras		-	20,000	(20,000)		-	20,200	(20,200)
City Prosecution Services		73,001	73,001	-		38,019	38,019	-
Resolution 2025-17 Pay Plan Amendments		-	40,639	(40,639)		-	166,822	(166,822)
Kittitas County EMS 2026 Budget Forecast					-	-	20,707	(20,707)
General Fund Total	**3,190,557**	**(901,999)**	**415,331**	**1,873,227**	**1,873,227**	**(661,981)**	**252,918**	**668,528**
General Sub-Funds								
Economic Development Investments Fund								
Beginning Fund Balance Update	289,800	-	-	289,800	279,800	-	-	279,800
Wood Products Business Plan (KC Chamber)		-	10,000	(10,000)				
Economic Development Investments Fund Total	289,800	**-**	**10,000**	**279,800**	**279,800**	**-**	**-**	**279,800**
Sales Tax Fund								
Beginning Fund Balance Update	188,111	-	-	188,111	188,111	-	-	188,111
Sales Tax Fund Total	**188,111**	**-**	**-**	**188,111**	**188,111**	**-**	**-**	**188,111**
Art Acquisition Fund								
Beginning Fund Balance Update	24,207	-	-	24,207	24,207	-	-	24,207
Art Acquisition Fund Total	**24,207**	**-**	**-**	**24,207**	**24,207**	**-**	**-**	**24,207**
Grants Fund								
Beginning Fund Balance Update					5,060	-	-	5,060
SLFRF Closeout Adjustments	(994,940)	-	(1,000,000)	5,060				
Grants Fund Total	**(994,940)**	**-**	**(1,000,000)**	**5,060**	**5,060**	**-**	**-**	**5,060**
Library Trust Fund								
Beginning Fund Balance Update	4,468	-	-	4,468	4,468	-	-	4,468
Library Trust Fund Total	**4,468**	**-**	**-**	**4,468**	**4,468**	**-**	**-**	**4,468**
Hal Holmes Trust Fund								
Beginning Fund Balance Update	18,954	-	-	18,954	18,954	-	-	18,954
Hal Holmes Trust Fund Total	**18,954**	**-**	**-**	**18,954**	**18,954**	**-**	**-**	**18,954**
Fire Relief & Pension Trust Fund								
Beginning Fund Balance Update	61,844	-	-	61,844	61,844	-	-	61,844
Fire Relief & Pension Trust Fund Total	**61,844**	**-**	**-**	**61,844**	**61,844**	**-**	**-**	**61,844**
General Sub-Funds Total	**(407,557)**	**-**	**(990,000)**	**582,443**	**582,443**	**-**	**-**	**582,443**

Table 1 *Continued* - Supplemental Items by Fund (First Reading)

Fund/Item	Bud. Beg. Fund Balance	2025 Revenues	2025 Expenditures	Bud. Ending Fund Balance	Bud. Beg. Fund Balance	2026 Revenues	2026 Expenditures	Bud. Ending Fund Balance
Special Revenue Funds								
Street Fund								
Beginning Fund Balance Update	157,387	-	-	157,387	127,387	-	-	127,387
University Way Rd Repair		-	30,000	(30,000)				
Street Fund Total	157,387	**-**	**30,000**	**127,387**	**127,387**	**-**	**-**	**127,387**
Arterial Street Fund								
Beginning Fund Balance Update	(3,823,925)	-	-	(3,823,925)	(1,940,395)	-	-	(1,940,395)
Arterial Street Interfund Loan		-	371,235	(371,235)		-	371,235	(371,235)
Transportation Funding Adjustments						-	-	-
Arterial Street Project Updates		-	(492,963)	492,963		(4,350,000)	(5,743,235)	1,393,235
Arterial Street Project Reconciliation		1,761,802	-	1,761,802				
Arterial Street Fund Total	**(3,823,925)**	**1,761,802**	**(121,728)**	**(1,940,395)**	**(1,940,395)**	**(4,350,000)**	**(5,372,000)**	**(918,395)**
Traffic Impact Fees Fund								
Beginning Fund Balance Update	37,907	-	-	37,907	37,907	-	-	37,907
Traffic Impact Fees Fund Total	**37,907**	**-**	**-**	**37,907**	**37,907**	**-**	**-**	**37,907**
Ellensburg Public Transit Fund								
Beginning Fund Balance Update	(1,196,647)	-	-	(1,196,647)	(1,196,647)	-	-	(1,196,647)
Ellensburg Public Transit Fund Total	**(1,196,647)**	**-**	**-**	**(1,196,647)**	**(1,196,647)**	**-**	**-**	**(1,196,647)**
Criminal Justice Fund								
Beginning Fund Balance Update	383,019	-	-	383,019	310,018	-	-	310,018
City Prosecution Services		-	73,001	(73,001)		-	38,019	(38,019)
Criminal Justice Fund Total	**383,019**	**-**	**73,001**	**310,018**	**310,018**	**-**	**38,019**	**271,999**
Drug Fund								
Beginning Fund Balance Update	(1,339)	-	-	(1,339)	(1,339)	-	-	(1,339)
Drug Fund Total	**(1,339)**	**-**	**-**	**(1,339)**	**(1,339)**	**-**	**-**	**(1,339)**
ECTV Fund								
Beginning Fund Balance Update	14,936	-	-	14,936	14,936	-	-	14,936
ECTV Fund Total	**14,936**	**-**	**-**	**14,936**	**14,936**	**-**	**-**	**14,936**
ECTV Capital Fund								
Beginning Fund Balance Update	1,369	-	-	1,369	1,369	-	-	1,369
ECTV Capital Fund Total	**1,369**	**-**	**-**	**1,369**	**1,369**	**-**	**-**	**1,369**
Park Acquisition and Improvement Fund								
Beginning Fund Balance Update	209,782	-	-	209,782	(218,018)	-	-	(218,018)
Park Impact Fees - Budget Error Correction		-	427,800	(427,800)				
Park Acquisition and Improvement Fund Total	**209,782**	**-**	**427,800**	**(218,018)**	**(218,018)**	**-**	**-**	**(218,018)**

Table 1 *Continued* - Supplemental Items by Fund (First Reading)

Fund/Item	Bud. Beg. Fund Balance	2025 Revenues	2025 Expenditures	Bud. Ending Fund Balance	Bud. Beg. Fund Balance	2026 Revenues	2026 Expenditures	Bud. Ending Fund Balance
Lodging Tax Fund								
Beginning Fund Balance Update	206,667	-	-	206,667	134,667	-	-	134,667
Downtown Garbage Receptacles		-	60,000	(60,000)				
Tourism LTAC Web Calendar (website)		-	12,000	(12,000)				
Lodging Tax Fund Total	**206,667**	**-**	**72,000**	**134,667**	**134,667**	**-**	**-**	**134,667**
Affordable Housing Fund								
Beginning Fund Balance Update	934,369	-	-	934,369	(265,631)	-	-	(265,631)
HopeSource Affordable Housing Acquisition Award		-	1,200,000	(1,200,000)				
Affordable Housing Fund Total	**934,369**	**-**	**1,200,000**	**(265,631)**	**(265,631)**	**-**	**-**	**(265,631)**
Special Revenue Funds Total	**(3,076,476)**	**1,761,802**	**1,681,073**	**(2,995,747)**	**(2,995,747)**	**(4,350,000)**	**(5,333,981)**	**(2,011,766)**
Capital Project Funds								
Fieldhouse Development Fund								
Beginning Fund Balance Update	(584,075)	-	-	(584,075)	(584,075)	-	-	(584,075)
Fieldhouse Development Fund Total	**(584,075)**	**-**	**-**	**(584,075)**	**(584,075)**	**-**	**-**	**(584,075)**
Capital Improvements Bond Fund								
Beginning Fund Balance Update					-	-	-	-
General Facilities- Library HVAC		-	348,384	(348,384)				
General Facilities Funding Update		(500,000)	(848,384)	348,384				
Capital Improvements Bond Fund Total		**(500,000)**	**(500,000)**	**-**	**-**	**-**	**-**	**-**
General Capital Fund								
Beginning Fund Balance Update	(0)	-	-	(0)	(0)	-	-	(0)
General Capital Fund Total	**(0)**	**-**	**-**	**(0)**	**(0)**	**-**	**-**	**(0)**
Sidewalk Fund (REET I)								
Beginning Fund Balance Update	(279,210)	-	-	(279,210)	(279,210)	-	-	(279,210)
Sidewalk Fund (REET I) Total	**(279,210)**	**-**	**-**	**(279,210)**	**(279,210)**	**-**	**-**	**(279,210)**
Recreational Facilities Fund (REET II)								
Beginning Fund Balance Update	243,854	-	-	243,854	308,854	-	-	308,854
Park System Plan		-	(100,000)	100,000				
Pool Sloped Roof Design/Engineering		-	35,000	(35,000)				
Pool Sloped Roof Construction						-	500,000	(500,000)
Recreational Facilities Fund (REET II) Total	**243,854**	**-**	**(65,000)**	**308,854**	**308,854**	**-**	**500,000**	**(191,146)**
Capital Project Funds Total	**(619,432)**	**(500,000)**	**(565,000)**	**(554,432)**	**(554,432)**	**-**	**500,000**	**(1,054,432)**
Enterprise Funds								
Stormwater Utility Fund								
Beginning Fund Balance Update	546,215	-	-	546,215	546,215	-	-	546,215
Stormwater Utility Fund Total	**546,215**	**-**	**-**	**546,215**	**546,215**	**-**	**-**	**546,215**
Telecom Utility Fund								
Beginning Fund Balance Update	(68,037)	-	-	(68,037)	(68,037)	-	-	(68,037)
Telecom Utility Fund Total	**(68,037)**	**-**	**-**	**(68,037)**	**(68,037)**	**-**	**-**	**(68,037)**

Table 1 *Continued* - Supplemental Items by Fund (First Reading)

Fund/Item	Bud. Beg. Fund Balance	2025 Revenues	2025 Expenditures	Bud. Ending Fund Balance	Bud. Beg. Fund Balance	2026 Revenues	2026 Expenditures	Bud. Ending Fund Balance
Natural Gas Utility Fund								
Beginning Fund Balance Update	1,667,124	-	-	1,667,124	1,667,124	-	-	1,667,124
Natural Gas Utility Fund Total	**1,667,124**	**-**	**-**	**1,667,124**	**1,667,124**	**-**	**-**	**1,667,124**
Electric Utility Fund								
Beginning Fund Balance Update	(731,837)	-	-	(731,837)	(731,837)	-	-	(731,837)
Electric Utility Fund Total	**(731,837)**	**-**	**-**	**(731,837)**	**(731,837)**	**-**	**-**	**(731,837)**
Water Utility Fund								
Beginning Fund Balance Update	2,072,808	-	-	2,072,808	1,606,985	-	-	1,606,985
Water Division Valve Maintenance Trailer		-	823	(823)		-	823	(823)
Meter Replacements (supports development)		-	50,000	(50,000)				
Valve Turner Equipment		-	45,000	(45,000)				
Whitney Well		-	100,000	(100,000)				
Cross connection hydrant meters (supports development)		-	15,000	(15,000)				
Well Telemetry Maintenance		-	15,000	(15,000)				
Lead Service Line Contract		-	40,000	(40,000)				
Water Main Replacements (emergency replacements)		-	200,000	(200,000)				
Water Utility Fund Total	**2,072,808**	**-**	**465,823**	**1,606,985**	**1,606,985**	**-**	**823**	**1,606,162**
Waste Water Utility Fund								
Beginning Fund Balance Update	1,071,906	-	-	1,071,906	1,051,906	-	-	1,051,906
Maintenance of sewer lines (water street project)		-	20,000	(20,000)				
Waste Water Utility Fund Total	**1,071,906**	**-**	**20,000**	**1,051,906**	**1,051,906**	**-**	**-**	**1,051,906**
Enterprise Funds Total	**4,558,179**	**-**	**485,823**	**4,072,356**	**4,072,356**	**-**	**823**	**4,071,533**
Internal Service Funds								
Shop & Warehouse Fund								
Beginning Fund Balance Update	(40,125)	-	-	(40,125)	331,933	-	-	331,933
Water Division Valve Maintenance Trailer		823	-	823		823	-	823
Arterial Street Interfund Loan		371,235	-	371,235		371,235	-	371,235
Shop & Warehouse Fund Total	**(40,125)**	**372,058**	**-**	**331,933**	**331,933**	**372,058**	**-**	**703,991**
General Facilities Fund								
Beginning Fund Balance Update	47,408	-	-	47,408	47,409	-	-	47,409
General Facilities - Pool Low-Slope Roof		-	70,000	(70,000)				
General Facilities - Pool Lobby HVAC		-	90,000	(90,000)				
General Facilities- Library HVAC		1,968,384	1,968,383	1				
General Facilities - City Hall Capacity Improvements		-	35,000	(35,000)				
General Facilities - City Hall HVAC		-	305,000	(305,000)				
General Facilities Funding Update		500,000	-	500,000				
General Facilities Fund Total	**47,408**	**2,468,384**	**2,468,383**	**47,409**	**47,409**	**-**	**-**	**47,409**

Table 1 *Continued* - Supplemental Items by Fund (First Reading)

Fund/Item	Bud. Beg. Fund Balance	2025 Revenues	2025 Expenditures	Bud. Ending Fund Balance	Bud. Beg. Fund Balance	2026 Revenues	2026 Expenditures	Bud. Ending Fund Balance
Health & Benefits Fund								
Beginning Fund Balance Update	209,264	-	-	209,264	209,264	-	-	209,264
Health & Benefits Fund Total	**209,264**	**-**	**-**	**209,264**	**209,264**	**-**	**-**	**209,264**
Risk Management Fund								
Beginning Fund Balance Update	44,803	-	-	44,803	44,803	-	-	44,803
Risk Management Fund Total	**44,803**	**-**	**-**	**44,803**	**44,803**	**-**	**-**	**44,803**
IT Fund								
Beginning Fund Balance Update	1,202,291	-	-	1,202,291	1,201,313	-	-	1,201,313
Resolution 2025-11 Pay Plan Amendments		-	978	(978)		-	978	(978)
IT Fund Total	**1,202,291**	**-**	**978**	**1,201,313**	**1,201,313**	**-**	**978**	**1,200,335**
GIS Fund								
Beginning Fund Balance Update	(312,314)	-	-	(312,314)	(312,314)	-	-	(312,314)
GIS Fund Total	**(312,314)**	**-**	**-**	**(312,314)**	**(312,314)**	**-**	**-**	**(312,314)**
Internal Service Funds Total	**1,151,327**	**2,840,442**	**2,469,361**	**1,522,408**	**1,522,408**	**372,058**	**978**	**1,893,488**
Grand Total	**4,796,599**	**3,200,245**	**3,496,588**	**4,500,255**	**4,500,255**	**(4,639,923)**	**(4,579,262)**	**4,439,595**

Table 2
City of Ellensburg
2025 Summary of Budget Adjustments by Fund

	Bud. Beg. Fund Balance	2025 Revenues	2025 Expenditures	Bud. Ending Fund Balance
General Fund	$3,190,557	-$901,999	$415,331	$1,873,227
Managerial Funds of the General Fund				
Econ. Dev. Investments Fund	289,800	0	10,000	279,800
Sales Tax Reserve Fund	188,111	0	0	188,111
Art Acquisition Fund	24,207	0	0	24,207
Grants Fund (CARES/ARPA/CCA)	-994,940	0	-1,000,000	5,060
Library Trust Fund	4,468	0	0	4,468
Hal Holmes Trust Fund	18,954	0	0	18,954
Fire Relief & Pension Trust Fund	61,844	0	0	61,844
Total Managerial Funds of the GF	-407,557	0	-990,000	582,443
Special Revenue Funds				
Street Fund	157,387	0	30,000	127,387
Arterial Street Fund	-3,823,925	1,761,802	-121,728	-1,940,395
Traffic Impact Fees Fund	37,907	0	0	37,907
Public Transit Fund	-1,196,647	0	0	-1,196,647
Criminal Justice Sales Tax Fund	383,019	0	73,001	310,018
Drug Fund	-1,339	0	0	-1,339
CATV Operations Fund	14,936	0	0	14,936
CATV Capital Fund	1,369	0	0	1,369
Parks Acquisition Fund	209,782	0	427,800	-218,018
Lodging Tax Fund	206,667	0	72,000	134,667
Housing Fund	934,369	0	1,200,000	-265,631
Total Special Revenue Funds	-3,076,476	1,761,802	1,681,073	-2,995,747
Debt Service Funds				
Facilities Imp. Debt Service Fund	0	0	0	0
2010 Maint. Bond Debt Service Fund	0	0	0	0
LID Guaranty Fund	0	0	0	0
Total Debt Service Funds	0	0	0	0
Capital Project Funds				
Fieldhouse Development Fund	-584,075	0	0	-584,075
Cap. Imp. Bond Projects Fund	0	-500,000	-500,000	0
General Capital Projects Fund	0	0	0	0
Sidewalk Fund (REET1)	-279,210	0	0	-279,210
Rec. Facilities Fund (REET 2)	243,854	0	-65,000	308,854
Total Capital Project Funds	-619,432	-500,000	-565,000	-554,432
Enterprise Funds				
Stormwater Utility Fund	546,215	0	0	546,215
Telecommunications Utility Fund	-68,037	0	0	-68,037
Gas Utility Fund	1,667,124	0	0	1,667,124
Electric Utility Fund	-731,837	0	0	-731,837
Water Utility Fund	2,072,808	0	465,823	1,606,985
Sewer Utility Fund	1,071,906	0	20,000	1,051,906
Total Enterprise Funds	4,558,179	0	485,823	4,072,356
Internal Service Funds				
Shop & Warehouse Fund	-40,125	372,058	0	331,933
General Facilities Fund	47,408	2,468,384	2,468,383	47,409
Health & Benefits Fund	209,264	0	0	209,264
Risk Management Fund	44,803	0	0	44,803
Information Technology Fund	1,202,291	0	978	1,201,313
Geographic Info. Systems Fund	-312,314	0	0	-312,314
Total Internal Service Funds	1,151,327	2,840,442	2,469,361	1,522,408
All Funds	$4,796,598	$3,200,245	$3,496,588	$4,500,255

Table 3
City of Ellensburg
2026 Summary of Budget Adjustments by Fund

	Bud. Beg. Fund Balance	2026 Revenues	2026 Expenditures	Bud. Ending Fund Balance
General Fund	$1,873,227	-$661,981	$252,918	$958,328
Managerial Funds of the General Fund				
Econ. Dev. Investments Fund	279,800	0	0	279,800
Sales Tax Reserve Fund	188,111	0	0	188,111
Art Acquisition Fund	24,207	0	0	24,207
Grants Fund (CARES/ARPA/CCA)	5,060	0	0	5,060
Library Trust Fund	4,468	0	0	4,468
Hal Holmes Trust Fund	18,954	0	0	18,954
Fire Relief & Pension Trust Fund	61,844	0	0	61,844
Total Managerial Funds of the GF	582,443	0	0	582,443
Special Revenue Funds				
Street Fund	127,387	0	0	127,387
Arterial Street Fund	-1,940,395	-4,350,000	-5,372,000	-918,395
Traffic Impact Fees Fund	37,907	0	0	37,907
Public Transit Fund	-1,196,647	0	0	-1,196,647
Criminal Justice Sales Tax Fund	310,018	0	38,019	271,999
Drug Fund	-1,339	0	0	-1,339
CATV Operations Fund	14,936	0	0	14,936
CATV Capital Fund	1,369	0	0	1,369
Parks Acquisition Fund	-218,018	0	0	-218,018
Lodging Tax Fund	134,667	0	0	134,667
Housing Fund	-265,631	0	0	-265,631
Total Special Revenue Funds	-2,995,747	-4,350,000	-5,333,981	-2,011,766
Debt Service Funds				
Facilities Imp. Debt Service Fund	0	0	0	0
2010 Maint. Bond Debt Service Fund	0	0	0	0
LID Guaranty Fund	0	0	0	0
Total Debt Service Funds	0	0	0	0
Capital Project Funds				
Fieldhouse Development Fund	-584,075	0	0	-584,075
Cap. Imp. Bond Projects Fund	0	0	0	0
General Capital Projects Fund	0	0	0	0
Sidewalk Fund (REET1)	-279,210	0	0	-279,210
Rec. Facilities Fund (REET 2)	308,854	0	500,000	-191,146
Total Capital Project Funds	-554,432	0	500,000	-1,054,432
Enterprise Funds				
Stormwater Utility Fund	546,215	0	0	546,215
Telecommunications Utility Fund	-68,037	0	0	-68,037
Gas Utility Fund	1,667,124	0	0	1,667,124
Electric Utility Fund	-731,837	0	0	-731,837
Water Utility Fund	1,606,985	0	823	1,606,162
Sewer Utility Fund	1,051,906	0	0	1,051,906
Total Enterprise Funds	4,072,356	0	823	4,071,533
Internal Service Funds				
Shop & Warehouse Fund	331,933	372,058	0	703,991
General Facilities Fund	47,409	0	0	47,409
Health & Benefits Fund	209,264	0	0	209,264
Risk Management Fund	44,803	0	0	44,803
Information Technology Fund	1,201,313	0	978	1,200,335
Geographic Info. Systems Fund	-312,314	0	0	-312,314
Total Internal Service Funds	1,522,408	372,058	978	1,893,488
All Funds	$4,500,255	-$4,639,923	-$4,579,262	$4,439,594

ORDINANCE NO. 4970

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, AMENDING THE 2025-2026 BIENNIAL BUDGET FOR THE CITY OF ELLENSBURG, WASHINGTON AS SET FORTH IN ORDINANCE NO. 4950 TO ADJUST APPROPRIATIONS IN THE CITY'S FUNDS.

WHEREAS, the City Council approved Ordinance No. 4950, which adopted a biennial budget for fiscal years 2025-2026; and

WHEREAS, the City Council approved Ordinance No. 4958, which amended the biennial budget for fiscal years 2025-2026; and

WHEREAS, Ch. 35A.34 RCW provides procedures for adopting, managing, and amending a biennial budget; and

WHEREAS, the City Manager has identified the need to make certain revisions to the 2025-2026 biennial budget; and

WHEREAS, the City Council has reviewed the proposed adjustments to the budget and has determined that they should be made;

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

Section 1. 2025-2026 Supplemental Budget. The 2025-2026 Biennial Budget for the City of Ellensburg for the period January 1, 2025 through December 31, 2026, as authorized in Ordinance 4950 is hereby amended as revised in attached Exhibits A and B, and are hereby appropriated for expenditure at the fund level during the 2025-2026 biennium.

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

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

Section 4. Effective Date. This ordinance, 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 2nd day of September, 2025.

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. 4970 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4970 was published as required by law.

BETH LEADER

Ordinance 4970- Supplemental Budget Ordinance- Exhibit A
City of Ellensburg
2025 Budget - All Funds as Amended

	Bud. Beg. Fund Balance	2025 Revenues	2025 Expenditures	Bud. Ending Fund Balance
General Fund	$8,301,093	$21,313,075	$23,904,790	$5,709,378
Managerial Funds of the General Fund				
Econ. Dev. Investments Fund	657,018	272,000	18,806	910,212
Sales Tax Reserve Fund	1,392,527	6,383,912	7,056,734	719,705
Art Acquisition Fund	82,560	51,000	105,000	28,560
Grants Fund (CARES/ARPA/CCA)	805,941	750,000	1,100,881	455,060
Library Trust Fund	382,656	7,500	8,974	381,182
Hal Holmes Trust Fund	199,147	4,500	1,472	202,175
Fire Relief & Pension Trust Fund	949,397	232,767	163,852	1,018,312
Total Managerial Funds of the GF	4,469,246	7,701,679	8,455,719	3,715,206
Special Revenue Funds				
Street Fund	1,149,604	2,658,227	3,149,134	658,697
Arterial Street Fund	228,475	6,267,253	5,686,316	809,412
Traffic Impact Fees Fund	682,871	389,387	158,330	913,928
Public Transit Fund	4,300,013	2,635,127	3,230,015	3,705,125
Criminal Justice Sales Tax Fund	2,787,333	2,051,226	2,128,167	2,710,392
Drug Fund	26,286	3,100	10,000	19,386
CATV Operations Fund	117,688	81,536	86,109	113,115
CATV Capital Fund	70,820	0	0	70,820
Parks Acquisition Fund	672,237	101,820	427,800	346,257
Lodging Tax Fund	1,841,216	687,000	622,966	1,905,250
Housing Fund	3,424,285	1,207,406	2,304,870	2,326,821
Total Special Revenue Funds	15,300,828	16,082,082	17,803,707	13,579,203
Debt Service Funds				
Facilities Imp. Debt Service Fund	361,381	562,327	563,326	360,382
2010 Maint. Bond Debt Service Fund	86,815	186,403	186,403	86,815
LID Guaranty Fund	153,508	5,000	0	158,508
Total Debt Service Funds	601,704	753,730	749,729	605,705
Capital Project Funds				
Fieldhouse Development Fund	5,607,619	572,000	485,232	5,694,387
Cap. Imp. Bond Projects Fund	348,384	0	348,384	0
General Capital Projects Fund	116,203	0	0	116,203
Sidewalk Fund (REET1)	232,319	396,000	363,000	265,319
Rec. Facilities Fund (REET 2)	806,936	313,431	35,000	1,085,367
Total Capital Project Funds	7,111,461	1,281,431	1,231,616	7,161,276
Enterprise Funds				
Stormwater Utility Fund	1,404,011	3,518,351	3,802,605	1,119,757
Telecommunications Utility Fund	262,779	1,019,457	1,029,329	252,907
Gas Utility Fund	7,585,123	15,122,537	18,290,132	4,417,528
Electric Utility Fund	14,328,297	22,634,757	31,507,586	5,455,468
Water Utility Fund	9,071,285	6,978,953	9,223,523	6,826,715
Sewer Utility Fund	7,415,678	8,266,225	10,212,243	5,469,660
Total Enterprise Funds	40,067,173	57,540,280	74,065,418	23,542,035
Internal Service Funds				
Shop & Warehouse Fund	9,793,434	4,178,620	3,140,993	10,831,061
General Facilities Fund	181,326	3,522,128	3,481,135	222,319
Health & Benefits Fund	1,295,483	10,000	1,096,219	209,264
Risk Management Fund	1,356,984	1,076,102	1,110,829	1,322,257
Information Technology Fund	2,992,205	2,998,071	3,357,481	2,632,795
Geographic Info. Systems Fund	433,228	349,127	538,095	244,260
Total Internal Service Funds	16,052,660	12,134,048	12,724,752	15,461,956
All Funds	$91,904,165	$116,806,325	$138,935,731	$69,774,759

Ordinance 4970- Supplemental Budget Ordinance- Exhibit B
City of Ellensburg
2026 Budget - All Funds as Amended

	Bud. Beg. Fund Balance	2026 Revenues	2026 Expenditures	Bud. Ending Fund Balance
General Fund	$5,709,378	$20,064,546	$23,753,605	$2,020,319
Managerial Funds of the General Fund				
Econ. Dev. Investments Fund	910,212	0	0	910,212
Sales Tax Reserve Fund	719,705	6,475,071	6,506,164	688,612
Art Acquisition Fund	28,560	51,000	50,000	29,560
Grants Fund (CARES/ARPA/CCA)	455,060	0	300,000	155,060
Library Trust Fund	381,182	7,500	8,983	379,699
Hal Holmes Trust Fund	202,175	4,000	1,546	204,629
Fire Relief & Pension Trust Fund	1,018,312	231,888	168,522	1,081,678
Total Managerial Funds of the GF	3,715,206	6,769,459	7,035,215	3,449,450
Special Revenue Funds				
Street Fund	658,697	2,857,106	3,310,869	204,934
Arterial Street Fund	809,412	2,457,651	2,865,557	401,506
Traffic Impact Fees Fund	913,928	389,387	1,034,750	268,565
Public Transit Fund	3,705,125	1,716,376	3,208,022	2,213,479
Criminal Justice Sales Tax Fund	2,710,392	2,070,984	2,179,088	2,602,288
Drug Fund	19,386	3,100	5,000	17,486
CATV Operations Fund	113,115	75,954	86,047	103,022
CATV Capital Fund	70,820	0	0	70,820
Parks Acquisition Fund	346,257	101,820	0	448,077
Lodging Tax Fund	1,905,250	687,000	625,975	1,966,275
Housing Fund	2,326,821	805,406	742,770	2,389,457
Total Special Revenue Funds	13,579,203	11,164,784	14,058,078	10,685,909
Debt Service Funds				
Facilities Imp. Debt Service Fund	360,382	562,327	563,326	359,383
2010 Maint. Bond Debt Service Fund	86,815	186,403	186,403	86,815
LID Guaranty Fund	158,508	4,000	0	162,508
Total Debt Service Funds	605,705	752,730	749,729	608,706
Capital Project Funds				
Fieldhouse Development Fund	5,694,387	0	0	5,694,387
Cap. Imp. Bond Projects Fund	0	0	0	0
General Capital Projects Fund	116,203	0	0	116,203
Sidewalk Fund (REET1)	265,319	376,000	490,000	151,319
Rec. Facilities Fund (REET 2)	1,085,367	313,431	500,000	898,798
Total Capital Project Funds	7,161,276	689,431	990,000	6,860,707
Enterprise Funds				
Stormwater Utility Fund	1,119,757	2,542,752	2,781,954	880,555
Telecommunications Utility Fund	252,907	410,324	549,521	113,710
Gas Utility Fund	4,417,528	15,177,736	15,343,601	2,584,537
Electric Utility Fund	5,455,468	28,983,598	30,269,264	4,169,802
Water Utility Fund	6,826,715	6,878,953	8,213,185	5,492,483
Sewer Utility Fund	5,469,660	10,241,344	12,298,071	3,412,933
Total Enterprise Funds	23,542,035	64,234,707	69,455,596	16,654,020
Internal Service Funds				
Shop & Warehouse Fund	10,831,061	4,348,114	3,265,564	11,913,611
General Facilities Fund	222,319	1,057,701	1,022,727	257,293
Health & Benefits Fund	209,264	0	0	209,264
Risk Management Fund	1,322,257	1,116,798	1,161,525	1,277,530
Information Technology Fund	2,632,795	2,887,368	2,691,339	2,828,824
Geographic Info. Systems Fund	244,260	357,010	546,560	54,710
Total Internal Service Funds	15,461,956	9,766,991	8,687,715	16,541,232
All Funds	$69,774,759	$113,442,648	$124,729,938	$56,820,343

Agenda #9.C

Meeting Date: September 2, 2025
City of Ellensburg
City Council Agenda Report

Agenda Subject:	Ordinance 4971 (1st Reading) - Amending City Code Regarding Accessory Dwelling Units (ADUs), Street Improvements, and Impact Fees (Public Comment Opportunity)
Submitted by:	Lily Frey, Housing Program Manager
Department:	Community Development

Suggested Motion/Action:
Move to conduct first reading of Ordinance 4971 amending City Code Regarding Accessory Dwelling Units (ADUs), Street Improvements, and Impact Fees.

Background/Summary:
In 2023, the Washington State Legislature passed Engrossed House Bill 1337, which relates to expanding housing options by easing barriers for the construction and use of Accessory Dwelling Units (ADUs). The majority of required changes to comply with RCW 36.70A.681 were in Title 15 of the Ellensburg City Code, which was amended through Ordinance 4953 in January 2025. The Washington State Department of Commerce's review of Ellensburg's code identified additional changes to code sections for sidewalks, curbs and gutters (public street improvements) and traffic impact fees to achieve compliance.

In addition, the City's Housing Action Plan (HAP) includes goals of producing more housing and adding variety to the housing stock. The HAP includes a strategy to encourage the construction of ADUs. On average, between 2022 and 2024, builders have produced 106 new housing units annually, compared to a HAP target of 281 units annually, or less than 40% of our target production.

Previous Council Action:
City Council adopted Ordinance 4953 at its January 21, 2025 meeting, encompassing Title 15 Land Development Code changes to comply with RCW 36.70A.681. City Council adopted the Housing Action Plan in October 2021.

Analysis:
The City of Ellensburg is required to fully comply with the provisions of EHB 1337 and RCW 36.70A.681 no later than December 31, 2026. Ordinance 4971 will complete these compliance requirements.

The exemption from frontage improvement requirements will decrease costs for affected ADU construction permits, making them more financially viable, potentially resulting in increased residential unit development. ADU construction, however, provides additional housing units in developed areas, which may increase demand for frontage improvements.

Financial Impact:
Traffic impact fees, based on currently adopted fees, for ADUs would be reduced from $1,301.24 per unit to $1,150.21, a decrease of about $150 per ADU. Future fees will be adjusted as allowed by State law and as adopted by City Council. An average of nine ADUs were permitted annually from 2021-2024, which would represent an average decrease in traffic impact fees collected of about $1,360 annually.

In accordance with ECC 14.06, some ADU construction permits require the construction or recorded deferral for future construction of sidewalk, curb and gutter improvements (frontage improvements), which provide a financial contribution to public street improvement projects when the City completes projects adjacent to these properties. Future construction of these frontage improvements would need to be funded from other sources.

Budget Adjustment: No

Attachments:
1. Ordinance 4971 - Sidewalks curbs and gutters

ORDINANCE NO. 4971

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO ACCESSORY DWELLING UNITS (ADUs) AND STREET IMPROVEMENTS AND IMPACT FEES, TO AMEND SECTIONS 4.06.060 AND 14.04.170 OF THE ELLENSBURG CITY CODE.

WHEREAS, Engrossed House Bill (EHB) 1337, passed in 2023, which is an Act relating to expanding housing options by easing barriers to the construction and use of accessory dwelling units (ADUs);

WHEREAS, agencies are required to be in compliance with changes enacted by EHB 1337 by the completion of their next comprehensive plan update;

WHEREAS, per RCW 36.70A.681, the City may not require public street improvements as a condition of permitting for ADU construction;

WHEREAS, the City may not assess impact fees on the construction ADUs that are greater than 50 percent of the impact fees that would be imposed on the principal unit per RCW 36.70A.681;

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

Section 1. Section 4.06.060 of the Ellensburg City Code, as last amended by Section 16 of Ordinance 4955, is hereby amended to read as follows:

4.06.060 Sidewalks, curbs and gutters for building permit applicants.

When an application is made for a building permit, subdivision, conditional use, SEPA review project or other development permit, the public works director shall evaluate the proposed building or development site to determine the need for new or reconstructed street surfaces, curbs, gutters and sidewalks based upon the following criteria <u>(Per RCW 36.70A.681, public street improvements are not required as a condition for permitting Accessory Dwelling Units (ADUs) as defined in ECC 15.130.010, which means ADUs are exempt from the requirements of this section)</u>:

A. New curbs, gutters and sidewalks shall be constructed on all street frontages where those street improvements are not already present and in serviceable condition.

B. Reconstruction of curbs, gutters and sidewalks shall be required if, in the opinion of the public works director, the present improvements are deteriorated to an unserviceable, hazardous state.

C. All curb, gutter and sidewalk improvements which are constructed, reconstructed or repaired shall be done so entirely in the public right-of-way, and further sidewalks shall be separated from the traveled way by landscaping, concrete curbing, a median or other approved physical barrier.

D. Applicants for a subdivision, SEPA review project, conditional use, building permit or other development permit, upon payment of a $100.00 fee, may apply for deferred installation of sidewalks, curbs and gutter under the following circumstances:

1. Applicants for all development permits may apply for deferrals for the above improvements if their construction involves a significant physical obstacle to the construction of such improvements. In those cases in which bridges, large-diameter (in excess of four feet in diameter) culverts, retaining walls in excess of four feet in height, or other construction deemed necessary by the public works director due to the presence of major physical obstacles are required for the construction of a sidewalk, the public works director shall grant a deferral of the improvement upon application for such. Such deferral shall be made contingent upon the acceptance by the public works director of the written recorded assurances by the applicant, heirs, successors and assigns of the property of their participation in a future larger local improvement district, sidewalk improvement district or other cooperative financing arrangement which would include the deferred section of improvement.

2. Applicants for industrial development projects that involve the construction of new streets may apply for waivers or deferrals for sidewalks only. The public works director shall grant deferrals or waivers, as deemed appropriate, for those projects in which no mixed commercial, residential or through traffic would use the affected streets, or in which no regular pedestrian traffic can be reasonably expected. If deferrals are granted, such deferrals shall be made contingent upon the acceptance by the public works director of the written recorded assurances by the applicant, heirs, successors and assigns of the property of their participation in a future larger local improvement district, sidewalk improvement district or other cooperative financing arrangement which would include the deferred section of improvement.

3. Applicants for building permits for new construction, additions which valuation exceeds 50 percent of the assessed valuation for the existing structure, or short plats all of which result in, by zoning or covenants, the development of single-family residential structures may apply for deferrals for the above improvements. The public works director shall review such requests, and shall grant deferrals if the construction results in an isolated segment of improvements. In order to qualify as an isolated segment of improvements, the edges of the improvements, once constructed, must be physically separated from connecting curb, gutter or sidewalk improvements by a minimum of 100 linear feet and not reasonably be subject to an LID or other major street improvements in the next two years. If such a deferral is granted, such deferrals shall be made contingent upon acceptance by the public works director of the written recorded assurances by the applicant, heirs, successors and assigns of the property of their participation in

a future larger local improvement district, sidewalk improvement district or other cooperative financing arrangement which would include the deferred section of improvement.

4. The public works director shall direct the public works department to provide the necessary determinations of grade, location and other engineering information deemed necessary for the completion of street, curb, gutter and sidewalk improvements for those building permits and short plats which result in, by applicable zoning or voluntary covenants, lots which are limited to single-family residential construction. For subdivisions which result in more than four single-family lots of record, or any number of lots which are subject to multifamily, commercial, or industrial development zoning uses, the developer shall be required to supply necessary engineering studies for public improvements as part of their public improvements requirement. Any existing plans, specifications or engineered designs in the public works department are considered as part of the public record and shall be made available to all persons constructing public improvements for review and use as is appropriate to their project.

5. Applicants for development permits may apply for short-term deferral of completion of required improvements due to weather or other unforeseen construction-related problems. The public works director shall consider each request for short-term deferral. In those cases where the delay of the completion of construction would not result in any hazardous condition, or other problems of site use, the public works director may grant such requests for short-term deferral. Such deferral shall be subject to acceptance by the public works director of adequate financial security needed to complete the improvements and pay potential city costs to accomplish said improvements completion, and a definite construction timetable for completion of the deferred improvements.

6. In all cases in which sidewalk, curb and gutter improvements are required to be installed, a useful life of 15 years for the improvements shall be established. If, during the 15-year period, subsequent street construction causes the improvements to be removed and reconstructed, the adjoining landowner shall obtain prorated credit against any assessment of costs based upon the estimated value of the improvements and the amount of useful life left. The estimated value of improvements shall be determined at the time of the permit application, and should be mutually agreed to by the city and the applicant. In those cases where mutual agreement cannot be reached, the estimated value shall be established by the average cost experienced for similar improvements in other city right-of-way locations.

7. Applicants for all developments which consist of a building which is less than 4,000 square feet in size and, in the opinion of the public works director, consist of an accessory or intermittent use of the lot, or consist of street frontage of less than 100 lineal feet on a separate street frontage, may apply for deferrals of curb, gutter and sidewalk improvements in those instances where the required street improvements would qualify as isolated segments of improvements. In order to qualify as an isolated segment of improvement, the improvement once completed must be physically separate from connecting curb, gutter or sidewalk improvements

by a minimum of 100 feet or, in the opinion of the public works director, cause a practical problem of surface water drainage or street configuration. If such a deferral is granted, such deferral shall be made contingent upon acceptance by the public works director of the written recorded assurances by the applicant, heirs, successors and assigns of the property of their participation in a future larger local improvement district, sidewalk improvements district, or council-ordered improvement which would include the deferred section of improvement.

E. Appeals. Applicants have the right to appeal decisions of staff made under the authority of this chapter to the city council. All appeals shall be made in writing and be submitted to the city within ten days of receiving a written determination from staff on the permit request.

In filing an appeal with the city council, it shall be the responsibility of the appellant to establish in writing why the staff decision did not follow the appropriate requirements and standards of this chapter in rendering the decision. Each section of this chapter which applies to the appellant's deferral request shall be referenced and addressed in the written appeal presented to the city council prior to the hearing of the appeal.

The city council, upon hearing the appeal and staff position, shall be authorized to uphold the public works director's decision as consistent with this chapter, or find the decision to be in whole or part in conflict with this chapter and amend the decision to ensure consistency with this chapter.

(Ord. No. 4955, § 16, 2-18-2025; Ord. 4804 §§ 3, 4, 2018; Ord. 4612 § 1, 2012; Ord. 4467 § 5, 2007; Ord. 4148, 1998; Ord. 4026 § 2, 1996)

Section 2. Section 14.04.170 of the Ellensburg City Code, as last amended by Section 3 of Ordinance 4876, is hereby amended to read as follows

14.04.170 - Schedule of fees.

A traffic impact fee shall be assessed against all new development based on development type in an amount provided for in the Traffic Impact Fee Schedule, Appendix C, of the "Traffic Impact Fee Rate Study Update, dated August 18, 2021," which is filed in the office of the city clerk and incorporated herein by this reference as if set forth in full. The traffic impact fee is hereby established at $2,324.00 per peak hour trip (PHT). This fee schedule represents the city's determination of the appropriate share of system improvement costs to be paid by new growth and development. Per RCW 36.70A.681(1)(a), ADUs will be charged traffic impact fees of 50% of what would be imposed on the principal unit, or Single-Family Residence (SFR).

(Ord. 4876 § 3, 2021; Ord. 4808 § 2, 2018; Ord. 4534 § 1, 2009)

Section 3. 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 4. **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 5. **Effective Date.** This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the _____ day of September, 2025.

____
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. 4971 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4971 was published as required by law.

____
BETH LEADER

Agenda #11.A

Meeting Date: September 2, 2025
City of Ellensburg
City Council Agenda Report

Agenda Subject:	Addison Place Affordable Housing Agreement with HopeSource (Public Comment Opportunity)
Submitted by:	Lily Frey, Housing Program Manager
Department:	Community Development

Suggested Motion/Action:
Authorize the City Manager to sign affordable housing agreement and attachments (as attached or in substantially similar form) with HopeSource and fund property acquisition.

Background/Summary:
The City of Ellensburg has had an open process for review of affordable housing project applications since 2020. In March 2025, the City issued a Notice of Funding Availability summarizing resources available for capital projects and housing services in 2025. On March 31, 2025, HopeSource submitted an application for funding in the amount of $1,200,000 to purchase a 7,200 square-foot lot with four duplexes that are currently under construction. The project is located at the intersection of S Pearl Street and W Washington Avenue. Kittitas County has committed $250,000 to the project, their maximum funding available in 2025. As part of the purchase and sale agreement, HopeSource would give a property they currently own on the same block to the developer, valued at $200,000. On May 19, Council authorized preparation of an agreement to contribute $1,200,000, the balance of the project cost. The approved project proposal will remain affordable to households with incomes no higher than 60% of Area Median Income for 25 years.

Previous Council Action:
On May 19, Council directed staff to prepare an affordable housing agreement with HopeSource for the acquisition of the property and eight housing units at 211 S. Pearl Street and approve the necessary budget adjustments.

Analysis:
The affordable housing agreement specifies the terms of rents and reporting consistent with the City's use of funds under RCW 82.14.530. Funding is structured as a forgivable loan, with no repayment scheduled and 1/25th of the City's contribution ($48,000) forgiven annually based on continued compliance with agreement terms and funding requirements.

Financial Impact:
After funding this project, approximately $1,300,000 remains available for other affordable housing projects in 2025. The City's sales tax funds have a revenue of approximately $800,000 annually. Budget authority for this project is covered in the budget revision presented separately at this meeting.

Budget Adjustment: No

Attachments:
1. Ellensburg - HopeSource - Affordable Housing Agreement - Addison
2. Ellensburg - Hope Source - City Note - Addison
3. Ellensburg - HopeSource - Covenant Addison
4. Ellensburg - HopeSource - Deed of Trust - Addison

AFFORDABLE HOUSING AGREEMENT

by and between

CITY OF ELLENSBURG

and

HOPESOURCE

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ATTACHMENT NO. 7	CITY DEED OF TRUST

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the "Agreement"), dated, as of ___, 2025 (the "Effective Date") is entered into by and between the **CITY OF ELLENSBURG**, a municipal corporation ("City"), **HOPESOURCE**, a Washington nonprofit corporation (the "Owner").

R E C I T A L S

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

B. In November 2017, City voters approved a one tenth of one percent City sales tax for housing and related services consistent with RCW 82.14.530. The purpose of this local funding source is to support housing and related services in the City. Consistent with Washington State law, housing created with these funds is required to serve households earning 60% or less of Area Median Income ("AMI") and fall within specific population groups as described in RCW 82.14.530(2)(b).

C. Owner intends to purchase that certain real property consisting of approximately .17 gross acres of land and the 8-unit multifamily development consisting of four duplexes located at 211 South Pearl Street (the "Site") within the corporate limits of the City of Ellensburg pursuant to that certain Real Property Purchase and Sale Agreement dated March 28, 2025 by and between Evergreen Village, LLC, as seller ("Seller") and Owner, as buyer (as may be amended, the "PSA"). The Site is legally described on Attachment 1.

D. Owner will acquire the Site and manage the multifamily development known as Addison Place ("Project") providing permanent housing to persons and families of limited income, as more particularly provided herein, with all of the dwelling units on the Site to be restricted to occupancy by low-income residents who also fall within one of the population groups identified in RCW 82.14.530(2)(b).

E. Owner has requested assistance from City in the form of contribution of moneys the City has obtained upon application of sales taxes under the authority of RCW 82.14.530.

F. By this Agreement, and subject to the terms and conditions herein, and pursuant to the approval of the City Council, City desires to aid in the implementation of the Project as more fully described herein.

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

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

1. DEFINITIONS AND INTERPRETATION

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

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

"**Affordability Period**" means the duration of the affordable housing requirements that are required by this Agreement and set forth in the Covenant. The Affordability Period shall continue until the twenty-fifth (25th) anniversary of the Effective Date of this Agreement.

"**Affordable Rent**" means the maximum amount of monthly Rent to be charged by Owner and paid by the Low Income Households occupying the Housing Units at the Project, which shall be determined and calculated in accordance with the Covenant.

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

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

"Capital Replacement Reserve" means a separate reserve fund account to be established and maintained by Owner as more particularly set forth herein. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Owner of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site and all common areas and common improvements in the manner prescribed herein.

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

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

"**City Council"** means the governing board of the City.

"**City Deed of Trust**" means a deed of trust securing the City Grant and other obligations of Owner hereunder substantially in the form of Attachment 7 hereto.

"**City Grant**" means a recoverable grant provided to Owner in the original amount of the City Grant Amount.

"**City Grant Amount**" means the sum of One Million Two Hundred Thousand and No/100 Dollars ($1,200,000.00).

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

"**City Note**" means the promissory note, substantially in the form of Attachment 5 hereto, which evidences the City Grant. The City Note shall be in the original amount of the City Grant Amount

"**Closing Date**" means [September 1, 2025].

"**Completion of Construction**" means the latter of final acceptance of the Project or issuance of the final certificate of occupancy for the Project.

"**Conditions Precedent**" means the conditions precedent to the disbursement of any portion of the City Grant as set forth in Section 4.

"**County**" means the County of Kittitas, Washington.

"**County Grant**" means the grant to be made to Owner pursuant to the County Grant Agreement in the amount of not less than the County Grant Amount.

"**County Grant Agreement**" means that certain unrecorded agreement between the County and Owner entitled HopeSource Pearl Street Affordable Housing Professional Services Agreement with an effective date of [_______]. A copy of the County Grant Agreement is on file with the County as a public record.

"**County Grant Amount**" means Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00).

"**County Recorder**" means the County Auditor or other official charged with recording of documents pertaining to title to land in the County.

"**Covenant**" means the Affordable Housing Covenant substantially in the form of Attachment 6 hereto.

"**Escrow**" means, unless the context requires otherwise, the escrow established for distribution of the City Grant Amount to Owner and the recording of the City Deed of Trust and the Covenant.

"**Escrow Holder**" means the holder of the Escrow, as designated by City.

"**Event of Default**" has the meaning set forth in Section 7.1.

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

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

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

"**Housing Unit**" or "**Housing Units**" means the eight (8) individual dwelling units at the Site to be leased, managed, and operated by Owner as long term affordable housing and in implementation of the Project.

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

"**Legal Description of the Site**" means Attachment 1.

"**Low-Income Household**" means those households earning not greater than sixty percent (60%) of Kittitas County Area Median Income, adjusted for household size, which is to be determined consistent with RCW 82.14.530 and any regulations promulgated thereunder.

"Material Adverse Change" means any event any occurrence of which is reasonably likely to have a material adverse effect on Owner's ability to fulfill its obligations under any Transaction Document, including without limitation:

(a) a voluntary or involuntary bankruptcy of Owner (which is not dismissed within ninety (90) calendar days of institution);

(b) a court order placing Owner under receivership;

(c) a sale of all or substantially all of the assets held by Owner, except any such sale made in accordance with the terms of this Agreement;

(d) subject to any applicable cure periods, the continued violation of Owner or other failure of Owner to comply at all times with any applicable law, statute, ordinance, code, rule, regulation, judgment, order, ruling, condition or other requirement of a statutory, regulatory, administrative, judicial or quasi-judicial nature or any other legal or governmental requirement of whatever kind or nature related to the Project, which violation is likely to have a material adverse effect on the ability of Owner to perform its duties and obligations under any Transaction Document; and/or

(e) Owner incurs one or more liabilities, contingent or otherwise, or pending or threatened litigation or any asserted claim or unasserted claim known to Owner exists against Owner with respect to the Project, which would have a material adverse effect on its ability to perform its duties and obligations under any Transaction Document.

"**Owner**" means HopeSource, a Washington nonprofit corporation, as defined in the first paragraph hereof.

"**Parties**" means City and Owner.

"**Project**" is defined in Recital D above.

"**Project Documents**" means the following documents evidencing the City Grant required as consideration for City to make the City Grant: (i) this Agreement, (ii) the City Note;(iii) the City Deed of Trust; (iv) the Covenant; and (v) any other agreement, document, or instrument that City may reasonably require Owner to execute in connection with the execution of this Agreement or the provision of the City Grant to Owner or otherwise, from time to time, to effectuate the purposes of and to implement this Agreement.

"**RCW**" means the Revised Code of Washington.

"**Relocation**" or "**Relocation Laws"** shall mean all applicable federal and state relocation laws and regulations, including without limitation, (i) the relocation obligations provided under Chapter 8.26 of the Revised Code of Washington and any implementing regulations thereto as prescribed from time to time by the State of Washington, and (ii) any other applicable federal, state or local enactment, regulation or practice providing for relocation assistance, benefits, or compensation for moving and for property interests, and (iii) any federal law or regulation prohibiting payment of relocation benefits or assistance to persons ineligible for relocation benefits or assistance. Owner shall be solely responsible for payment of all costs, expenses, and payments required to be made and/or incurred pursuant to any and all applicable Relocation Laws; City shall not incur any costs or expenses as a result of the application of the Relocation Laws to the Project or this Agreement.

"**Rent**" means the total of monthly payments by tenants of a Housing Unit for use and occupancy for the Housing Unit and facilities associated therewith, including a reasonable allowance for utilities for an adequate level of service.

"Request for Notice of Default" means a request for notice of default to be recorded against the Site in connection with the Escrow, substantially in the form of Attachment No. 4 hereto.

"**Site**" is defined in the Recitals to this Agreement.

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

"**Transaction Documents**" means all Project Documents and any and all financing documents in connection with other financing sources for the Project.

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

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

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

1.4 **Exhibits Incorporated**. All attachments and exhibits to this Agreement are incorporated herein by this reference.

2. FINANCING

2.1 **Recoverable Grant**. City hereby commits and agrees, subject to the terms and provisions of this Agreement, to provide Owner with the City Grant, and Owner hereby agrees to accept the City Grant from City, in an amount not to exceed the City Grant Amount, all subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the Project Documents, including the "City Note," the "City Deed of Trust," and the "Covenant." The City Grant shall be evidenced by the City Note and secured by the City Deed of Trust, which shall be recorded against the Site with the County Recorder. It is not contemplated that a deed of trust will be recorded for the benefit of the County in relation to the County Grant, but if such a deed of trust is recorded, it shall be junior to the City Deed of Trust.

2.2 **Terms of the City Grant**. All funds provided by the City for this Project under this Agreement shall be in the form of a recoverable grant to the Owner. The secured grant shall be evidenced by the City Note. No repayment of the principal or interest on the City Note will be required so long as the Owner complies with the terms of this Agreement and other Project Documents and their related covenants throughout the Affordability Period.

2.3 **Security for the City Grant**. The City Grant shall be secured by the City Deed of Trust, which instrument shall be recorded against the Site with the County Recorder.

2.4 **Disbursement of City Grant Proceeds**. The City shall disburse the proceeds of the City Grant to the Escrow Holder with instructions to Escrow Holder on the payment of such funds to the Seller in connection with Owner's acquisition of the Site under the PSA. Disbursement of the City Grant proceeds shall also be subject to the prior satisfaction of those conditions described in Section 4.

2.5 **Consent Required for Assignment and Assumption**. Except for Transfers permitted pursuant to Section 5.3 below, the City Note shall not be assignable or assumable by any successor or assignee of Owner without the prior written consent of City.

3. CONDITION OF PROPERTY; SCOPE OF DEVELOPMENT

3.1 **Owner Representations to City re Existing Condition of the Site**. Owner will enter into a Certificate of Scope of Development. Site development shall be complete prior to Owner's acquisition of the Site.

4. GRANT DISBURSEMENT; CONDITIONS PRECEDENT.

Disbursement of the City Grant Amount is subject to the fulfillment by Owner or waiver by City of each and all of the Conditions Precedent described in this Section 4, which are solely for the benefit of City, and any of which may be waived by the City Manager in his or her discretion. City will disburse the City Grant Amount in one disbursement at Closing.

4.1 **Closing Date**. The close of Escrow ("Closing") for Owner's acquisition of fee title to the Site, the recording of the City Deed of Trust, Request for Notice of Default, and Covenant and, the disbursement of proceeds of the City Grant shall have occurred on the Closing Date.

4.2 **Project Documents**. Not later than one (1) day prior to the date set for the Closing Owner shall have executed and delivered to the Escrow Holder, in recordable form where required, each of the Project Documents required hereunder in connection with the City Grant, the County Grant, and the acquisition of the Site.

4.3 **Evidence of Financing**. Owner shall have provided written proof reasonably acceptable to City that Owner shall provide evidence of equity contributions in an amount which together with the proceeds of the City Grant, the County Grant, and any additional affordable housing subsidies and loans, is sufficient to finance the Project. In addition as a part of the evidence of financing, evidence of due formation and good standing shall have been filed with the Washington Secretary of State a copy shall be provided to City.

4.4 **Insurance**. City shall have received evidence that all of the insurance policies, certificates, and endorsements required by this Agreement have been duly obtained and such insurance policies, certificates and endorsements are and remain in full force and effect.

4.5 **Title Insurance**. City shall have received (or Title Company shall be ready to issue) a 2021 ALTA lender's policy of title insurance excluding any survey or arbitration exceptions, reasonably satisfactory to City Manager relating to the City Deed of Trust ("City Policy"). The City Policy shall have a liability limit of not less than the City Grant Amount and shall insure City's interest under the City Deed of Trust as a valid lien or charge upon the Site with the priority required by this Agreement. The City Policy shall include mechanics' lien coverage and such other endorsements as City may reasonably require. The City Policy shall contain only such exceptions from coverage as shall have been approved in writing by City Manager, which approval will not be unreasonably withheld or delayed. It is not contemplated that the County will record a deed of trust with respect to the County Loan, but it such a deed of trust is recorded, it shall be junior to the City Deed of Trust.

4.6 **Escrow Expenses**. Owner shall have paid, or caused the payment of, all costs, fees, and expenses of the Escrow (other than City's deposit of the City Grant proceeds), including all costs or fees in connection with the recording of the City Deed of Trust, Request for Notice of Default, and Covenant, Escrow fees, title insurance costs, documentary transfer taxes, or recording fees.

4.7 **Corporate Resolution**. Owner shall deliver to City certified copies of Owner Resolutions of the Owner entity 's respective boards of directors specifically authorizing (or ratifying) the execution of this Agreement, the City Note, the City Deed of Trust, the Covenant, and all implementing Project Documents and identifying the individual(s) with authority to enter into non-material implementation agreements and/or amendments to this Agreement and make ongoing decisions relating to the acquisition of the Site, construction, and operation of the Project.

4.8 **Representations and Warranties**. The representations and warranties of Owner contained in this Agreement shall be correct in all material respects as of Closing.

4.9 **No Default**. No Event of Default by Owner shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Owner.

All Conditions Precedent set forth in Section 4, *et seq.,* to the disbursement of proceeds of the City Grant and close of the Escrow for the recording of the City Deed of Trust, or to City's obligations hereunder, are for City's benefit only and the City Manager may waive all or any part of such rights by written notice to Owner. If City Manager shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to City's approval (and such items are not cured by Owner within applicable time frames), or if any of the conditions set forth in this Agreement are not met within the times called for, City may thereafter terminate this Agreement without any further liability on the part of City by giving written notice of termination to Owner. Escrow Holder shall thereupon, without further consent from Owner, return to each party the documents and funds deposited by them as to the Site.

5. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

5.1 **City Representations**. City represents and warrants to Owner as follows:

5.1.1 The execution, performance and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of the City.

5.1.2 To the best of City's knowledge, City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which City is a party or by which it is bound.

5.1.3 City is not the subject of a bankruptcy proceeding.

Until the Closing, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 5.1 not to be true, immediately give written notice of such fact or condition to Owner.

5.1 Owner Representations. As a material inducement to City to enter into this Agreement, Owner represents and warrants to City that:

5.1.1 **Formation, Qualification and Compliance**. Owner (a) is a Washington nonprofit corporation, validly existing and in good standing under the laws of the State of Washington; (b) has all requisite authority to conduct its business and own, purchase, improve and lease its properties. Owner is in compliance in all material respects with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with any governmental City that are necessary for the transaction of its business; (c) There are no tenants or other persons who have a lawful interest in the Site; (d) Owner has and will in the future duly authorize, execute and deliver this Agreement and any and all other agreements and documents required to be executed and delivered by Owner in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement; (e) Owner does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of Owner to carry out its obligations hereunder; (f) There are no material pending or, so far as is known to Owner, threatened, legal proceedings to which Owner is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed by Owner to City in this Agreement which could materially adversely affect the ability of Owner to carry out its obligations hereunder; (g) There is no action or proceeding pending or, to Owner's best knowledge, threatened, looking toward the dissolution or liquidation of Owner and there is no action or proceeding pending or, to Owner's best knowledge, threatened by or against Owner which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of Owner to carry out its obligations hereunder; (h) Owner has disclosed to City all information, records, and studies obtained or received by Owner as to the Site concerning Hazardous Materials that are or have been stored, handled, disposed of, or released on the Site; and (i) upon Closing, Owner will have fee title to the Site. Each of the foregoing items (a) to (i), inclusive, shall be deemed to be an ongoing representation and warranty. Owner shall advise City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (i), inclusive.

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

5.2 Covenant Not to Transfer Except in Conformity. Owner shall not sell or otherwise transfer or convey all or any part of the Site, or any interest therein (including Owner's interests in this Agreement), unless Owner has first obtained the prior written consent of the City Manager. Any sale, lease, transfer or conveyance without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Owner acknowledges that City relied upon Owner's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion of all of the Improvements, and the marketing and renting of the Housing Units to Low-Income Households at Affordable Rent to afford the community a substantial long-term, quality affordable housing resource. Notwithstanding the foregoing, consent from the City Manager shall not be required for the leasing of Housing Units to Low-Income Households in compliance with this Agreement.

6. AFFORDABLE HOUSING COVENANT; MAINTENANCE, PROPERTY MANAGEMENT, OWNER COVENENTS, AND OPERATION OF THE PROJECT.

The operation of the Project, including without limitation, repair and maintenance, income qualifications of tenants, compliance with RCW 82.14.530(2)(b), rent, maintenance, monitoring, and reporting, shall be accomplished by Owner in conformity with the Covenant, as more particularly set forth therein. The provisions of the Covenant shall constitute portions of this Agreement as effectively as if set out at length herein.

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

Owner hereby covenants, by and for itself, its successors and assigns, and shall require all contractors and subcontractors providing work or services related to the Site to covenant, to comply with the following laws relating to nondiscrimination and equal opportunity: The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

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

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

6.2 **Taxes and Assessments**. Owner shall be responsible to and shall pay, prior to delinquency, all of the following (collectively, the "Impositions"): (a) all general and special real property taxes and assessments imposed on the Site; and (b) all other taxes and assessments and charges of every kind that are assessed upon the Site and that create or may create a lien upon the Site (or upon any personal property or fixtures used in connection with the Site), including nongovernmental levies and assessments pursuant to applicable covenants, conditions or restrictions. If permitted by law, Owner may pay any Imposition in installments (together with any accrued interest).

6.2.1 **Right to Contest**. Owner shall not be required to pay any Imposition so long as (a) the validity of such Imposition is being actively contested in good faith and by appropriate proceedings, and (b) either (i) Owner has demonstrated to City's reasonable satisfaction that leaving such Imposition unpaid pending the outcome of such proceedings could not result in conveyance of any parcel in satisfaction of such Imposition or otherwise impair City's interests under the Project Documents, or (ii) Owner has furnished City with a bond or other security satisfactory to City in an amount not less than 120% of the applicable claim (including interest and penalties).

6.2.2 **Evidence of Payment.** Upon demand by the City Manager from time to time, Owner shall deliver to the City Manager within thirty (30) calendar days following the due date of any Imposition, evidence of payment of said Imposition reasonably satisfactory to the City Manager, unless Owner is contesting the imposition in conformity with Section 6.2.1. In addition, upon demand by City from time to time, Owner shall furnish to City a tax reporting service for the Site of a type and duration, and with a company, reasonably satisfactory to City.

6.3 Compliance with Laws. Owner shall carry out the operation of the Project in conformity with all applicable laws, including all applicable state labor standards and federal prevailing wage laws, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and the Fair Housing Act, 42 U.S.C. Section 3601 et seq. (and 24 C.F.R. Part 100), and the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., and the Fair Housing Act of 1968 as amended from time to time (42 U.S. Code Sections 3601-3619 and 3631), and State laws pertaining to housing including without limitation the Washington Law Against Discrimination, Chapter 49.60 RCW.

6.4 Property Management.

6.4.1 **Property Manager.** Owner shall cause the Project, and all appurtenances thereto that are a part of the Project, to be managed consistent with property management standards for other comparable high quality, well-managed rental housing projects in Kittitas County, Washington. Owner itself shall operate and maintain the Project in accordance with the terms of this Section 6.4 ("Property Manager"); provided, however, if Owner fails to manage the property pursuant to the terms of this Agreement and the Project Documents, City Manager can require the Owner to select and hire an independent Property Manager. Owner shall conduct due diligence and background evaluation of any potential outside property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have prior experience with rental housing projects and properties comparable to the Project and the references and credit record of such manager/company shall be investigated (or caused to be investigated) by Owner prior to submitting the name and qualifications of such proposed property manager to the City Manager for review and approval. The City Manager shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing management of the Project. Furthermore, the identity and retention of any approved Property Manager shall not be changed without the prior written approval of the City Manager, which approval shall not be unreasonably withheld or delayed. The selection by Owner of any new Property Manager also shall be subject to the foregoing requirements.

6.4.2 **Management Plan**. Prior to and as a Condition Precedent of disbursement of the City Grant proceeds, Owner shall prepare and submit to the City Manager for review and approval a management plan in adherence with Federal, State and local laws, which includes a detailed plan and strategy for long term operation, budgeting, maintenance, repair, security, and marketing of the Project, method of selection of tenants, rules and regulations for tenants, method for tenant income verification and compliance with RCW 82.14.530(2)(b), recordkeeping, leasing policies, rent and collection policies, and other rental and operational policies for the Project ("Management Plan"). The Management Plan shall also outline management training that will be provided to Owner and its employees in their role as Property Manager. City Manager approval of the Management Plan shall not be unreasonably withheld or delayed. Subsequent to approval of the Management Plan by the City Manager, the ongoing management and operation of the Project shall be in compliance with the approved Management Plan. Owner shall submit to the City Manager proposed amendments to the Management Plan in the annual report described in Section 6.7.1.

6.4.2.1 **Gross Mismanagement**. In the event of "Gross Mismanagement" (as that term is defined below) of the Project or any part of the Project, City Manager shall have and retain the authority to: (i) provide written notice to the Owner of the Gross Management and direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and (ii) if such conditions are not corrected within 30 days from the date of written notice, the City may further direct and require the immediate removal of the Property Manager, and replacement with a new qualified and approved Property Manager. If Owner or Property Manager has commenced to cure such Gross Mismanagement condition(s) on or before the 20th day from the date of written notice (with evidence of such submitted to the City Manager), but has failed to complete such cure by the 30th day, then Owner or Property Manager shall have an additional ten (10) calendar days to complete the cure of such Gross Mismanagement condition(s). In no event shall any condition of Gross Mismanagement continue uncured for a period exceeding forty-five (45) calendar days from date of the initial written notice of such condition(s). If such condition(s) do persist beyond such period City Manager shall have the sole and absolute right to immediately and without further notice to Owner (or to Property Manager or any other person/entity) replace the Property Manager with a new property manager of the City Manager's selection at the sole cost and expense of Owner. If Owner takes steps to select a new Property Manager that selection is subject to the requirements set forth above for selection of a Property Manager. If Owner contracts with Property Manager for property management services, any agreement between Property Manager and Owner shall include a provision outlining City Manager's authority to respond to Gross Mismanagement and City Manager's available remedies, as outlined in this Section 6.4.2.1.

(a) For purposes of this Agreement, the term "Gross Mismanagement" shall mean management of the Project (or any part of this Project) in a manner which violates the terms and/or intention of this Agreement to operate a high quality, covenanted affordable rental housing complex comparable to other similar complexes in Kittitas County, Washington, and shall include, but is not limited to, any one or more of the following:

(i) Knowingly or repeatedly leasing to tenants who do not qualify as tenants eligible to be housed in the Project pursuant to RCW 82.14.530;

(ii) Knowingly or repeatedly charging more than Affordable Rent;

(iii) Knowingly allowing the tenants to exceed the prescribed occupancy levels without taking appropriate action to stop such overcrowding;

(iv) Underfunding required reserve accounts, unless funds are not reasonably available to deposit in such accounts;

(v) Failing to timely maintain the Project in accordance with the Management Plan and the manner prescribed herein;

(vi) Failing to submit timely and/or adequate annual reports to City as required herein;

(vii) Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;

(viii) Failing to reasonably cooperate with the Ellensburg Police Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime-free environment within the Project;

(ix) Failing to reasonably cooperate with Kittitas Valley Fire and Rescue or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe environment within the Project;

(x) Failing to reasonably cooperate with the Ellensburg Community Development Department, including the Code Enforcement Division, or other local health and safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a safe environment within the Project;

(xi) Spending funds from the Capital Replacement Reserve account(s) for items that are not defined as capital costs under the standards imposed by generally accepted accounting principles (GAAP) (and/or, as applicable, generally accepted auditing principles); and

(xii) Failing to re-lease Housing Units within ninety (90) calendar days (on an annual average basis) following a notice of vacancy or termination by a tenant household and/or failing to maintain average (over the prior three (3) years) annual vacancy rates at less than ten percent (10%).

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Owner is obligated and shall use commercially reasonable efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Owner shall include advisement and provisions of the foregoing requirements and requirements of this Agreement within any contract between Owner and its Property Manager.

6.4.3 **Code Enforcement.** Owner acknowledges and agrees that City's employees and authorized agents shall have the right to conduct code compliance and/or code enforcement inspections of the Project and the individual units, both exterior and interior, at reasonable times during normal business hours and upon reasonable notice (not less than seventy-two (72) hours prior notice) to Owner and/or an individual tenant. If such notice is provided by City representative(s) to Owner, then Owner (or its Property Manager) shall immediately and directly advise tenant of such upcoming inspection and use commercially reasonable efforts to cause the area(s) and/or units on the Project to be made available and open for inspection. Owner shall include express advisement of such inspection rights within the approved lease/rental agreements for each Housing Unit in the Project in order for each and every tenant and tenant household to be aware of this inspection right.

6.4.4 **Household Size**. The household size assumed for purposes of calculating AMI and Affordable Rent for each unit type shall be as follows:

UNIT TYPE	ASSUMED HOUSEHOLD SIZE
Studio	1 Person
1 Bedroom	1.5 Persons
2 Bedroom	3 Persons
3 Bedroom	4.5 Persons

6.5 Capital Reserve Requirements. Owner shall annually set aside and fund the Capital Replacement Reserve in the amounts defined and required under this Agreement (Five Hundred Dollars ($500.00) per year for each Housing Unit, increased annually by 3%) or shall cause the Property Manager to do so. The amount in the Capital Replacement Reserve will not be required to be greater than Twenty Thousand Dollars ($20,000.00). The Capital Replacement Reserve deposits shall be allocated from the gross rents received from the Site and shall be deposited into a separate interest-bearing trust account. Funds in the Capital Replacement Reserve shall be used for capital replacements to the fixtures and equipment on the Site (including common areas) that are normally capitalized under generally accepted accounting principles and shall include the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs, showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Owner of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site and all common areas and common improvements in the manner prescribed herein.

6.5.1 **Annual Accounting of Reserve.** Not less than once per year, Owner, at its expense, shall submit to City an accounting for the Capital Replacement Reserve set forth in the Annual Financial Statement, demonstrating compliance with this Section 6.5.

6.6 **Operating Budget**. No less than annually on or before March 31 of each year, Owner shall submit to City on not less than an annual basis an Operating Budget for the Project, which budget shall be subject to the written approval of City Manager or his or her designee, which approval shall not be unreasonably withheld. The City Manager's discretion in review and approval of each proposed annual Operating Budget shall include, without limitation, authority to review individual categories, line items, and accounts, such as the following: existing balance(s) in and proposed deposits to the Capital Replacement Reserve to evaluate shortfalls and/or cumulative unexpended/unencumbered deposits (provided that required annual deposits into the Capital Replacement Reserve are not required to exceed the amount, as increased annually, in Section 6.5); reasonableness and conformity to prevailing market rates in the City and rates and fees for goods and services to be provided by Owner or any Affiliate. The Operating Budget shall be in form reasonably acceptable to the City Manager. City shall not unreasonably withhold, condition, or delay City's approval of the annual Operating Budget or any amendments thereto.

6.7 **Monitoring and Recordkeeping**. Throughout the Affordability Period, Owner shall comply with all recordkeeping and monitoring requirements as described herein. Owner agrees to maintain records in a businesslike manner, to make such records available to City upon seventy-two (72) hours' notice, and to maintain such records for the entire Affordability Period. Failure to comply with all monitoring, reporting, and recordkeeping requirements will be an Event of Default under Section 7.1 and will constitute Gross Mismanagement as defined in Section 6.4.2.1. At the times set forth below and throughout the Affordability Period, Owner shall complete and submit to City:

6.7.1 **Annual Report.** On or before each March 31, commencing on the first March 31 following the Closing, the Affordable Housing Agreement Annual Report Form attached to this Agreement as Attachment 2.

6.7.2 **Management Plan**. Owner shall submit an annual budget for the Project and a certification that Owner is in compliance with the Management Plan approved by City Manager (as defined in Section 6.4.2). Additionally, Owner shall be required to provide a yearly accounting to City Manager of all reserve accounts, including the Capital Replacement Reserve.

6.7.3 **Annual Monitoring Fee**. Owner shall pay an Annual Monitoring Fee based on rates in City Code to compensate City for its costs incurred to monitor Owner's compliance with the Affordable Housing Covenant and this Agreement.

6.8 **Right of Entry for Inspection**. Representatives of City shall be entitled to enter the Site during normal business hours, upon at least seventy-two (72) hours· notice, to monitor compliance with the Affordable Housing Covenant and this Agreement, to inspect the records of the Project with respect to the Housing Units, and to conduct an independent audit of such records. Owner agrees to reasonably cooperate with City in making the Site and records relating to the Project available for such inspection.. This Section 6.8 shall be in addition to and shall not limit the exercise by City of its police powers.

6.9 **General Maintenance**. Owner shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with all applicable provisions of the City Codes. Owner shall maintain in accordance with the Maintenance Standards (as hereinafter defined) the improvements and landscaping on the Site. Such Maintenance Standards shall apply to all buildings, signage, common amenities, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and the Project. To accomplish the maintenance, Owner shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Owner and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (collectively, "Maintenance Standards"):

6.9.1 The Site and the Project shall be maintained in conformance and in compliance with the approved final as-built plans, and reasonable maintenance standards which comply with the industry standard for comparable high quality affordable housing projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curb line. The Site shall be maintained in good condition and in accordance with the industry custom and practice generally applicable to comparable high quality affordable housing projects in the County.

6.9.2 Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement. as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

6.9.3 Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal or all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers or in accordance with plans for multi-day work.

City agrees to notify Owner in writing if the condition of the Site does not meet Maintenance Standards and to specify the deficiencies and the actions required to be taken by Owner to cure the deficiencies. Upon notification of any maintenance deficiency, Owner shall have thirty (30) calendar days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Owner shall have forty-eight (48) hours to rectify the problem. In the event Owner does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards. City shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site, or to contract for the correction of such deficiencies, after written notice to Owner, and Owner shall be responsible for the payment of all such costs incurred by City.

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

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

7. DEFAULTS AND REMEDIES

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

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

7.1.2 Owner fails to perform any obligation (other than obligations described in sub-paragraph 7.1.1. above) under any Project Document, and such failure is not cured within 30 days after Owner's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such 30-day period, such failure shall not be an Event of Default so long as Owner commences cure within 30 days of receipt of such notice, and completes the cure no later than 90 days from receipt of such notice;

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

7.1.4 Owner is enjoined or otherwise prohibited by any governmental entity from occupying the Project and such injunction or prohibition continues unstayed for 30 days or more for any reason, subject to extensions permitted under Section 9.2;

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

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

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

7.1.8 (i) Owner is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (ii) Owner applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitate or similar officer for it or any part of its property; (iii) any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Owner and the appointment continues undischarged or unstayed for 90 days; (iv) Owner institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Owner and continues undismissed or unstayed for 90 days; or (v) any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Owner is not released, vacated or fully bonded within 90 days after its issue or levy.**Remedies Upon Default**. In addition to the rights of the City pursuant to Section 7.4.2 below, upon the occurrence of any Event of Default, City may, at its option and in its sole and absolute discretion, do any or all of the following:7.2.1 In its own right or by a court-appointed receiver, take possession of the Site;

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

7.2.3 Seek and obtain an order for specific performance.

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

7.4 Termination.

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

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

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

(c) in the event of any default of Owner which has not been cured; or

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

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

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

(g) Owner is enjoined or otherwise prohibited by any governmental entity from occupying the Project and such injunction or prohibition continues unstayed for 30 days or more for any reason, subject to extensions allowed under Section 9.2; or

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

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

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

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

(l) There is a change in the ownership of Owner or the Site contrary to the provisions of Section 5.2 hereof; or

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

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

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

8. INSURANCE AND INDEMNFICATION.

8.1 Insurance Requirements. Owner shall secure from a company or companies licensed to conduct insurance business in the State of Washington, pay for, and maintain in full force and effect from and after the Closing, and continuing for the entire Affordability Period, insurance for the Project as required herein, against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by Owner, its agents, representatives, or employees.

8.2 No Limitation. The Owner's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Owner to the coverage provide by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

8.3 Minimum Scope of Insurance. The Owner shall obtain insurance of the types and coverages described below:

8.3.1 **Commercial General Liability** insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 001 and shall cover liability arising from premises, operations, stop-gap, independent contractors, products-completed operations for a period of three (3) years from Certificate of Occupancy, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Owner's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

8.3.2 **Tenant Discrimination** insurance shall cover tenant discrimination claims. The City shall be named as an additional insured using an additional insured endorsement to a separate Tenant Discrimination policy of insurance or a Commercial General Liability policy specifically endorsed to cover third party tenant discrimination claims.

8.3.3 **Automobile Liability** insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as ISO form CA 00 01.

8.3.4 **Property** insurance shall be written on an all-risk basis.

8.3.5 **Excess or Umbrella Liability** insurance shall be excess over and at least as broad in coverage as the Owner's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Owner's Excess or Umbrella Liability insurance policy. The Excess or Umbrella insurance coverage will drop down when underlying policy aggregate limits are exhausted.

8.3.6 **Workers' Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

8.4 **Minimum Amounts of Insurance**. The Owner shall maintain the following insurance limits:

8.4.1 **Commercial General Liability** insurance shall be written with limits no less than $1,000,000 each occurrence, $3,000,000 general aggregate and a $3,000,000 products-completed operations aggregate limit.

8.4.2 **Tenant Discrimination** insurance shall be written with limits no less than $1,000,000 per claim and $3,000,000 policy aggregate limit.

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

8.4.4 **Property** insurance. Commencing with Owner's acquisition of the Site and continuing until the later of (i) the expiration or earlier termination of the Affordability Period or (ii) the date Owner vacates the Site:

8.4.4.1 All-risk physical damage insurance coverage ("Property Insurance"), on an all-risk basis, covering all insurable structures and equipment, including coverage for building code changes, but excluding the perils of earthquake (land movement) and flood, in an amount not less than 100% of the replacement cost of the total values at risk, which shall be adjusted for increased costs of construction and replacement on an annual basis, to protect against loss of, damage to, or destruction of the Project; such insurance shall not contain a coinsurance clause; (b) business interruption and extra expense insurance to protect Owner and all additional loss payees covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project, or any portion thereof, caused by loss or damage to or destruction of any part of the insurable real property structures or equipment as a result of the perils insured against under such Property Insurance, covering a period of suspension, delay or interruption of at least eighteen (18) calendar months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during any such period; such insurance shall not contain a deductible in an amount in excess of a thirty (30) day period; and (c) as applicable, boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance. On the coverage required under this subparagraph 8.1.2.2, City shall each be named as an additional loss payee, as its interests may appear, with a Lenders Loss Payable endorsement whenever possible, and if not attainable for Additional Insured other than City, then a loss payable endorsement may be utilized, which shall be delivered to City at the completion of construction and prior to the expiration of the Builders Risk insurance coverage required herein.

8.4.5 **Excess or Umbrella Liability** insurance shall be written with limits of not less than $5,000.000 per occurrence and $5,000,000 annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through the Contractor's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

8.5 **Public Entity Full Availability of Owner Limits**. If the Owner maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Owner, irrespective of whether such limits maintained by the Owner 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 Owner.

8.6 **Other Insurance Provision**. The Owner's Automobile Liability, Commercial General Liability, and Excess or Umbrella Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the CITY. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Owner's insurance and shall not contribute with it.

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

8.8 **Verification of Coverage**. Owner shall furnish the City with original certificates of insurance, policy or policies, and endorsement(s) to City not fewer than fifteen (15) calendar days prior to the Closing and shall provide to City original certificate and endorsements annually, including but not limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement. Upon request by the City, the Owner shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.

8.9 **Failure to Maintain Insurance**. Failure on the part of the Owner to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Owner to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Owner from the City.

8.9.1 Owner's policies shall bear an endorsement or shall have attached a rider providing that City shall be notified not less than thirty (30) calendar days before any expiration, cancellation, nonrenewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) calendar days after any event of nonpayment of premium (collectively, "Cancellation Notice"), provided, however, that an individual endorsement specifically naming City shall not be required if Owner provides documentation which, in the sole discretion of City, demonstrate s that City will automatically receive such Cancellation Notice under some sort of blanket policy language, without the need for a separate endorsement in favor of City.

8.9.2 Owner shall also file with City the following signed certification:

"I am aware of, and will comply with, Title 51 RCW, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

Owner shall comply with Title 51 RCW and in connection therewith shall secure, pay for and maintain in full force and effect from and after the Closing of Escrow, and continuing for the entire Affordability Period, complete Workers' Compensation insurance with Employers Liability limits not less than One Million Dollars ($1,000,000.00) per occurrence, and shall furnish a Certificate of Insurance to City. Every Workers' Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, City shall be notified, giving Owner a sufficient time to comply with applicable law, but in no event less than thirty (30) calendar days before such expiration, cancellation, or reduction in c overage is effective or ten (10) calendar days in the event of nonpayment of premium.

8.10 **Minimum Insurance Requirements**. Owner acknowledges and agrees that the insurance requirements contained herein are the minimum requirements of the City, and the City reserves the right to review and amend the minimum insurance requirements every five (5) years. If the Owner maintains higher insurance limits than the minimums shown above, and/or if the County or any other lender requires that Owner maintain higher amounts and/or additional insurance coverage, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Owner, irrespective of whether such limits maintained by the Owner 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 Owner.

8.11 **Obligation to Repair and Restore Damage Due to Casualty**. If the Improvements shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Owner, Owner shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Owner shall complete the same as soon as possible thereafter so that the Improvements can be occupied as an affordable housing project in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed 12 months from the date Owner obtains insurance proceeds unless the City Manager, in his sole and absolute discretion, approves a longer period of time. City shall cooperate with Owner, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration or the cost of such repair, replacement of restoration exceeds such insurance proceeds, Owner may elect not to repair, replace, or restore the Improvements by giving notice to City (in which event Owner will be entitled to all insurance proceeds) or Owner may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by City and the other governmental City or agencies with jurisdiction, and City may pursue remedies of its choosing under this Agreement, including without limitation termination. If the Improvements are completely destroyed or substantially damaged by a casualty for which Owner is not required to (and has not) insured against, or if insurance proceeds are insufficient to rebuild, then Owner shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing City with written notice of election not to repair, replace, or restore within ninety (90) calendar days after such substantial damage or destruction. In such event, Owner shall concurrently repay the full outstanding balance of the City Grant to City and this Agreement shall be automatically terminated. As used in this Section 8.2, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is ten percent (10%) or more of the replacement cost of the improvements comprising the Improvements.

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

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

8.13 **Non-Liability of City**. Owner acknowledges and agrees that the City is providing a loan to the Project, and the relationship between the City and Owner is only that of a lender and borrower. This Agreement does not create a formal joint venture or legal partnership between the City and Owner, and the City shall not be directly or indirectly liable for any claim against the Owner or Project including those related to (i) any acts, omissions or decisions of Owner, or ((ii) any loss or injury of any kind to any person or property resulting from use of, the Site. No City acceptance or approval related to the Project shall constitute a legal warranty or representation by City to anyone.

9. MISCELLANEOUS.

9.1 **Covenant Not to Sue**. The following covenant relating to Owner's obligation not to sue regarding the Project or the Site or any issues ancillary thereto (but excluding the specific performance of this Agreement) is a material incentive for and a part of the consideration to City to enter into this Agreement with Owner. Therefore, City shall have no obligation to make the City Grant to Owner, and the performance obligations of City under this Agreement shall automatically terminate, in the event from and after the Effective Date and until the Closing, Owner, or any Affiliate of Owner or any of its partners, officers, di rectors, employees, agents, representatives, consultants, attorneys, or any person acting at the direction of Owner, undertakes any act to oppose. or to commence, participate in, prosecute, or otherwise object to, or to litigate, directly or indirectly, any permit or discretionary decision of City, City's Planning Commission, or any other City Council or commission relating to the Site and/or the Project of whatever form or nature (but excluding the specific performance of this Agreement).

Notwithstanding the foregoing, nothing set forth in this Section 9.1 shall prevent Owner from asserting its rights relating to the performance and enforcement of this Agreement or due to the abuse of discretion by a governmental entity considering and acting upon a future discretionary decision related to the parameters of this covenant. Further, nothing in the foregoing covenant shall prevent Owner from asserting Owner's rights with respect to prospective action or future conduct by any person who interferes, opposes, or delays implementation and completion of the Project.

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

Notwithstanding the foregoing portion of this section, Owner is not entitled to an extension of time to perform because of past, present, or future difficulty in obtaining suitable temporary, construction, or permanent financing for the acquisition, development or lease of Housing Units on the Site.

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

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

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

If to Owner:
HopeSource
606 W 3rd Ave
Ellensburg, Washington 98926
Attention: Susan Grindle

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

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

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

9.7 **<u>Owner Payment of Third Party Costs</u>**. Owner shall, within ten (10) days of written request (which shall include copies of invoices or billings for Third Party Costs incurred) pay for and reimburse City for all costs reasonably incurred by City for any and all out of pocket, third party costs, fees, and expenses incurred by City (but not in-house staff time) for attorneys, economic consultants, appraisers, engineers, affordable housing consultants, escrow company fees, title company fees, and other consulting and/or professional services incurred by City arising from and/or related in any respect to the implementation of this Agreement or the Project from the period of time commencing upon the Effective Date through the term of the Affordability Period (together, "Third Party Costs"). The Third Party Costs may include costs incurred in connection with (a) drafting, negotiation, and execution of post-Closing agreements, if any, (b) post-Closing enforcement of the Covenant, City Note, City Deed of Trust, or other Project Documents, including the following: (i) commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Documents, and (ii) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under the Project Documents, provided as to defense of any action which City has tendered the defense to Owner and Owner fails to defend any such action; and (c) other reasonable costs incurred related to requests for or provision of estoppel certificates, subordination agreements, affordable housing documents, escrow instructions, advisory assistance, amendments, implementation agreements, interpretations, modifications, any other agreements, instruments, documentation, legal advice, economic development/affordable housing advice, or other third party contracts for consulting or professional services necessitated by City's, City's or Owner's post-Closing implementation of this Agreement, and/or requested by Owner, and/or its Lender or other independent contractor or consultant to Owner post-Closing arising from or related in any manner to this Agreement. Notwithstanding the foregoing, Third Party Costs shall not include costs incurred or attributable to (i) City Council, Planning Commission, Zoning Administrator, or other City official with discretionary approval and/or disapproval rights over the Project or the implementation of this Agreement disapproves, denies, or refuses to take action on an application for a permit or other discretionary application necessary to commence and complete the Project; (ii) Default by City under this Agreement; or (iii) Any amendment to this Agreement or any other Project Documents that is initiated by City.

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

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

9.10 **<u>Binding Effect; Assignment of Obligations</u>**. This Agreement shall bind, and shall inure to the benefit of, Owner and City and their respective successors and assigns. Except for assignments or transfers permitted herein, Owner shall not assign any of its rights or obligations under any Project Document without the prior written consent of the City Manager. Any such assignment without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Owner acknowledges that City relied upon Owner's particular expertise in entering this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the Improvements and the qualification of eligible occupants of each Housing Unit in conformity with this Agreement.

9.11 **<u>Superiority of City Agreement</u>**. Owner agrees and acknowledges that any agreements between Owner and third parties, shall be subject and subordinate in all cases to this Agreement (including, without limitation, the Attachments hereto) and that in the event of conflict, this Agreement (including, without limitation, the Attachments hereto) shall control.

9.12 **<u>Prior Agreements; Amendments; Consents</u>**. This Agreement (together with the other Project Documents) contains the entire agreement between City and Owner with respect to the Site, and all prior negotiations, understandings and agreements with respect to such matters, including without limitation this Agreement, are superseded by this Agreement and such other Project Documents. No modification of any Project Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 27 and Attachments 1 through 7 (which attachments are incorporated herein by reference), which constitutes the entire understanding and agreement of the parties.

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

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

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

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

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

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

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

9.18 **Time of the Essence**. Time is of the essence of all of the Project Documents.

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

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

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

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

[Remainder of page blank; signature page follows.]

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

OWNER:

HOPESOURCE,
a Washington nonprofit corporation

By: ______________________

Name: ___________________

Title: ____________________

CITY:

CITY OF ELLENSBURG,
a Washington municipal corporation

By: ____
City Manager

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF THE SITE

Lot 7 and the South 10 Feet of Lot 8, Block 31, MURRAY ADDITION TO THE CITY OF ELLENSBURG, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, page 15, records of said County.

Assessor's Property Tax Parcel Number: 927133

ATTACHMENT NO. 2

RESREVED

ATTACHMENT NO. 3

RESERVED

ATTACHMENT NO. 4

REQUEST FOR NOTICE OF DEFAULT

ATTACHMENT NO. 5

CITY NOTE

ATTACHMENT NO. 6

AFFORDABLE HOUSING COVENANT

ATTACHMENT NO. 7

CITY DEED OF TRUST

CITY NOTE

$1,200,000.00 Ellensburg, Washington _____, 2025

FOR VALUE RECEIVED, **HOPESOURCE,** a Washington nonprofit corporation ("Grantor"), promises to pay to the **CITY OF ELLENSBURG,** a municipal corporation ("City"), at its offices at 501 North Anderson Street, Ellensburg, Washington 98926, or at such other place as City may from time to time designate in writing, (a) the principal sum of One Million Two Hundred Thousand Dollars ($1,200,000.00) ("City Note Amount"); and (b) all costs and expenses payable hereunder.

RECITALS

A. This Promissory Note Secured By Deed of Trust ("City Note") is made pursuant to that certain unrecorded Affordable Housing Agreement by and between Grantor and City, dated as of __________, 2025 ("Agreement") and the Affordable Housing Covenant, by and between Grantor and City, dated as of _______, 2025 ("Covenant").

B. Capitalized terms used in this City Note shall have the meaning set forth in the Agreement, unless expressly otherwise defined herein.

NOW, THEREFORE, for good valuable consideration, receipt of which is hereby acknowledged, Grantor agrees as follows:

1. Agreement. The principal sums hereunder have been and are being conditionally granted by City to Grantor in accordance with and pursuant to the Agreement, which is a public record on tile in the office of the City Clerk. The proceeds of the City Grant shall be disbursed only to pay for the items and in accordance with the procedures set forth in the Agreement. The terms of the Agreement are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. In the event of any inconsistencies between the terms of this City Note and the terms of the Agreement or any other document related to the City Note Amount, the terms of this City Note shall prevail.

A default by Grantor under any of the provisions of the Agreement, the Covenant, the City Deed of Trust of even date herewith, or any of the other Transaction Documents shall, after the expiration of any cure period under the respective agreement, be a default hereunder, and a default hereunder after the expiration of any applicable cure periods shall be a default under the Project Documents as defined in the Agreement.

2. Interest. Three percent simple interest (3%) per annum (based on a 360-day year and charged on the basis of the actual number of days elapsed) shall accrue on the Note Amount and all other amounts due under this City Note (other than accrued interest), except as set forth in Section 8 hereof.

3. Payment; Forgiveness. There are no regularly scheduled payments under this City Note. Payment shall be due as provided in Section 8 hereof only upon a Default. [September 1, 2050] (the twenty-fifth anniversary of the date of this Note) shall be the "Maturity Date" of this City Note. Each year on September 1st until the Maturity Date, as long as there are no uncured defaults under the Project Documents, the City will forgive 1/25 of the original principal balance due under this City Note ($48,000.00). The annual forgiveness will occur automatically unless the City provides the Borrower with a Notice of Non-Forgiveness in response to a Default or Borrower's non-compliance. If, as of the Maturity Date, there are no uncured defaults under the Project Documents, including all attachments thereto, and there are no amounts which have become payable pursuant to a Notice of Non-Forgiveness or Section 8 hereof, all outstanding amounts on this City Note shall be forgiven.

4. Form of Payments. All amounts due hereunder are payable in immediately available funds and lawful monies of the United States of America.

5. Application of Payments. All payments shall be applied (i) first, to costs and fees owing hereunder, (ii) second, to the payment of unpaid accrued interest owing hereunder for each calendar year in which no payment was made by Grantor pursuant to Section 3 hereof, (iii) third, to the payment of accrued interest for the preceding calendar year, and (iv) fourth, to the payment of principal.

6. Prepayment. At any time, Grantor may prepay in whole or in part the outstanding principal balance under this City Note, together with all accrued interest, if any, and unpaid fees, costs and expenses, if any, payable hereunder, without penalty or premium. In the event of prepayment by Grantor, the Affordable Housing Covenant shall remain intact, and shall be unaffected by the prepayment of this Note by Grantor.

7. Security. This City Note and all amounts payable hereunder are secured by the City Deed of Trust of even date herewith ("City Deed of Trust"), executed by Grantor in favor of City and recorded against the Site in the Official Records of Kittitas County, which City Deed of Trust shall only be subordinate to (i) a deed of trust securing the repayment of the Senior Loan, and, if applicable (ii) such other encumbrances reasonably approved by City in writing. The terms of the City Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. A default under any of the provisions of the City Deed of Trust shall be a default hereunder, and a default hereunder shall be a default under the City Deed of Trust.

8. Acceleration and Other Remedies. If elected by City pursuant to the following sentence, the entire balance due under this City Note shall be paid to City upon the earlier of any of the following (each, a "Default"): (i) the uncured default of Grantor under the Project Documents, this City Note, or the City Deed of Trust, in each case, after delivery of notice and expiration of the applicable cure period provided in the respective agreement; or (ii) the sale, lease or other transfer or conveyance (other than the permitted rentals and conveyances under the Agreement) of all or any part of the Project, or any interest therein (individually or collectively a "Transfer"), without the prior written consent of City in accordance with the Agreement, in each case, after delivery of notice and expiration of the applicable cure period provided in the applicable Project Document. Upon the occurrence and during the continuance of a Default, City may, at City's option, declare the outstanding principal amount of this City Note, together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by the City Deed of Trust, to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice, all as fu1ther set forth in the City Deed of Trust. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this City Note, may be added to the principal hereunder, and shall accrue interest as provided herein. City shall at all times have the right to proceed against any portion of the security for this City Note in such order and in such manner as City may consider appropriate, without waiving any rights with respect to any of the security. Any delay or omission on the part of City in exercising any right hereunder, under the Agreement, the Project Documents or under the Deed of Trust shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement, the Project Documents, the City Deed of Trust or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment. In addition, upon any Default, the City Note Amount and all outstanding amounts due under this City Note shall accrue interest at the default rate of ten percent (10%) per annum (based on a 360-day year and charged on the basis of the actual number of days elapsed) ("Alternate Rate").

9. Waivers. Except to the extent notice is required under any of the Project Documents, Grantor and all endorsers, guarantors and sureties hereof jointly and severally waive presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights or interests in or to any and all properly securing this City Note, and the benefit of any exemption under any homestead exemption laws, if applicable. Grantor expressly agrees that this City Note or any payment hereunder may be extended from time to time at City’s sole discretion and that City may accept security in consideration for any such extension or release any security for this City Note at its sole discretion all without in any way affecting the liability of Grantor. No extension of time for payment of this City Note made by agreement by City with any person now or hereafter liable for the payment of this City Note shall operate to release, discharge, modify, change or affect the original liability of Grantor under this City Note, either in whole or in part. The obligations of Grantor under this Note shall be absolute and Grantor waives any and all rights to offset, deduct or withhold any payments or charges due under this City Note for any reasons whatsoever. No previous waiver and no failure or delay by City in acting with respect to the terms of this City Note or the City Deed of Trust shall constitute a waiver of any breach, default, or failure or condition under this City Note, the City Deed of Trust or the obligations secured thereby. A waiver of any term of this City Note, the City Deed of Trust or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

10. Consents. Grantor and all endorsers, guarantors and sureties consent to: (a) any renewal, extension or modification (whether one or more, and subject to the terms and provisions of the Agreement relating to modification, extension, and/or amendment) of the terms of the Agreement as such terms relate to this City Note or the terms or time of payment under this City Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof to the extent requested or approved by Grantor, (c) the granting of any other indulgences to Grantor, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Except as otherwise set forth above, any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Grantor or to any endorser, guarantor or surety hereof, and without affecting the liability of said patties hereunder.

11. Successors and Assigns. Whenever "City" is referred to in this Note, such reference shall be deemed to include City, and its successors and assigns, including, without limitation, any subsequent assignee or holder of this City Note. All covenants, provisions and agreements by or on behalf of Grantor, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of City's successors and assigns. City may, at its option, assign its right to receive payment under this City Note without necessity of obtaining the consent of Grantor. Whenever "Grantor" is referred to in this City Note, such reference shall be deemed to include HopeSource, a Washington nonprofit corporation, and its approved successors and assigns, including, without limitation, any approved subsequent assignee or obligor of this City Note, if such approval is given in accordance with the Agreement. In no event shall Grantor assign or transfer any portion of this Note without the prior express written consent of City, except as permitted in the Agreement.

12. Usury. It is the intention of Grantor and City to conform strictly to the Interest Law, as defined below, applicable to this transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this City Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this

City Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this City Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

(a) the provisions of this paragraph shall govern and control;

(b) neither Grantor nor Grantor's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction:

(c) any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this City Note by City or, if this City Note shall have been paid in full, refunded to Grantor; and

(d) the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this City Note. For purposes of this City Note, "Interest Law" means any present or future law of the State of Washington, the United States of America, or any other jurisdiction which has application to the interest and other charges under this City Note. The "Maximum Legal Rate of Interest" means the maximum rate of interest that City may from time to time charge Grantor, and under which Grantor would have no claim or defense of usury under the Interest Law.

13. Costs of Enforcement. Grantor agrees to pay upon demand all reasonable costs and expenses, including attorneys' fees, expert witness fees, and costs of suit (including appeals), incurred by City to enforce the terms hereof. In addition to the foregoing award of attorneys' fees, City shall be entitled to its reasonable attorneys' fees incurred in any post-judgment proceedings to enforce any judgment in connection with this City Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

14. Miscellaneous. Time is of the essence hereof. If this City Note is now, or hereafter shall be, signed by more than one party or person, it shall be the joint and several obligation of such parties or persons (including, without limitation. all makers, endorsers, guarantors and sureties), and shall be binding upon such parties and upon their respective successors and assigns. This City Note shall be governed by and construed under the laws of the State of Washington. Grantor irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of Washington for Kittitas County or the United States District Court of the Central District of Washington as City hereof may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this City Note. Grantor also waives any objection regarding personal or in rem jurisdiction or venue to the extent such action is filed in the above-referenced courts. In the event of a conflict between the provisions of this City Note and the Agreement, this City Note shall control with respect to the subject matter hereof.

15. Non-Recourse Obligation. In the event of any Default under the terms of the Agreement or any of the other Project Documents, the sole recourse of City for any such Default shall be the Site and the Project and Grantor and its partners and Affiliates shall not be personally liable for the payment of any obligations under this Agreement; provided, however, that the foregoing shall not in any way affect any rights City may have hereunder, or any right of City to recover or collect funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, intentional misrepresentation or bad faith waste, and/or any costs and expenses incurred by City in connection therewith (including without limitation reasonable attorneys’ fees and costs).

[Signature Follows]

IN WITNESS WHEREOF, the parties hereto have caused this City Note, Promissory Note Secured by Deed of Trust to be executed on the date first set forth above.

GRANTOR:

HOPESOURECE,
a Washington nonprofit corporation

By:_________________________
Name: ______________________
Title:_________________________

ATTACHMENT NO. 6

When Recorded Return To:

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

AFFORDABLE HOUSING COVENANT
(HOPESOURCE)

GRANTOR:	HopeSource
GRANTEE:	City of Ellensburg, Washington
ABBREV. LEGAL DESCRIPTION:	Lot 7 and the ptn Lot 8, Block 31, MURRAY ADDITION TO THE CITY OF ELLENSBURG, Book 1 of Plats, pg 15 Official legal description on Exhibit A attached
ASSESSOR'S TAX PARCEL NOS.	927133
REFERENCE NUMBERS:	N/A

AFFORDABLE HOUSING COVENANT
(HOPESOURCE)

This Affordable Housing Covenant ("Covenant") is made as of the ____ day of ______, 2025, by **HOPESOURCE**, a Washington nonprofit corporation ("HopeSource" or "Grantor") in favor of the **CITY OF ELLENSBURG,** a public body corporate and politic of the State of Washington ("City" or "Grantee"), and is part of the consideration for the financial assistance provided by the City pursuant to an Affordable Housing Agreement dated on or about the date hereof (the "Agreement"), for the construction of a 8-unit multifamily rental complex initially to be known as Addison Place, and any future development of additional housing units, on real property legally described on Exhibit A hereto (the "Property").

WHEREAS, this Covenant will be filed and recorded in the official public land records of Kittitas County, Washington and shall constitute a restriction upon the use of the Property, subject to, and in accordance with, the terms of this Covenant for **twenty-five (25) years of affordability** ending on September 1, 2050, the Maturity Date of the City Note executed by HopeSource in favor of the City and dated of even date herewith (the "Affordability Period").

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

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

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

(a) **Eight (8)** of the residential units in the Property, and any housing units subsequently built on the Property, shall be rented to tenants who meet the eligibility criteria consistent with RCW 82.14.530. Consistent with Washington State law, housing created with these funds is required to serve households with gross annual household incomes at the time of initial occupancy no higher than **sixty (60) percent of median income** in Kittitas County, Washington adjusted for family size ("AMI") as published annually, effective July 1, by the U.S. Department of Housing and Urban Development ("HUD"), as HOME Income Limits and fall within specific population groups as described in RCW 82.14.530(2)(b). If HUD ceases to provide such determinations of median income, then median income shall mean such comparable figure for Kittitas County, Washington published or reported by a federal, state, or local agency as the City shall select.

(b) Rents payable by tenants may not exceed **Thirty (30) percent** of the maximum **sixty (60) percent AMI** tenant income for the unit, assuming occupancy of one person per efficiency/studio unit and two persons per one bedroom unit including a utility allowance ("Affordable Rent"). The amount of the utility allowance shall be as calculated annually by HopeSource or at another level acceptable to the City. The foregoing provisions shall be subject to the provisions of the Agreement.

(c) Consistent with the requirements of RCW 84.14.530(2)(b), as it may be amended from time to time, the residential units in the Property shall be occupied by tenants who at the time of initial occupancy of a residential unit are: (i) persons with behavioral health disabilities, (ii) veterans, (iii) senior citizens, (iv) persons who are homeless or at-risk of being homeless, including families with children, (v) unaccompanied homeless youth or young adults, (vi) persons with disabilities, or (vii) domestic violence survivors.

(d) By March 31st of each calendar year during the Affordability Period, HopeSource shall prepare and submit the documents and reports to the City described in Section 6.7 of the Agreement, to demonstrate compliance in all respects with the requirements of this Covenant.

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

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

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

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

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

Section 4. Survival. This Covenant has priority over the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filings in favor of the City of even date herewith (the "Deed of Trust"), and shall survive any payment, release, satisfaction or cancellation of the City Note or the Deed of Trust occurring prior to the expiration of the Affordability Period. The covenants herein are independent of and in addition to the covenants in the Deed of Trust and Affordable Housing Agreement between the Grantor and the City, any other covenants made for the benefit of the City. This Section shall not prohibit any mortgages, deeds of trust, regulatory agreements and covenants for the purposes of the future financing, nor prohibit any transfer upon foreclosure of a deed of trust or mortgage approved by the City, or in lieu of foreclosure thereof, or any subsequent transfer, but any transfer shall be subject to the terms of this Covenant.

Section 5. Default. If a violation of any of the foregoing covenants occurs, the City may, after thirty days' notice to HopeSource, and if applicable, its successors and assigns, heirs, grantees, or lessees of the Property, institute and prosecute any proceeding at law or in equity to abate, default the loan evidenced by the City Note, prevent, or enjoin any such violation or to compel specific performance by HopeSource of its obligations hereunder; provided that HopeSource shall not be required by any provision herein to evict a residential tenant. No delay in enforcing the provisions hereof as to any breach or violation, shall impair, damage or waive the right of the City to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

[*Signatures on following page.*]

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

HOPESOURCE,
a Washington nonprofit corporation

By: ______________________________
Name: ____________________________
Title: _____________________________

THE CITY OF ELLENSBURG, a Washington public corporation

By: ______________________________
Name: ____________________________
Title: _____________________________

STATE OF WASHINGTON)
)ss.
COUNTY OF KITTITAS)

On this ______ day of ________________, 202_, before me personally appeared _______________________, to me known to be the _________________ of ________________________, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

____
(Signature of Notary)

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

STATE OF WASHINGTON)
)ss.
COUNTY OF KITTITAS)

On this ______ day of ________________, 202_, before me personally appeared _______________________, to me known to be the _________________ of ________________________, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

____
(Signature of Notary)

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

EXHIBIT A

LEGAL DESCRIPTION

Lot 7 and the South 10 Feet of Lot 8, Block 31, MURRAY ADDITION TO THE CITY OF ELLENSBURG, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, page 15, records of said County.

Commented [KP1]: Confirm matches lender's pro forma, taken from PSA

WHEN RECORDED, MAIL TO:

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

Washington State Recorder's Cover Sheet (RCW 65.04.047)

.

Document Title: Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing
Reference Number(s) of Related Documents: N/A
Grantor: HopeSource, a Washington nonprofit corporation
Grantee(s)/Trustee(s)/Beneficiary(ies): 1. THE CITY OF ELLENSEBURG, a Washington municipal corporation 2. AmeriTitle
Abbreviated Legal Description: [____________________] ☒ Additional legal within document.
Assessor's Property Tax Parcel/Account Numbers: 927133

**<u>DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING</u>**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING, made this ____ day of ____________, 20___ (together with any amendments or modifications hereto in effect from time to time, the "**<u>Deed of Trust</u>**"), between HOPESOURCE, a Washington nonprofit corporation, GRANTOR, whose address is 601 West Fifth Avenue, Ellensburg, WA 98926, AMERITITLE, TRUSTEE, whose address is 101 W. Fifth Avenue, Ellensburg, Washington 98926, and the CITY OF ELLENSBURG, a Washington municipal corporation, "BENEFICIARY", whose address is c/o City Manager 501 North Anderson Street, Ellensburg, Washington 98926.

WITNESSETH: Grantor hereby bargains, sells and conveys to Trustee in trust, with power of sale, the following described real property in Kittitas County, Washington:

> <u>Lot 7 and the South 10 Feet of Lot 8, Block 31, MURRAY ADDITION TO THE CITY OF ELLENSBURG, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, page 15, records of said County.</u>

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

Grantor has received a grant from Beneficiary in the amount of $1,200,000.00 ("**Grant**") pursuant to that certain Affordable Housing Agreement by and between Grantor and Beneficiary, dated as of the date hereof ("**Affordable Housing Agreement**") and that certain Promissory Note dated as of the date hereof executed by Grantor in favor of Beneficiary ("**Note**"). In connection with the Grant, Grantor has also executed that certain Affordable Housing Covenant dated on or about the date hereof in favor of Beneficiary ("**Covenant**"). The Affordable Housing Agreement, Note, and Covenant are referred to herein as the "**Grant Documents**". Grantor's obligation to repay the Grant to Beneficiary shall only be required in the event Grantor defaults in its obligations under the Grant Documents. This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained and contained in the Grant Documents, and payment of the Grant in the event of Grantor's breach of its obligations herein or under the Grant Documents and all renewals, modifications and extensions thereof.

This Deed of Trust shall be subordinate to the liens set forth in a Priority and Subordination Agreement for the Project signed by the Beneficiary.

1. **<u>Grant in Trust</u>**. In consideration and for the purpose of securing payment and performance of the secured obligations (as set forth above), Grantor hereby irrevocably and unconditionally grants, bargains, conveys, sells, transfers, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of the estate, right, title, and interest which Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, is herein referred to as the "**Property**"):

(a) The real property located in Kittitas County, Washington, as more fully described on page 1 of this Deed of Trust (the "**Land**"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land (the "**Improvements**") and all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements and all existing and future as-extracted collateral produced from or allocated to the Land, including, all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, and all products processed or obtained therefrom, and the proceeds thereof, and all development rights and credits, air rights, water, water courses, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, easements, rights-of-way, gores or strips of land, and any land lying in the streets, ways, alleys, passages, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(c) All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, and remainder and remainders thereof, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto; together with

(d) All articles of personal property (including those specified below) and any software imbedded therein, now owned or hereafter acquired by Grantor and attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise a "fixture" under applicable law (each a "**Fixture**," collectively "**Fixtures**"); together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future, except for the Ground Lease (each a "**Lease**," collectively, the "**Leases**") relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Grant Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all Leases, including all rent loss insurance proceeds, prepaid rents and any and all security deposits received or to be received by Grantor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue, to Grantor under any and all Leases (some or all collectively, as the context may require, "**Rents**"); together with

(g) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all computer systems, telephone and telecommunication systems, televisions and television systems, all software embedded within or used in connection with any of the property described above, pumps or pumping plants, tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, sprinkler equipment, lighting, power equipment, ventilation, incineration, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(h) All rights to the payment of money and all guaranties thereof and judgments therefor, and all accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Grantor with third parties (including all utility deposits), warranty rights, contract rights, management contracts, service contracts, construction and architectural contracts, contracts for the purchase and sale of the Property or any part thereof, end-loan or other financing commitments, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights (whether or not the letter of credit is evidenced by a writing), supporting obligations, and general intangibles, including payment intangibles, whether any of the foregoing are tangible or electronic, which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(i) All insurance policies (and the unearned premiums therefor) and bonds required by the Grant Documents and all proceeds thereof, and all proceeds (including all claims to and demands for them) of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to, or defect in, the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, misrepresentation, or concealment of a material fact; together with

(j) All books, records, and all recorded data of any kind or nature (regardless of the medium of recording) pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, the "**Books and Records**"); together with

(k) All commercial tort claims Grantor now has or hereafter acquires relating to any of the property described above; together with

(l) All documents, instruments, chattel paper, intangibles, and general intangibles as the foregoing terms are defined in the Uniform Commercial Code, relating to the Property; together with

(m) All products, accounts, and proceeds (cash or non-cash) of, additions, betterments, extensions, accessions and accretions to, substitutions, renewals and replacements for, and changes in any of the property described above, including all proceeds of any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all supporting obligations ancillary to or arising in connection therewith, general intangibles (including payment intangibles) arising in connection therewith, and all goods, accounts, instruments, documents, promissory notes, chattel paper, deposit accounts, supporting obligations, and general intangibles (including payment intangibles) (whether any of the foregoing are tangible or electronic), wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.; together with

(n) Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (m) above.

AND without limiting any of the other provisions of this Deed of Trust, to the extent permitted by applicable statutes, regulations or ordinances ("**Applicable Law**"), Grantor expressly grants to Beneficiary, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to herein as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Deed of Trust be deemed conclusively to be real estate and conveyed hereby

Grantor shall and will warrant and forever defend the above-bargained Property in the quiet and peaceable possession of Trustee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof. Grantor agrees that any greater title to the Property hereafter acquired by Grantor during the term hereof shall be subject hereto.

2. **Assignment of Rents**.

(a) Grantor hereby irrevocably absolutely and unconditionally assigns and transfers to Beneficiary all of Grantor's right, title and interest in and to the Leases and the Rents; provided, however, that so long as no event of default has occurred and is continuing under the Grant Documents, Grantor shall have the right under a license granted hereby to collect and receive all Rents as trustee for the benefit of Beneficiary and to apply the amounts so collected first to the payment of costs and expenses associated with the ownership maintenance, operation and leasing of the Property, including, principal, interest and all other amounts required to be paid under the Grant Documents, before using or applying such Rents for any other purpose. If an Event of Default has occurred and is continuing, Grantor's right to collect and receive the Rents under the license granted hereby shall cease and the license shall be revoked automatically and, Beneficiary shall have the sole right, with or without taking possession of the Property, to collect all Rents. The assignment of Rents is intended as security for the Grant pursuant to RCW 7.28.230 and, upon recording of this Deed of Trust, shall immediately perfect the security interest and shall not require any further action by Beneficiary to be perfected as to any subsequent purchaser, mortgagee, or assignee of any interest in the Property. The lien created by this assignment shall, when recorded, be deemed specific, perfected, and choate.

(b) Grantor shall timely perform all of its obligations under the Leases. Grantor represents and warrants that: (i) Grantor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; and (ii) no other assignment of any interest in any of the Leases or Rents has been made except pursuant to the Grant Documents.

(c) Except as expressly permitted pursuant to the terms of the Grant Documents, Grantor shall not: (i) enter into any lease of all or any portion of the Property; (ii) amend, modify, terminate or accept a surrender of any Lease; or (iii) collect or accept rent from any tenant of the Property for a period of more than one (1) month in advance. Any of the foregoing acts, if done, in each instance, shall be null and void.

3. **Security Agreement; Fixture Filing.**

(a) This Deed of Trust shall also be considered a security agreement under the Uniform Commercial Code. This Deed of Trust is both a security deed and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Property. By executing and delivering this Deed of Trust, Grantor hereby grants to Beneficiary, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). Grantor hereby authorizes Beneficiary to file financing statements, continuation statements and financing statement amendments in such form as Beneficiary may require to perfect or continue the perfection of this security interest without the authorization or signature of Grantor. If an Event of Default shall occur and be continuing, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary after the occurrence and during the continuance of an Event of Default, Grantor shall, at its expense, assemble the Collateral and make it available to Beneficiary at a location (at the Land if tangible property) reasonably acceptable to Beneficiary. Grantor shall pay to Beneficiary on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Beneficiary in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by Applicable Law, constitute reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by Applicable Law, be applied by Beneficiary to the payment of the Grant and other Obligations in such priority and proportions as Beneficiary in its discretion shall deem proper.

(b) From the date of its recording, this Deed of Trust shall be effective as a "fixture filing" for the purposes of RCW 62A.9A-502 with respect to all of the Property which is or is to become fixtures (within the meaning of the Uniform Commercial Code). The addresses of Grantor (Debtor) and Beneficiary (Secured Party) are set forth below. This Deed of Trust is to be filed for recording with the Recorder of any county or counties where the Land (including such fixtures) is located. For this purpose, the following information is set forth:

Name and Address of Debtor:	HopeSource 606 W. 3rd Ave.

Ellensburg, Washington 98926
Attention: Susan Grindle

Name and Address of Secured Party: City of Ellensburg
501 North Anderson Street
Ellensburg, Washington 98926
Attention: City Manager

This document covers any portion of the Property that now is or later may become a fixture attached to the Land.

Debtor is the record owner of the Property.

4. **Conditions to Grant.** TO HAVE AND TO HOLD the above granted and described Property unto the Trustee and its heirs, successors and assigns, in fee simple forever, for the benefit of Beneficiary and their successors and assigns forever;

PROVIDED ALWAYS, these presents are upon the express condition, that if Grantor has performed all of its obligations pursuant to this Deed of Trust and the other Grant Documents, and no further advances are to be made under the Grant Documents, Beneficiary will provide a satisfaction and cancellation of this Deed of Trust and termination statements for filed financing statements, if any, to Grantor within the time required by Applicable Law. Grantor shall be responsible for the recordation of such cancellation and satisfaction and the payment of any recording and filing costs, subject to any limitations set forth in Applicable Law. Upon the recording of such cancellation and satisfaction and the filing of such termination statements, the absolute assignments set forth in Section 2 shall automatically terminate and become null and void.

5. **Grantor Covenants**. To protect the security of this Deed of Trust, Grantor covenants and agrees:

(a) To keep the Property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvements being built or about to be built thereon; to restore promptly any building, structure, or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property.

(b) All the covenants, conditions and agreements contained in all and any of the Grant Documents, are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

(c) Grantor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Grant Documents. The amount collected under any insurance policy shall be applied in accordance with Section 6(c) below. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(d) To pay before delinquent all lawful taxes and assessments upon the property; and to keep the Property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.

(e) To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding in any suit brought by Beneficiary to foreclose this Deed of Trust.

(f) To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided above.

(g) Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens encumbrances or other charges against the Property hereinabove described Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

(h) Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor pursuant to the Grant Documents and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

(i) Grantor shall not remove or permit to be removed from the Property any Fixtures presently or in the future owned by Grantor (unless such Fixtures have been replaced with similar Fixtures of equal or greater utility and value).

(j) Grantor hereby warrants that (a) Grantor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property subject only to those matters set forth in Exhibit A attached hereto (the "**Permitted Encumbrances**"); (b) Grantor has the right, full power and lawful authority to grant, convey and assign the same to Beneficiary in the manner and form set forth herein; and (c) this Deed of Trust creates a valid and enforceable first lien on and security title to the Property, subject to Permitted Encumbrances. Grantor hereby covenants that Grantor shall (a) preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Beneficiary against all lawful claims whatsoever, subject to the Permitted Encumbrances; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Beneficiary to protect fully the lien of this Deed of Trust.

6. **FURTHER ASSURANCES**.

(a) Grantor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust and any of the other Grant Documents conveying, creating or evidencing the security title, liens or security interest hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the security title, liens or security interest hereof upon, and the interest of Beneficiary in, the Property. Grantor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of this Deed of Trust, the other Grant Documents, any note, deed of trust or mortgage supplemental hereto, any Deed of Trust with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust or mortgage supplemental hereto, any Deed of Trust with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do, provided that Grantor shall have no liability for taxes paid on the revenue or income of Beneficiary that is derived from the Grant.

(b) Grantor will, at the cost of Grantor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, security deeds, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust, or for complying with all Applicable Law. Grantor hereby irrevocably authorizes Beneficiary, its counsel or its representative, at any time and from time to time, to file financing statements and amendments as Beneficiary may deem necessary, including financing statements and amendments that describe the collateral covered by such financing statements as "all assets of Grantor" or "all personal property of Grantor" or words of similar effect, in order to perfect the security title and interests granted by Grantor under this Deed of Trust. Grantor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including without limitation such rights and remedies available to Beneficiary pursuant to this Section 5.2.

(c) In the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, Grantor shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefore, provided that (i) such proceeds are sufficient to keep the loan in balance and rebuild the Property in a manner that provides adequate security to the Beneficiary for repayment of the loan, or if such proceeds are insufficient to provide adequate security or to keep the loan in balance, then Grantor has funded any deficiency, (ii) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and such approval shall not be unreasonably withheld, (iii) the Project can, in Beneficiary's reasonable discretion be rebuilt within 36 months of the casualty or condemnation; and (iv) no material default then exists under the this Deed of Trust, the Affordable Housing Agreement, the Note, or the Covenant, including any validly executed amendments to any of those documents, which are herein incorporated by reference. If Grantor elects to rebuild under this section, Grantor shall diligently pursue such construction and shall ensure that no material default occurs under the Affordable Housing Agreement, the Note, the Deed of Trust, or Covenant during the period of construction. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then such insurance and/or condemnation proceeds may be used for partial rebuilding and partial repayment of the loan in a manner that provides adequate security to the Beneficiary for repayment of the remaining balance of the loan. In the event that the conditions of items (a) through (d) cannot be met, Beneficiary, subject to the rights of any senior lienholders shall be entitled to the entire amount of such insurance or condemnation proceeds or such portion as may be necessary to fully satisfy the obligation secured hereby.

(d) Grantor acknowledges that Beneficiary has examined and relied on the experience of Grantor and its general partners, managers, members, principals and beneficial owners in owning and operating properties such as the Property in agreeing to make the Grant, and will continue to rely on Grantor's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of the Grant and the payment and performance of the other Obligations. Grantor acknowledges that Beneficiary has a valid interest in maintaining the value of the Property so as to ensure that, should there be an Event of Default, Beneficiary can recover the Grant and the other Obligations by a sale of the Property for the benefit of Beneficiary.

(e) Except as may be expressly permitted in the Affordable Housing Agreement, Grantor shall not permit or suffer any Transfer of the Property. Except as may be expressly permitted under the

Affordable Housing Agreement, Grantor will not to the extent within Grantor's control permit the Property to become subject to any lien, easement, right of way, roadway (public or private), common area, condominium regime, cooperative housing regime, restrictive covenant, Lease or other matter of any nature that would affect title to the Property, other than the Permitted Encumbrances. Grantor shall give Beneficiary written notice in accordance with the Affordable Housing Agreement of any default under any obligation secured by a Lien. As used herein, the term "**Transfer**" means any direct or indirect sale, transfer, conveyance, mortgage, pledge or assignment of (i) the Property or any part thereof, or any direct legal or beneficial interest therein; or (ii) any ownership interest in Grantor, or any owner of Grantor, direct or indirect.

(f) The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

(g) Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrances for value.

(h) The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington, now or as hereafter amended, is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

(i) In the event of the death, incapacity, disability, or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless the Trustee brings such action or proceeding.

(j) This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

7. **Events of Default**. Each of the following shall constitute an event of default (each, an "**Event of Default**") hereunder:

(a) default (as defined therein) occurs under the Affordable Housing Agreement;

(b) Grantor fails to promptly perform or comply with any of the obligations set forth in this Deed of Trust, and such failure continues beyond that date which is thirty (30) days after the earlier of (i) the date on which Beneficiary notifies Grantor of such failure or (ii) the date on which Grantor otherwise becomes aware of such failure, provided, however, if such failure cannot be reasonably cured within such thirty (30) day period, Grantor shall have such additional time (not to exceed a total cure period of sixty (60) days) as reasonably necessary to cure such failure provided that Grantor commences such cure within such thirty (30) day period and diligently pursues such cure thereafter; or

(c) A default or event of default occurs under any other Grant Document other than the Affordable Housing Agreement, and such default or event of default continues beyond the expiration of the applicable grace or notice and cure period therefor, if any, set forth in such Grant Document (without duplication).

8. **Remedies.** If an Event of Default shall have occurred and be continuing, Beneficiary may take any of the following actions:

(a) Acceleration. Beneficiary may declare the entire amount of the Grant immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Grant Documents.

(b) Possession. Beneficiary may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as provided in the Affordable Housing Agreement or otherwise agreed to in writing with the Beneficiary: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Obligations. Beneficiary is given full authority to do any act which Grantor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Deed of Trust and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Grantor shall pay monthly in advance to Beneficiary or to any receiver appointed to collect said rents the fair and reasonable rental value for Grantor's use and occupation of the Property, and upon default in any such payment Grantor shall vacate and surrender the possession of the Property to Beneficiary or to such receiver. If Grantor does not vacate and surrender the Property then Grantor may be evicted by summary proceedings.

(c) Foreclosure and Sale. Beneficiary may sell the Property or any part thereof at one or more public sales before the door of the courthouse of the County in which the Property or any part thereof is located, without notice except as otherwise set forth herein or in the other Grant Documents or required by Applicable Law, to the highest bidder for cash, in order to pay the Grant, and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys' fees, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which sheriff's sales are advertised in said County. At any such public sale, Beneficiary (or any person on behalf of Beneficiary) may bid and purchase at such sale on behalf of Beneficiary (including itself), and Beneficiary (or, as applicable, its designee) shall have the right to credit upon the amount of Beneficiary's (or, as applicable, its designee's) successful bid, to the extent necessary to satisfy such bid, all or any part of the Grant, in such manner and order as Beneficiary may elect in its sole discretion. Upon any such sale, Beneficiary may execute and deliver to the purchaser at such sale a conveyance of the Property or any part thereof in fee simple, with warranties of title subject to Permitted Exceptions, and to this end Grantor hereby constitutes and appoints Beneficiary its agent and attorney-in-fact to make such sale and conveyance, and thereby to divest Grantor of all right, title and equity that Grantor may have in and to the Property and to vest the same in the purchaser at such sale; and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance as to facts essential to a valid sale shall be binding upon Grantor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable, are granted as cumulative of the other remedies provided hereby or by law for collection of the Grant, and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the Grant. The unpaid balance of any judgment shall bear interest at the statutory rate provided for judgments. In the event of any sale under this Deed of Trust by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Beneficiary in its sole discretion may elect, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Property is sold or the Obligations are paid in full.

(d) Appointment of Receiver. Beneficiary may petition a court of competent jurisdiction to appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Grantor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Grantor has committed waste or allowed deterioration of the Property, and Beneficiary or any agent of Beneficiary may be appointed as such receiver. Grantor hereby agrees that Beneficiary has a special interest in the Property and absent the appointment of such receiver the Property may suffer waste and deterioration and Grantor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Beneficiary pursuant to sub-section (b) above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Property during such period.

(e) Rights as a Secured Party. Beneficiary shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Uniform Commercial Code. Beneficiary may elect to foreclose such of the Property as then comprise Fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Uniform Commercial Code. To the extent permitted by law, Grantor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

(f) Excess Monies. Beneficiary may apply on account of the Obligations any unexpended monies still retained by Beneficiary or any Beneficiary that were paid by Grantor to Beneficiary: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Grantor.

(g) Collection of Rents. Upon the occurrence of an Event of Default, the license granted to Grantor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Grantor. Beneficiary may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Beneficiary may, but shall not be obligated to, exercise and enforce any or all of Grantor's rights under the Leases. Without limitation to the generality of the foregoing, Beneficiary may notify the tenants under the Leases that all Rents are to be paid to Beneficiary, and following such notice all Rents shall be paid directly to Beneficiary and not to Grantor or any other person other than as directed by Beneficiary, it being understood that a demand by Beneficiary on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Beneficiary without the necessity of further consent by Grantor. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Beneficiary instead of to Grantor, upon receipt of written notice from Beneficiary, without the necessity of any inquiry of Grantor and without the necessity of determining the existence or non-existence of an Event of Default. Grantor hereby appoints Beneficiary as Grantor's attorney-in-fact with full power of substitution, which appointment shall be effective upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Grantor's name or in Beneficiary's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Beneficiary; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Beneficiary may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied in accordance with the terms of sub-section (b), above.

(h) Other Remedies. Beneficiary shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Grantor provided under the Grant Documents or by Applicable Law. Beneficiary shall have the right, in the name and on behalf of Grantor during the continuance of an Event of Default, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary in the Property. Beneficiary shall also have the right from time to time to bring an appropriate action to recover any sums required to be paid by Grantor under the terms of this Deed of Trust, as they become due, without regard to whether or not any other Obligations shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for any default by Grantor existing at the time the earlier action was commenced. In addition, Beneficiary shall have the right to set-off all or any part of any amount due by Grantor to Beneficiary under any of the Obligations, against any indebtedness, liabilities or obligations owing by Beneficiary in any capacity to Grantor, including any obligation to disburse to Grantor any funds or other property on deposit with or otherwise in the possession, control or custody of Beneficiary.

(i) Waiver of Grantor's Rights. BY EXECUTION OF THIS DEED OF TRUST, GRANTOR EXPRESSLY: (a) ACKNOWLEDGES THE RIGHT OF TRUSTEE TO ACCELERATE THE LIABILITIES SECURED BY THIS DEED OF TRUST AND THE POWER OF SALE GIVEN HEREIN TO TRUSTEE TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED OF TRUST OR OTHER GRANT DOCUMENTS; (b) WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), OR THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (i) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY TRUSTEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO TRUSTEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED OF TRUST OR ANOTHER GRANT DOCUMENT AND (ii) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (c) ACKNOWLEDGES THAT GRANTOR HAS READ THIS DEED OF TRUST AND ANY AND ALL QUESTIONS OF GRANTOR REGARDING THE LEGAL EFFECT OF THIS DEED OF TRUST AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR, AND GRANTOR HAS CONSULTED WITH COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS DEED OF TRUST; AND (d) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED FOR TRANSACTION AND THAT THIS DEED OF TRUST IS VALID AND ENFORCEABLE BY TRUSTEE AGAINST GRANTOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

9. **Right to Cure Defaults**. Upon the occurrence and during the continuance of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, remedy such Event of Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or

proceeding to protect its interest in the Property or to foreclose this Deed of Trust or collect the Obligations, and the cost and expense thereof actually incurred (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Obligations and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period beginning on the first day after notice from Beneficiary that such cost or expense was incurred and continuing until the date of payment to Beneficiary. All such costs and expenses incurred by Beneficiary together with interest thereon at the Default Rate shall be deemed to constitute a portion of the Obligations and be secured by this Deed of Trust and the other Grant Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

10. **Other Rights, Etc.** The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Beneficiary to comply with any request of Grantor or any guarantor or indemnitor with respect to the Grant to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of the other Grant Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of, this Deed of Trust or the other Grant Documents.

It is agreed that the risk of loss or damage to the Property is on Grantor, and Beneficiary shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the insurance policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Beneficiary's possession.

Beneficiary may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Grant) to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to recover the Grant, or any portion thereof, or to enforce the other Obligations or any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust. The rights of Beneficiary under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

11. **Additional Provisions**.

(a) Remedies Cumulative. The rights and remedies of Beneficiary as provided in this Deed of Trust or in any other Grant Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Beneficiary at law or in equity. The failure, at any one or more times, of Beneficiary to assert the right to declare the Obligations due, grant any extension of time for payment of the Obligations, take other or additional security for the payment thereof, release any security, change any of the terms of the Grant Documents, or waive or fail to exercise any right or remedy under any Grant Document shall not in any way affect this Deed of Trust or the rights of Beneficiary.

(b) No Implied Waiver. Beneficiary shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Beneficiary, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy with respect to a subsequent event.

(c) No Warranty by Beneficiary. By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Grantor or to be given to Beneficiary pursuant to this Deed of Trust or any of the other Grant Documents, Beneficiary shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Beneficiary.

(d) Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Deed of Trust shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

(e) Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Deed of Trust shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Deed of Trust cannot be assigned by Grantor without the prior written consent of Beneficiary, and any such assignment or attempted assignment by Grantor shall be void and of no effect with respect to Beneficiary.

(f) Modifications. This Deed of Trust may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the Grantor and Beneficiary, with such consent of the Beneficiary (if any) required by the Grant Documents. No course of dealing or conduct by or among Beneficiary and Grantor shall be effective to amend, modify or change any provisions of this Deed of Trust or the other Grant Documents.

(g) Commercial Loan. Grantor represents and warrants that the loans or other financial accommodations secured by this Deed of Trust were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

(h) Governing Law. The provisions of this Deed of Trust regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Property is located. All other provisions of this Deed of Trust shall be governed by the laws of the State of Washington.

(i) Joint and Several Liability. If Grantor consists of more than one person or entity, the word "Grantor" shall mean each of them and their liability shall be joint and several.

(j) Substitution of Trustee. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Beneficiary may, from time to time, by instrument in writing, substitute a successor to any Trustee named herein or acting hereunder in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee, who shall, without conveyance from the predecessor Trustee, succeed to all its title. Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to record in Washington, and in the event of the death or resignation of the Trustee herein named, Beneficiary shall have the right to appoint his successor by such written instrument, and any Trustee so appointed shall be vested with the title to the Property hereinbefore described, and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though he were named herein as Trustee. Any oath or bond by the Trustee is hereby waived

(k) ORAL AGREEMENTS. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW. RCW 19.36.140.

(l) Fixture Filing. To the extent that any Property constitutes a fixture, this Deed of Trust will serve as a fixture filing pursuant to the Uniform Commercial Code.

(m) Other Purposes. The Grant is not being made for personal, family or household purposes as provided in RCW 19.52.080.

(n) *Power of Sale*.

i. If an Event of Default occurs and Beneficiary so requests, Trustee shall sell the Property in accordance with the Deed of Trust Act of the State of Washington (RCW Chapter 61.24 as existing now or hereafter amended) at public auction to the highest bidder. Any person, except Trustee, may bid at the Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (i) to the expenses of sale, including Trustee's fees and attorneys' fees, to the extent that such trustee's fees and charges do not, in the aggregate, exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney's fee, had this instrument been foreclosed as a mortgage in a non-contested action in that court; (ii) to the amount of the Grant and all other indebtedness secured by this Deed of Trust; and (iii) the surplus, if any, less the clerk's filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the notice of trustee's sale, and an affidavit of mailing as provided in RCW 61.24.080(3), with the clerk of the superior court of the county in which the sale took place. The Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of its execution of this Deed of Trust and such as it may have acquired thereafter. The Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of the law and of this Deed of Trust, which recital shall be prime facie evidence that such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The power of sale conferred by this Deed of Trust is not an exclusive remedy, and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage.

ii. Beneficiary shall have the right to proceed with respect to the Personal Property in accordance with Beneficiary's rights and remedies with respect to real property or sell the personal property separately and without regard to the remainder of the Property in accordance with Beneficiary's rights and remedies provided by the Uniform Commercial Code, as well as other rights and remedies available at law and equity.

iii. Upon the occurrence and continuation of an Event of Default, Beneficiary is authorized, either by itself or its agent, to be appointed by it for the purpose, or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take hold and possession of any portion or all of the Property, both real and personal, and exclude Grantor and all other persons therefrom; to operate and manage the Property and rent and lease the same; to perform such reasonable acts of repair and protection as may be reasonably necessary or proper to conserve the value thereof; and collect any Rents for the benefit and protection of Beneficiary, and from time to time apply or accumulate such Rents in such order and manner as Beneficiary or such receiver, in its sole discretion shall consider advisable to or upon the following: expenses of receivership, if any; the costs of upkeep, maintenance, repair and/or operation of the Property; the repayment of any sums theretofore, or thereafter advanced pursuant to this Deed of Trust, the interest then due or to become due upon the Grant secured hereby; the taxes and assessments upon the Property then due or next to become due; or upon the unpaid principal of such indebtedness. The collection or receipt of Rents by Beneficiary, its agent or receiver after notice of default and notice of sale shall not affect or impair such default of notices or any sale proceedings predicated thereon. Any Rents in possession of Beneficiary's agents or receiver at the time of sale and not theretofore applied as herein provided shall be applied in the same manner and for the same purposes as the proceeds of sale. Neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts referred to in this paragraph, and any actions referred to in this paragraph may be taken by Beneficiary regardless of whether any notice of default or notice of sale has been given hereunder and without regard to the adequacy of the security for the Grant evidenced by the Affordable Housing Agreement. Nothing herein shall require Beneficiary, debtor or receiver appointed to collect any Rents; however, Beneficiary shall be entitled to such appointment at its options in accordance with this 9.12(iii).

iv. The Property, real, personal or mixed, may be sold as an entirety or in parcels by one sale or by several sales held at one time or at different times, all as Trustee or Beneficiary, in their unrestricted discretion, may elect. Grantor, for and on behalf of itself and all persons including by, through or under Grantor, waives any and all right to have the Property marshalled upon any foreclosure sale, and agrees that upon foreclosure, the Property may be sold as an entirety and not in parcels.

v. Upon the occurrence and continuation of an Event of Default, Beneficiary, separately or in an action to foreclose this Deed of Trust, shall be entitled without notice and without regard of the adequacy of any security for the Grant, the absence of waste or deterioration of the Property or other arguments based on equity, to the appointment of a receiver of the Rents of the Property who shall have, in addition to all the rights and powers customarily given to and exercised by such receiver, all the rights and powers granted to Beneficiary by the covenants herein. Once appointed, at Beneficiary's option, such receiver shall remain in place until the default is cured.

vi. Whenever this Deed of Trust requires that amounts payable by a third party be paid directly to Beneficiary (for example, insurance proceeds and proceeds of claims of loss or damage to the Property), Beneficiary may enforce such rights with a preliminary injunction or temporary restraining order. Grantor agrees that irreparable harm may resolve if such payments are not made directly to Beneficiary. Grantor agrees not to oppose such a motion for injunction or restraining order provided the arrangements are made to deposit such sums in a third party depository.

WARNING

Unless you provide us with evidence of the insurance coverage as required by our contract, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract. If the cost is added to your contract, the interest rate on the underlying contract will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

[*Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, Grantor, intending to be legally bound, has duly executed and delivered this Deed of Trust under seal as of the day and year first above written

HOPESOURECE,
a Washington nonprofit corporation

By: ______________________
Name: ___________________
Title: ____________________

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ______ day of ________________, 202_, before me personally appeared ________________, to me known to be the ___________________ of HopeSource, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

____
Notary Public
Print Name______________________________
My commission expires __________________________

(Use this space for notarial stamp/seal)

Exhibit A

Permitted Encumbrances

[TO BE ATTACHED]

Meeting Date: September 2, 2025
City of Ellensburg
City Council Agenda Report

Agenda Subject:	Public Facilities District (PFD) for Funding Recreational Facilities (Public Comment Opportunity)
Submitted by:	Heidi Behrends Cerniwey, City Manager
Department:	City Manager

Suggested Motion/Action:
Approve continuation of partnership discussions to explore development of a county-wide Public Facilities District to fund recreational facilities in Ellensburg and CleElum/Roslyn.

Background/Summary:
One of the Council's 2024-2029 strategic priorities is to, "Develop dedicated and sustainable revenue for park infrastructure and operations and maintenance (O&M)..." Given the need to plan for replacement of the aging Kittitas Valley Memorial Pool (46 years old) and the former Ellensburg Racquet and Recreation Center (lost to arson fire 12/2022) with a Fieldhouse facility at Rotary Park, new revenues to support debt service will be required for one or both facilities. Council previously expressed interest in exploring sales tax options for funding these facilities. Council has expressed an interest in finding a pathway for county residents to participate in funding recreation facilities that are used by people living inside and outside the City limits.

Early discussions with the Upper Kittitas County Community Recreation Center (UKCCRC), a nonprofit organization seeking to build a community recreation center in CleElum, WA, have framed a potential partnership to explore county-wide support for a Public Facilities District (PFD) to partially fund the development and/or operation of recreational facilities in CleElum and Ellensburg. Link to Upper Kittitas County Recreation Center website: https://www.recreationukc.org/

The UKCCRC sponsored legislation in the 2025 Washington State legislative session (HB 1037/SB 5053) that would have allowed formation of a PFD by a geographic area that held boundaries less than a full county but larger than a city, such as a school district or fire district boundary. The City of Ellensburg included this in the 2025 Legislative Priorities, but the bills did not pass.

Authorized by Chapter 36.100 RCW, counties can create Public Facilities Districts to develop, improve, and operate regional centers costing at least $10 million and serving a regional population. The full Chapter is attached. Cities can also create PFDs under RCW 35.57. Pursuant to RCW 82.14.048, PFDs may impose a sales tax up to 0.2%, but the measure must be approved by a simple majority of voters. PFDs may impose other taxes, fees, and charges, including admissions taxes (up to 5%), parking taxes (up to 10%), general obligation and revenue bonds; lodging taxes, state shared sales tax credits, and user charges and fees.

More about PFDs on the Municipal Research Services Center website: https://mrsc.org/explore-topics/economic-development/financing/public-facilities-districts.

Previous Council Action:
Council adopted Resolution 2024-14 Council Strategic Vision 2024-2029 on May 20, 2024; and 2025 City of Ellensburg Legislative Priorities were adopted on December 16, 2025.

Analysis:
Public facilities districts are municipal corporations with independent taxing authority and are taxing districts under the state constitution. PFDs must be consistent with the boundaries of the jurisdictions that created them. PFDs are flexible in that they can own and operate public facilities or contract with cities, counties, or other PFDs to develop and operate those facilities. The process to create and operate a PFD will be reviewed during the staff presentation at the meeting. A few highlights include.

Before the formation of a new PFD, the issuance of new PFD debt, or the long-term lease, purchase, or development of a PFD facility, the Washington State Department of Commerce (Commerce) must conduct an independent financial feasibility review (see RCW 35.57.025 and RCW 36.100.025).

Documentation for Commerce Review of PFD Formation:

1. Proposed project
2. Project partners and expected roles; experience relating to the proposed project
3. Plan for funding of pre-formation costs and costs incurred prior to voter approval of PFD revenues (including PFD administration, planning studies, election costs)
4. Project funding plan
5. Capital plan and assumptions – project cost estimates and funding sources; initial bonding plans and related assumptions (i.e., term, interest rates, proceeds)
6. Operating projections and assumptions – plan for deficit funding
7. Areas to be included in taxation and base AV and Sales Tax being used for planning (i.e., school district boundaries? City boundaries? Unincorporated areas?)
8. Any additional reports, documents, or studies relevant to the proposed PFD and project
9. What are the plans or concepts under consideration relative to operating responsibility – who will hire employees, manage and administer the completed facility? Is there an experienced operator?
10. Copies of existing contractual agreements pertinent to the formation and ultimate financing and support of the project
11. MOU or other documents outlining expected contractual agreements pertinent to the formation and ultimate financing and support of the project

Facilities developed by PFDs are considered public facilities and subject to prevailing wages.

With the scenario proposed by the UKCCRC, Kittitas County would be asked to create a county-wide Public Facilities District, which would be responsible for developing and proposing voter-approved or other revenues to fund designated public recreation facilities within the County.

Financial Feasibility:
For discussion and planning purposes, estimated revenues, financing expenditures have been developed to explore the funding capacity of a PFD in Kittitas County. More information will be provided at the meeting. We used a county-wide voter-approved 0.2% sales and use tax for revenues, beginning in 2027, to provide the following estimates:

Estimated Sales Tax revenues for 0.2% in Kittitas County (this includes all incorporated and unincorporated areas, based on revenue trends in 2025): $4 million annually

- Annual amount split 50% (if two projects were funded within Kittitas County): $2 million
- Annual amount split by property valuation (Upper County versus Lower County): $2.78 million
- Annual amount split by location of sales: $3.1 million

Using an Estimated Cost of Fieldhouse Funding Gap: $7 million; plus $500,000-$1 million operations and maintenance (high)

- 20-Year Debt Service @ 5%; Annual Debt Payments of approximately - $622K
- 30-Year Debt Service @ 5.5%; Annual Debt Payments of approximately - $528K

Using an Estimated Cost of Pool Replacement: $25 million; plus $1 million annual operations & maintenance

- 20-Year Debt Service @ 5%; Annual Debt Payments of approximately - $2.2 million
- 30-Year Debt Service @ 5.5%; Annual Debt Payments of approximately - $1.9 million

*Debt Service assumed the cost of issuance at 1.5% or the principal amount which is a conservative figure at this level of borrowing.

Financial Impact:
This item is for discussion purposes only at this time.

Budget Adjustment: No

Attachments:
1. RCW Chapter 36.100

Chapter 36.100 RCW
PUBLIC FACILITIES DISTRICTS

Sections

36.100.010 Public facilities districts—Creation—Approval of taxes by election—Corporate powers—Property transfer—Agreements.
36.100.020 Governance—Board of directors.
36.100.025 Independent financial feasibility review—When required—Public document.
36.100.027 Statutorily authorized taxing authority.
36.100.030 Facilities—Agreements—Fees.
36.100.035 Additional powers and restrictions on district that constructs baseball stadium.
36.100.036 Donated moneys for baseball stadium.
36.100.037 Baseball stadium construction agreement.
36.100.040 Lodging tax authorized—Annual payment amount—Payment of obligations—Application of other tax provisions.
36.100.042 Lodging license fee or tax in excess of rate imposed on retail businesses prohibited.
36.100.050 Ad valorem property tax.
36.100.060 General obligation bonds—Termination, reauthorization of excise tax.
36.100.070 Acquisition and transfer of real and personal property.
36.100.080 Direct or collateral attack barred after thirty days.
36.100.090 Tax deferral—New public facilities.
36.100.100 Ex officio treasurer.
36.100.110 Travel, expense reimbursement policy—Required.
36.100.120 Travel, expense reimbursement policy—Limitations.
36.100.130 Board of directors—Compensation.
36.100.140 Liability insurance.
36.100.150 Costs of defense.
36.100.160 Expenditure of funds—Purposes.
36.100.170 Employees—Benefits.
36.100.180 Service provider agreements—Competitive solicitation process for personal service contracts of one hundred fifty thousand dollars or more—Exceptions.
36.100.190 Purchases and sales—Procedures.
36.100.200 Revenue bonds—Limitations.
36.100.205 Bonds issued are securities.
36.100.210 Tax on admissions.
36.100.220 Tax on vehicle parking charges.
36.100.230 Transfer of property, assets, and other interests from state convention and trade center public nonprofit to district—Necessary actions.
36.100.240 Eminent domain authorized.
36.100.905 Construction—2010 1st sp.s. c 15.

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Sales and use tax for public facilities districts: RCW 82.14.048.

Sales and use tax imposed by public facilities districts for regional centers: RCW 82.14.390.

RCW 36.100.010 Public facilities districts—Creation—Approval of taxes by election—Corporate powers—Property transfer—Agreements. (1) One or more public facilities districts may be created in any county and must be coextensive with the boundaries of the county.

(2) A public facilities district is created upon adoption of a resolution providing for the creation of such a district by the county legislative authority in which the proposed district is located.

(3) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(4) Except as provided in RCW 36.100.040 (4) and (5), no taxes authorized under this chapter may be assessed or levied unless a majority of the voters of the public facilities district has approved such tax at a general or special election. A single ballot proposition may both validate the imposition of the sales and use tax under RCW 82.14.048 and the excise tax under RCW 36.100.040(1).

(5)(a) A public facilities district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, including contracts with public and private parties, to acquire, own, sell, transfer, lease, and otherwise acquire or dispose of property, to grant concessions under terms approved by the public facilities district, and to sue and be sued.

(b) A public facilities district created by a county with a population of one million five hundred thousand or more to acquire, own, and operate a convention and trade center transferred from a public nonprofit corporation may continue to contract with the Seattle-King county convention and visitors' bureau or its successor in interest for marketing the convention and trade center facility and services.

(6) A public facilities district may enter into contracts with a county for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

(7) The legislative authority of a city or county, the board of directors of a public nonprofit corporation, or the state of Washington may transfer property to a public facilities district created under this chapter, with or without consideration. No property that is encumbered with debt or that is in need of major capital renovation may be transferred to the district without the agreement of the district and revenues adequate to retire the existing indebtedness.

(8) A public facilities district may enter into agreements with the state, any municipal corporation, or any other governmental entity for the design, financing, acquisition, development, construction, reconstruction, lease, remodeling, alteration, maintenance, equipping, reequipping, repair, operation, or management of one or more facilities of the parties thereto. Agreements may provide that any party to the contract designs, finances, acquires, develops, constructs, reconstructs, remodels, alters, maintains, equips, reequips, repairs, and operates one or more facilities for the other party or parties to the contract. A public facilities district may enter into an agreement with the state, any municipal corporation, or other public or private entity that will assist a public facilities

district in the financing of all or any part of a district facility on such terms as may be determined by agreement between the respective parties, including without limitation by a loan, guaranty, or other financing agreement. [2010 1st sp.s. c 15 s 2; 2002 c 218 s 26; 1995 3rd sp.s. c 1 s 301; 1995 1st sp.s. c 14 s 1; 1995 c 396 s 1; 1989 1st ex.s. c 8 s 1; 1988 ex.s. c 1 s 11.]

Findings—Intent—2010 1st sp.s. c 15: "(1) The legislature finds that conventions and trade shows provide both direct and indirect civic and economic benefits. It is the intent of the legislature to provide for the transfer of the governance and financing of the state convention and trade center to a public facilities district formed by a county with a population of one million five hundred thousand or more to acquire, own, and operate the convention and trade center. The legislature also intends to replace, in connection with such transfer, the authority under chapter 67.40 RCW of the state and city to impose excise taxes on the sale of or charge made for the furnishing of lodging to fund the state convention and trade center with authority for the public facilities district to impose lodging taxes at these rates, without affecting the existing authority of the state, county, cities, and other municipal corporations to impose taxes on the sale or charge made for the furnishing of lodging under existing caps on the aggregate rate that may be charged.

(2) The legislature further finds that the location of the convention and trade center particularly benefits and increases the occupancy of larger hotels and other lodging facilities in the city in which it is located and to a lesser extent in the remainder of the county in which it is located. The legislature finds that imposing excise taxes on the sale of or charge made for the furnishing of lodging at the rates authorized in section 5 of this act is an appropriate method of paying for the cost of acquiring, constructing, owning, remodeling, maintaining, equipping, reequipping, repairing, altering, and operating a convention and trade center." [2010 1st sp.s. c 15 s 1.]

Construction—2010 1st sp.s. c 15: "The provisions of *this chapter must be liberally construed to effect the policies and purposes of *this chapter." [2010 1st sp.s. c 15 s 20.]

***Reviser's note:** The reference to "this chapter" appears to be erroneous. Reference to chapter 36.100 RCW was apparently intended.

Severability—Savings—Construction—2002 c 218: See notes following RCW 35.81.005.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Severability—1995 1st sp.s. c 14: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 14 s 12.]

Effective dates—1995 1st sp.s. c 14: "(1) Sections 1 through 9 and 11 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995.

(2) Sections 10 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995]." [1995 1st sp.s. c 14 s 13.]

Severability—1995 c 396: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 396 s 19.]

RCW 36.100.020 Governance—Board of directors. (1)(a) A public facilities district must be governed by a board of directors consisting of five, seven, or nine members as provided in this section.

(b) If the largest city in the county has a population that is at least forty percent of the total county population, the board of directors of the public facilities district must consist of five members selected as follows:

(i) Two members appointed by the county legislative authority to serve for four-year staggered terms;

(ii) Two members appointed by the city council of the largest city in the county to serve for four-year staggered terms; and

(iii) One person to serve for a four-year term who is selected by the other directors.

(c)(i) Except as provided in (c)(ii) of this subsection (1), if the largest city in the county has a population of less than forty percent of the total county population, the county legislative authority must establish in the resolution creating the public facilities district whether the board of directors of the public facilities district has either five or seven members, and the county legislative authority must appoint the members of the board of directors to reflect the interests of cities and towns in the county, as well as the unincorporated area of the county.

(ii) However, if the county has a population of one million five hundred thousand or more, the largest city in the county has a population of less than forty percent of the total county population, and the county operates under a county charter, which provides for an elected county executive, the members of the board of directors must be appointed as follows:

(A) If the public facilities district is created to construct a baseball stadium as defined in RCW 82.14.0485, three members must be appointed by the governor and the remaining members must be appointed by the county executive subject to confirmation by the county legislative authority. Of the members appointed by the governor, the speaker of the house of representatives and the majority leader of the senate must each recommend to the governor a person to be appointed to the board; and

(B) If the public facilities district is created to acquire, own, and operate a convention and trade center, following the expiration of the terms of the initial board of directors, three members must be appointed by the governor, three members must be nominated by the county executive subject to confirmation by the county legislative authority, and three members must be nominated by the mayor of the city in which the convention and trade center is located subject to confirmation by the city legislative authority. Members of the board of directors may not be members of the legislative authority of the county or any city within the county.

(d) The initial board of directors of a public facilities district created in a county of one million five hundred thousand or more to acquire, own, and operate a convention and trade center must be comprised of the nine members of the board of the public nonprofit corporation that transfers the convention and trade center to the public facilities district under RCW 36.100.230. The governor must designate which of the initial board members must serve two-year terms and which must serve four-year terms and identify the board positions to which successors to initial directors are to be appointed by the county and the city.

(2) At least one member on the board of directors must be representative of the lodging industry in the public facilities district before the public facilities district imposes the excise tax under RCW 36.100.040(1). Of the members of the board of directors of a public facilities district created in a county of one million five hundred thousand or more to acquire, own, and operate a convention and trade center, one of the governor's appointments and one of the county's appointments must be representative of the lodging industry in the public facilities district and one of the city's appointments must be representative of organized labor, except that these requirements do not apply to the initial board of such district.

(3) Members of the board of directors must serve four-year terms of office, except that two of the initial five board members, three of the initial seven board members, and four of the initial nine board members must serve two-year terms of office.

(4) A vacancy must be filled in the same manner as the original appointment was made and the person appointed to fill a vacancy must serve for the remainder of the unexpired term of the office for the position to which he or she was appointed.

(5) Any director may be removed from office by the person or entity that appointed or confirmed such director for any reason or for no reason as follows: A director appointed by the governor may be removed from office by the governor; and any director confirmed by a city or county legislative authority may be removed from office by action of at least two-thirds of the members of the legislative authority that confirmed the director. [2010 1st sp.s. c 15 s 3; 1995 3rd sp.s. c 1 s 302; 1995 1st sp.s. c 14 s 2; 1995 c 396 s 2; 1989 1st ex.s. c 8 s 2; 1988 ex.s. c 1 s 12.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.025 Independent financial feasibility review—When required—Public document. (1) An independent financial feasibility review under this section is required to be performed prior to any of the following events:

(a) The formation of a public facilities district under this chapter;

(b) The issuance of any indebtedness, excluding the issuance of obligations to refund or replace such indebtedness, by a public facilities district under this chapter; or

(c) The long-term lease, purchase, or development of a facility under this chapter.

(2) The independent financial feasibility review required by this section must be conducted by the department of commerce through the municipal research and services center under RCW 43.110.030 or under a contract with another entity under the authority of RCW 43.110.080. The review must examine the potential costs to be incurred by the public facility [facilities] district and the adequacy of revenues or expected revenues to meet those costs. The cost of the independent financial feasibility review must be borne by the public facility [facilities] district or the local government proposing to form a public facility [facilities] district.

(3) The independent financial feasibility review, upon completion, must be a public document and must be submitted to the governor, the state treasurer, the state auditor, the public facility [facilities] district and participating local political subdivisions, and appropriate committees of the legislature. [2012 c 4 s 2.]

RCW 36.100.027 Statutorily authorized taxing authority. After June 7, 2012, the statutorily authorized taxing authority of a public facility [facilities] district may not be restricted in any manner by the forming jurisdiction or jurisdictions or by any action of the public facility [facilities] district. [2012 c 4 s 4.]

RCW 36.100.030 Facilities—Agreements—Fees. (1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate (a) sports facilities, entertainment facilities, convention facilities, including without limitation any convention and trade center transferred from a public nonprofit corporation under RCW 36.100.230(1), or regional centers as defined in RCW 35.57.020, and (b) for districts formed after January 1, 2000, recreational facilities other than ski areas, together with contiguous parking facilities. The taxes that are provided for in this chapter may only be imposed for these purposes, including without limitation implementing any redemption, prepayment, or legal defeasance of outstanding obligations under RCW 36.100.230(3)(a).

(2) A public facilities district may enter into agreements under chapter 39.34 RCW for the design, financing, acquisition, development, construction, reconstruction, lease, remodeling, alteration, maintenance, equipping, reequipping, repair, operation, or management of such facilities and may enter into contracts under chapter 39.34 RCW where any party to the contract provides and operates such facilities for the other party or parties to the contract. A public facilities district may enter into agreements under chapter 39.34 RCW that will assist a public facilities district in the financing of all

or any part of a district facility on such terms as may be determined by agreement between the respective parties, including without limitation by a loan, guaranty, or other financing agreement.

(3) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

(4) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any of its public facilities.

(5) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations. [2010 1st sp.s. c 15 s 4; 2003 c 376 s 1; 1999 c 165 s 16; 1995 1st sp.s. c 14 s 3; 1995 c 396 s 3; 1989 1st ex.s. c 8 s 3; 1988 ex.s. c 1 s 13.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.035 Additional powers and restrictions on district that constructs baseball stadium. In addition to other powers and restrictions on a public facilities district, the following shall apply to a public facilities district, located in a county with a population of one million or more, that constructs a baseball stadium:

(1) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to determine the stadium site;

(2) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to establish the overall scope of the stadium project, including, but not limited to, the stadium itself, associated parking facilities, associated retail and office development that are part of the stadium facility, and ancillary services or facilities;

(3) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the final authority to make the final determination of the stadium design and specifications;

(4) The public facilities district shall have the authority to contract with the baseball team that will use the stadium to obtain architectural, engineering, environmental, and other professional services related to the stadium site and design options, environmental study requirements, and obtaining necessary permits for the stadium facility;

(5) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to establish the project budget and bidding specifications and requirements on the stadium project;

(6) The public facilities district, in consultation with the professional baseball team that will use the stadium and the county in which the public facilities district is located, shall have the authority to structure the financing of the stadium facility project; and

(7) The public facilities district shall consult with the house of representatives executive rules committee and the senate facilities and operations committee before selecting a name for the stadium.

As used in this section, "stadium" and "baseball stadium" mean a "baseball stadium" as defined in RCW 82.14.0485. [1995 3rd sp.s. c 1 s 303.]

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

RCW 36.100.036 Donated moneys for baseball stadium. A public facilities district may accept and expend moneys that may be donated for the purpose of a baseball stadium as defined in RCW 82.14.0485. [1995 3rd sp.s. c 1 s 304.]

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

RCW 36.100.037 Baseball stadium construction agreement. The public facilities district, the county, and the city with the largest population in the county shall enter into an agreement regarding the construction of a baseball stadium as defined in RCW 82.14.0485. The agreement shall address, but not be limited to:

(1) Expedited permit processing for the design and construction of the project;

(2) Expedited environmental review processing;

(3) Expedited processing of requests for street, right-of-way, or easement vacations necessary for the construction of the project; and

(4) Other items deemed necessary for the design and construction of the project. [1995 3rd sp.s. c 1 s 308.]

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

RCW 36.100.040 Lodging tax authorized—Annual payment amount—Payment of obligations—Application of other tax provisions. ***(Effective until July 1, 2035.)*** (1) A public facilities district may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than 40 lodging units. Except for any tax imposed under subsection (4) or (5) of this section, if a public facilities district has not imposed such an excise tax prior to December 31, 1995, the public facilities district may only impose the excise tax if a ballot proposition authorizing the imposition of the tax has been approved by a simple majority vote of voters of the public facilities district voting on the proposition.

(2) The rate of the tax may not exceed two percent and the proceeds of the tax may only be used for the acquisition, design,

construction, remodeling, maintenance, equipping, reequipping, repairing, and operation of its public facilities. This excise tax may not be imposed until the district has approved the proposal to acquire, design, and construct the public facilities.

(3) Except for a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, and operating a convention and trade center, a public facilities district may not impose the tax authorized in this section if, after the tax authorized in this section was imposed, the effective combined rate of state and local excise taxes, including sales and use taxes and excise taxes on lodging, imposed on the sale of or charge made for furnishing of lodging in any jurisdiction in the public facilities district exceeds eleven and one-half percent.

(4)(a) To replace the tax authorized by *RCW 67.40.090, a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, operating, renovating, and expanding a convention and trade center may impose an excise tax on the sale of or charge made for the furnishing of lodging (including but not limited to any short-term rental) that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on:

(i) Any premises:

(A) Having fewer than 60 lodging units if the premises is located in a town with a population less than three hundred; or

(B) Classified as a hostel;

(ii) Any lodging that is concurrently subject to a tax on engaging in the business of being a short-term rental operator imposed by a city in which a convention and trade center is located; or

(iii) Any lodging that is operated by a university health care system exclusively for family members of patients.

(b) The rate of the tax may not exceed seven percent within the portion of the district that corresponds to the boundaries of the largest city within the public facilities district and may not exceed 2.8 percent in the remainder of the district. The tax imposed under this subsection (4) may not be collected prior to the transfer date defined in RCW 36.100.230.

(5) To replace the tax authorized by *RCW 67.40.130, a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, operating, renovating, and expanding a convention and trade center may impose an additional excise tax on the sale of or charge made for the furnishing of lodging (including but not limited to any short-term rental) that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises: (a) Having fewer than sixty lodging units if the premises is located in a town with a population less than three hundred; or (b) classified as a hostel. The rate of the additional excise tax may not exceed two percent and may be imposed only within the portion of the district that corresponds to the boundaries of the largest city within the public facilities district and may not be imposed in the remainder of the district. The tax imposed under this subsection (5) may not be collected prior to the transfer date specified in RCW 36.100.230. The tax imposed under this subsection (5) must be credited against the amount of the tax otherwise due to the state from those same taxpayers under chapter 82.08 RCW. The tax under this subsection (5) may be imposed only for the purpose of paying or securing the payment of the

principal of and interest on obligations issued or incurred by the public facilities district and paying annual payment amounts to the state under subsection (6)(a) of this section. The authority to impose the additional excise tax under this subsection (5) expires on the date that is the earlier of (i) July 1, 2029, or (ii) the date on which all obligations issued or incurred by the public facilities district to implement any redemption, prepayment, or legal defeasance of outstanding obligations under RCW 36.100.230(3)(a) are no longer outstanding.

(6)(a) Commencing with the first full fiscal year of the state after the transfer date defined in RCW 36.100.230 and for so long as a public facilities district imposes a tax under subsection (5) of this section, the public facilities district must transfer to the state of Washington on June 30th of each state fiscal year an annual payment amount.

(b) For the purposes of this subsection (6), "annual payment amount" means an amount equal to revenues received by the public facilities district in the fiscal year from the additional excise tax imposed under subsection (5) of this section plus an interest charge calculated on one-half the annual payment amount times an interest rate equal to the average annual rate of return for the prior calendar year in the Washington state local government investment pool created in chapter 43.250 RCW.

(c)(i) If the public facilities district in any fiscal year is required to apply additional lodging excise tax revenues to the payment of principal and interest on obligations it issues or incurs, and the public facilities district is unable to pay all or any portion of the annual payment amount to the state, the deficiency is deemed to be a loan from the state to the public facilities district for the purpose of assisting the district in paying such principal and interest and must be repaid by the public facilities district to the state after providing for the payment of the principal of and interest on obligations issued or incurred by the public facilities district, all on terms established by an agreement between the state treasurer and the public facilities district executed prior to the transfer date. Any agreement between the state treasurer and the public facilities district must specify the term for the repayment of the deficiency in the annual payment amount with an interest rate equal to the twenty bond general obligation bond buyer index plus one percentage point.

(ii) Outstanding obligations to repay any loans deemed to have been made to the public facilities district as provided in any such agreements between the state treasurer and the public facilities district survive the expiration of the additional excise tax under subsection (5) of this section.

(iii) For the purposes of this subsection (6)(c), "additional lodging excise tax revenues" mean the tax revenues received by the public facilities district under subsection (5) of this section.

(7) A public facilities district is authorized to pledge any of its revenues, including without limitation revenues from the taxes authorized in this section, to pay or secure the payment of obligations issued or incurred by the public facilities district, subject to the terms established by the board of directors of the public facilities district. So long as a pledge of the taxes authorized under this section is in effect, the legislature may not withdraw or modify the authority to levy and collect the taxes at the rates permitted under this section and may not increase the annual

payment amount to be transferred to the state under subsection (6) of this section.

(8) The department of revenue must perform the collection of such taxes on behalf of the public facilities district at no cost to the district, and the state treasurer must distribute those taxes as available on a monthly basis to the district or, upon the direction of the district, to a fiscal agent, paying agent, or trustee for obligations issued or incurred by the district.

(9) Except as expressly provided in this chapter, all of the provisions contained in RCW 82.08.050 and 82.08.060 and chapter 82.32 RCW have full force and application with respect to taxes imposed under the provisions of this section.

(10) In determining the effective combined rate of tax for purposes of the limit in subsection (3) of this section, the tax rate under RCW 82.14.530 is not included.

(11) The taxes imposed in this section do not apply to sales of temporary medical housing exempt under RCW 82.08.997.

(12) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Community-initiated equitable development" means strategic capacity-building and capital investments that are determined and directed by communities who have experienced significant historical and ongoing social and economic vulnerabilities with the purpose to offset disparities, prevent or reduce displacement, address marginalization, and improve access to opportunities, resources, and outcomes.

(b)(i) "Hostel" means a structure or facility where a majority of the rooms for sleeping accommodations are hostel dormitories containing a minimum of four standard beds designed for single-person occupancy within the facility. Hostel accommodations are supervised and must include at least one common area and at least one common kitchen for guest use.

(ii) For the purpose of this subsection (12)(b), "hostel dormitory" means a single room, containing four or more standard beds designed for single-person occupancy, used exclusively as nonprivate communal sleeping quarters, generally for unrelated persons, where such persons independently acquire the right to occupy individual beds, with the operator supervising and determining which bed each person will occupy.

(c) "Short-term rental" means a lodging use, that is not a hotel or motel, in which a dwelling unit, or portion thereof, that is offered or provided to a guest or guests by a short-term rental operator for a fee for fewer than thirty consecutive nights. The term "short-term rental" does not include:

(i) A dwelling unit, or portion thereof, that is used by the same person for thirty or more consecutive nights; and

(ii) A dwelling unit, or portion thereof, that is operated by an organization or government entity that is registered as a charitable organization with the secretary of state, state of Washington, and/or is classified by the federal internal revenue service as a public charity or a private foundation, and provides temporary housing to individuals who are being treated for trauma, injury, or disease and/or their family members.

(13) Taxes authorized under subsections (4) and (5) of this section are deemed to have been imposed on December 1, 2000, for the purposes of RCW 82.14.410.

(14)(a) Beginning on the date that the condition in (b) of this subsection is satisfied, a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, operating, renovating, and expanding a convention and trade center must make quarterly payments from tax revenue collected by a public facilities district as a result of the tax imposed in chapter 245, Laws of 2018 to a city in which the convention and trade center is located that has authorized on or before December 31, 2017, a tax on engaging in the business of being a short-term rental operator. Such payments must be made no more than thirty days after the last day of each fiscal quarter and must equal the portion of the revenues received by the public facilities district during such fiscal quarter from the lodging taxes authorized under subsection (4) of this section that are determined by the department of revenue to be derived from the short-term rental activity within such city.

(b) The public facilities district is not required to make any payments under this subsection (14) unless the city has repealed any ordinance authorizing a tax on engaging in the business of being a short-term rental operator.

(c) The public facilities district is not required to make any payments to a city under this subsection (14), if the city, after satisfying the condition in (b) of this subsection imposes any tax specifically on the act of engaging in the business of being a short-term rental operator.

(d) The proceeds of any payments made by a public facilities district to a city under this subsection (14) must be used by the city to support community-initiated equitable development and affordable housing programs, as determined by the city in its sole discretion.

(15) 50 percent of any tax revenue collected by a public facilities district as a result of the tax imposed in chapter 245, Laws of 2018 must be distributed by the public facilities district to the county in which the convention and trade center is located. However, if a city has satisfied the condition in subsection (14)(b) of this section, payments made under this subsection to the county in which the convention and trade center is located must be calculated after deducting any payments made to a city under subsection (14) of this section from the total tax revenue received by the public facilities district as a result of the enactment of chapter 245, Laws of 2018. The proceeds of such payments to a county under this subsection (15) must be used by the county to support community-initiated equitable development and affordable housing programs, as determined by the county, in its sole discretion. [2025 c 376 s 1; 2018 c 245 s 2; 2015 3rd sp.s. c 24 s 702; 2015 c 151 s 1; 2010 1st sp.s. c 15 s 5; 2008 c 137 s 5; 2002 c 178 s 5; 1995 c 396 s 4; 1989 1st ex.s. c 8 s 4; 1988 ex.s. c 1 s 14.]

***Reviser's note:** RCW 67.40.090 and 67.40.130 were repealed by 2010 1st sp.s. c 15 s 14, effective November 30, 2010.

Expiration date—2025 c 376: "This act expires July 1, 2035." [2025 c 376 s 2.]

Effective date—2018 c 245: "This act takes effect October 1, 2018." [2018 c 245 s 3.]

Findings—Intent—2018 c 245: "(1) The legislature finds that it is in the public interest that taxation of lodging not distort the market for different types of lodging and that all types of lodging participate in the funding of the public benefits supported with lodging tax revenue.

(2) The legislature further finds that, with respect to the lodging taxes levied under RCW 36.100.040 (4) and (5), the current significant disparity in the taxation of sales of lodging on premises having fewer than sixty lodging units compared to premises having sixty or more units is contrary to the public interest in both equitable taxation and adequately supporting the public benefits funded by lodging tax revenue.

(3) It is the intent of this act to equalize the taxation levied under RCW 36.100.040 (4) and (5) by applying it to all lodging, regardless of the number of lodging units in premises subject to such taxation." [2018 c 245 s 1.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

Effective date—2015 c 151: "This act takes effect August 1, 2015." [2015 c 151 s 2.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Effective date—2008 c 137: See note following RCW 82.08.997.

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.040 Lodging tax authorized—Annual payment amount—Payment of obligations—Application of other tax provisions. ***(Effective July 1, 2035.)*** (1) A public facilities district may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than forty lodging units. Except for any tax imposed under subsection (4) or (5) of this section, if a public facilities district has not imposed such an excise tax prior to December 31, 1995, the public facilities district may only impose the excise tax if a ballot proposition authorizing the imposition of the tax has been approved by a simple majority vote of voters of the public facilities district voting on the proposition.

(2) The rate of the tax may not exceed two percent and the proceeds of the tax may only be used for the acquisition, design, construction, remodeling, maintenance, equipping, reequipping, repairing, and operation of its public facilities. This excise tax may not be imposed until the district has approved the proposal to acquire, design, and construct the public facilities.

(3) Except for a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, and operating a convention and trade center, a public facilities district may not impose the tax

authorized in this section if, after the tax authorized in this section was imposed, the effective combined rate of state and local excise taxes, including sales and use taxes and excise taxes on lodging, imposed on the sale of or charge made for furnishing of lodging in any jurisdiction in the public facilities district exceeds eleven and one-half percent.

(4)(a) To replace the tax authorized by *RCW 67.40.090, a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, operating, renovating, and expanding a convention and trade center may impose an excise tax on the sale of or charge made for the furnishing of lodging (including but not limited to any short-term rental) that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on:

(i) Any premises:

(A) Having fewer than sixty lodging units if the premises is located in a town with a population less than three hundred; or

(B) Classified as a hostel;

(ii) Any lodging that is concurrently subject to a tax on engaging in the business of being a short-term rental operator imposed by a city in which a convention and trade center is located; or

(iii) Any lodging that is operated by a university health care system exclusively for family members of patients.

(b) The rate of the tax may not exceed seven percent within the portion of the district that corresponds to the boundaries of the largest city within the public facilities district and may not exceed 2.8 percent in the remainder of the district. The tax imposed under this subsection (4) may not be collected prior to the transfer date defined in RCW 36.100.230.

(5) To replace the tax authorized by *RCW 67.40.130, a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, operating, renovating, and expanding a convention and trade center may impose an additional excise tax on the sale of or charge made for the furnishing of lodging (including but not limited to any short-term rental) that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises: (a) Having fewer than sixty lodging units if the premises is located in a town with a population less than three hundred; or (b) classified as a hostel. The rate of the additional excise tax may not exceed two percent and may be imposed only within the portion of the district that corresponds to the boundaries of the largest city within the public facilities district and may not be imposed in the remainder of the district. The tax imposed under this subsection (5) may not be collected prior to the transfer date specified in RCW 36.100.230. The tax imposed under this subsection (5) must be credited against the amount of the tax otherwise due to the state from those same taxpayers under chapter 82.08 RCW. The tax under this subsection (5) may be imposed only for the purpose of paying or securing the payment of the principal of and interest on obligations issued or incurred by the public facilities district and paying annual payment amounts to the state under subsection (6)(a) of this section. The authority to impose the additional excise tax under this subsection (5) expires on the date that is the earlier of (i) July 1, 2029, or (ii) the date on which all obligations issued or incurred by the public facilities district to implement any redemption, prepayment, or legal defeasance

of outstanding obligations under RCW 36.100.230(3)(a) are no longer outstanding.

(6)(a) Commencing with the first full fiscal year of the state after the transfer date defined in RCW 36.100.230 and for so long as a public facilities district imposes a tax under subsection (5) of this section, the public facilities district must transfer to the state of Washington on June 30th of each state fiscal year an annual payment amount.

(b) For the purposes of this subsection (6), "annual payment amount" means an amount equal to revenues received by the public facilities district in the fiscal year from the additional excise tax imposed under subsection (5) of this section plus an interest charge calculated on one-half the annual payment amount times an interest rate equal to the average annual rate of return for the prior calendar year in the Washington state local government investment pool created in chapter 43.250 RCW.

(c)(i) If the public facilities district in any fiscal year is required to apply additional lodging excise tax revenues to the payment of principal and interest on obligations it issues or incurs, and the public facilities district is unable to pay all or any portion of the annual payment amount to the state, the deficiency is deemed to be a loan from the state to the public facilities district for the purpose of assisting the district in paying such principal and interest and must be repaid by the public facilities district to the state after providing for the payment of the principal of and interest on obligations issued or incurred by the public facilities district, all on terms established by an agreement between the state treasurer and the public facilities district executed prior to the transfer date. Any agreement between the state treasurer and the public facilities district must specify the term for the repayment of the deficiency in the annual payment amount with an interest rate equal to the twenty bond general obligation bond buyer index plus one percentage point.

(ii) Outstanding obligations to repay any loans deemed to have been made to the public facilities district as provided in any such agreements between the state treasurer and the public facilities district survive the expiration of the additional excise tax under subsection (5) of this section.

(iii) For the purposes of this subsection (6)(c), "additional lodging excise tax revenues" mean the tax revenues received by the public facilities district under subsection (5) of this section.

(7) A public facilities district is authorized to pledge any of its revenues, including without limitation revenues from the taxes authorized in this section, to pay or secure the payment of obligations issued or incurred by the public facilities district, subject to the terms established by the board of directors of the public facilities district. So long as a pledge of the taxes authorized under this section is in effect, the legislature may not withdraw or modify the authority to levy and collect the taxes at the rates permitted under this section and may not increase the annual payment amount to be transferred to the state under subsection (6) of this section.

(8) The department of revenue must perform the collection of such taxes on behalf of the public facilities district at no cost to the district, and the state treasurer must distribute those taxes as available on a monthly basis to the district or, upon the direction of

the district, to a fiscal agent, paying agent, or trustee for obligations issued or incurred by the district.

(9) Except as expressly provided in this chapter, all of the provisions contained in RCW 82.08.050 and 82.08.060 and chapter 82.32 RCW have full force and application with respect to taxes imposed under the provisions of this section.

(10) In determining the effective combined rate of tax for purposes of the limit in subsection (3) of this section, the tax rate under RCW 82.14.530 is not included.

(11) The taxes imposed in this section do not apply to sales of temporary medical housing exempt under RCW 82.08.997.

(12) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Hostel" means a structure or facility where a majority of the rooms for sleeping accommodations are hostel dormitories containing a minimum of four standard beds designed for single-person occupancy within the facility. Hostel accommodations are supervised and must include at least one common area and at least one common kitchen for guest use.

(ii) For the purpose of this subsection (12)(a), "hostel dormitory" means a single room, containing four or more standard beds designed for single-person occupancy, used exclusively as nonprivate communal sleeping quarters, generally for unrelated persons, where such persons independently acquire the right to occupy individual beds, with the operator supervising and determining which bed each person will occupy.

(b) "Short-term rental" means a lodging use, that is not a hotel or motel, in which a dwelling unit, or portion thereof, that is offered or provided to a guest or guests by a short-term rental operator for a fee for fewer than thirty consecutive nights. The term "short-term rental" does not include:

(i) A dwelling unit, or portion thereof, that is used by the same person for thirty or more consecutive nights; and

(ii) A dwelling unit, or portion thereof, that is operated by an organization or government entity that is registered as a charitable organization with the secretary of state, state of Washington, and/or is classified by the federal internal revenue service as a public charity or a private foundation, and provides temporary housing to individuals who are being treated for trauma, injury, or disease and/or their family members.

(13) Taxes authorized under subsections (4) and (5) of this section are deemed to have been imposed on December 1, 2000, for the purposes of RCW 82.14.410.

(14)(a) Beginning on the date that the condition in (b) of this subsection is satisfied, a public facilities district created within a county with a population of one million five hundred thousand or more for the purpose of acquiring, owning, operating, renovating, and expanding a convention and trade center must make quarterly payments from tax revenue collected by a public facilities district as a result of the tax imposed in chapter 245, Laws of 2018 to a city in which the convention and trade center is located that has authorized on or before December 31, 2017, a tax on engaging in the business of being a short-term rental operator. Such payments must be made no more than thirty days after the last day of each fiscal quarter and must equal the portion of the revenues received by the public facilities district during such fiscal quarter from the lodging taxes authorized under subsection (4) of this section that are determined by the department of revenue to be derived from the short-term rental activity within such city.

(b) The public facilities district is not required to make any payments under this subsection (14) unless the city has repealed any ordinance authorizing a tax on engaging in the business of being a short-term rental operator.

(c) The public facilities district is not required to make any payments to a city under this subsection (14), if the city, after satisfying the condition in (b) of this subsection imposes any tax specifically on the act of engaging in the business of being a short-term rental operator.

(d) The proceeds of any payments made by a public facilities district to a city under this subsection (14) must be used by the city to support community-initiated equitable development and affordable housing programs, as determined by the city in its sole discretion.

(15) Fifty percent of any tax revenue collected by a public facilities district as a result of the tax imposed in chapter 245, Laws of 2018 must be distributed by the public facilities district to the county in which the convention and trade center is located. However, if a city has satisfied the condition in subsection (14)(b) of this section, payments made under this subsection to the county in which the convention and trade center is located must be calculated after deducting any payments made to a city under subsection (14) of this section from the total tax revenue received by the public facilities district as a result of the enactment of chapter 245, Laws of 2018. The proceeds of such payments to a county under this subsection (15) must be used by the county to support affordable housing programs, as determined by the county, in its sole discretion. [2018 c 245 s 2; 2015 3rd sp.s. c 24 s 702; 2015 c 151 s 1; 2010 1st sp.s. c 15 s 5; 2008 c 137 s 5; 2002 c 178 s 5; 1995 c 396 s 4; 1989 1st ex.s. c 8 s 4; 1988 ex.s. c 1 s 14.]

***Reviser's note:** RCW 67.40.090 and 67.40.130 were repealed by 2010 1st sp.s. c 15 s 14, effective November 30, 2010.

Effective date—2018 c 245: "This act takes effect October 1, 2018." [2018 c 245 s 3.]

Findings—Intent—2018 c 245: "(1) The legislature finds that it is in the public interest that taxation of lodging not distort the market for different types of lodging and that all types of lodging participate in the funding of the public benefits supported with lodging tax revenue.

(2) The legislature further finds that, with respect to the lodging taxes levied under RCW 36.100.040 (4) and (5), the current significant disparity in the taxation of sales of lodging on premises having fewer than sixty lodging units compared to premises having sixty or more units is contrary to the public interest in both equitable taxation and adequately supporting the public benefits funded by lodging tax revenue.

(3) It is the intent of this act to equalize the taxation levied under RCW 36.100.040 (4) and (5) by applying it to all lodging, regardless of the number of lodging units in premises subject to such taxation." [2018 c 245 s 1.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

Effective date—2015 c 151: "This act takes effect August 1, 2015." [2015 c 151 s 2.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Effective date—2008 c 137: See note following RCW 82.08.997.

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.042 Lodging license fee or tax in excess of rate imposed on retail businesses prohibited. (1) Except as provided in chapters 35.101, 67.28, and 82.14 RCW, after January 1, 1983, no city, town, or county in which the tax under RCW 36.100.040 (4) and (5) is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail.

(2) For the purposes of this section, "sales at retail" has the same meaning as provided in RCW 82.04.050. [2010 1st sp.s. c 15 s 9.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

RCW 36.100.050 Ad valorem property tax. (1) A public facilities district may levy an ad valorem property tax, in excess of the one percent limitation, upon the property within the district for a one-year period to be used for operating or capital purposes whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) A public facilities district may provide for the retirement of voter-approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies, in excess of the one percent limitation, whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [1988 ex.s. c 1 s 15.]

RCW 36.100.060 General obligation bonds—Termination, reauthorization of excise tax. (1) To carry out the purpose of this chapter, a public facilities district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to one-half of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A public facilities district additionally may issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW

39.36.015, when authorized by the voters of the public facilities district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in this chapter.

(2) General obligation bonds may be issued with a maturity of up to thirty years, and must be issued and sold in accordance with the provisions of chapter 39.46 RCW. If the public facilities district is formed by a county with a population of one million five hundred thousand or more to acquire, own, and operate a convention and trade center, general obligation bonds may be issued with a maturity of up to forty years, and must be issued and sold in accordance with the provisions of chapter 39.46 RCW. In addition to the powers vested in it under RCW 39.46.030, a public facilities district created by a county with a population of one million five hundred thousand or more to acquire, own, and operate a convention and trade center may appoint, and may specify the rights and duties of, trustees with respect to its bonds, and such trustees may receive, hold, disburse, invest, and reinvest funds on the district's behalf and for the protection of the district's bond owners.

(3) The general obligation bonds may be payable from the operating revenues of the public facilities district in addition to the tax receipts of the district.

(4) The excise tax imposed pursuant to RCW 36.100.040(1) terminates upon final payment of all bonded indebtedness for its public facilities, except that the excise tax may be reauthorized by a public vote, in the same manner as originally authorized, for funding of additional public facilities or a regional center. [2010 1st sp.s. c 15 s 6; 1999 c 165 s 15; 1995 1st sp.s. c 14 s 4; 1995 c 396 s 5; 1989 1st ex.s. c 8 s 5; 1988 ex.s. c 1 s 16.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.070 Acquisition and transfer of real and personal property. A public facilities district may acquire and transfer real and personal property by lease, sublease, purchase, or sale. [1988 ex.s. c 1 s 17.]

RCW 36.100.080 Direct or collateral attack barred after thirty days. No direct or collateral attack on any public facilities district purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation by the county legislative authority. [1995 1st sp.s. c 14 s 5.]

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

RCW 36.100.090 Tax deferral—New public facilities. (1) The governing board of a public facilities district may apply for deferral of taxes on the construction of buildings, site preparation, and the acquisition of related machinery and equipment for a new public facility. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding the location of the public facility, estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the public facility. The use of the certificate shall be governed by rules established by the department of revenue.

(3) The public facilities district shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the public facility is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the public facilities district.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the public facilities district.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

(7) As used in this section, "public facility" means a baseball stadium with a retractable roof or canopy and natural turf. [1995 1st sp.s. c 14 s 6.]

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

RCW 36.100.100 Ex officio treasurer. The treasurer of the county in which a public facilities district is located must be the ex officio treasurer of the district, unless the board of directors of a public facilities district created in a county of one million five hundred thousand or more designates by resolution another person having experience in financial or fiscal matters as the treasurer of the district. Such a treasurer possesses all of the powers, responsibilities, and duties of, and is subject to the same restrictions as provided by law for, a county treasurer with regard to district financial matters. Such treasurer must be bonded for not less than twenty-five thousand dollars. [2010 1st sp.s. c 15 s 7; 1995 c 396 s 7.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.110 Travel, expense reimbursement policy—Required. The board of directors of the public facilities district shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such district officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher; and requirements governing the use of credit cards issued in the name of the district. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public facilities district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses. [1995 c 396 s 8.]

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.120 Travel, expense reimbursement policy—Limitations. The board of directors of the public facilities district may authorize payment of actual and necessary expenses of officers and employees for lodging, meals, and travel-related costs incurred in attending meetings or conferences on behalf of the public facilities district and strictly in the public interest and for public purposes. Officers and employees may be advanced sufficient sums to cover their anticipated expenses in accordance with rules adopted by the state auditor, which shall substantially conform to the procedures provided in RCW 43.03.150 through 43.03.210. [1995 c 396 s 9.]

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.130 Board of directors—Compensation. Each member of the board of directors of the public facilities district may receive compensation of fifty dollars per day for attending meetings or conferences on behalf of the district, not to exceed three thousand dollars per year. A director may waive all or a portion of his or her compensation under this section as to a month or months during his or her term of office, by a written waiver filed with the public facilities district. The compensation provided in this section is in addition to reimbursement for expenses paid to the directors by the public facilities district. [1995 c 396 s 10.]

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.140 Liability insurance. The board of directors of the public facilities district may purchase liability insurance with such limits as the directors may deem reasonable for the purpose of protecting and holding personally harmless district officers and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1995 c 396 s 11.]

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.150 Costs of defense. Whenever an action, claim, or proceeding is instituted against a person who is or was an officer or employee of the public facilities district arising out of the performance of duties for or employment with the district, the public facilities district may grant a request by the person that the attorney of the district's choosing be authorized to defend the claim, suit, or proceeding, and the costs of defense, attorneys' fees, and obligation for payments arising from the action may be paid from the district's funds. Costs of defense or judgment or settlement against the person shall not be paid in a case where the court has found that the person was not acting in good faith or within the scope of employment with or duties for the public facilities district. [1995 c 396 s 12.]

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.160 Expenditure of funds—Purposes. (1) The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining facilities of the district. For promotional activities the district board must: (a) Identify the proposed expenditure in its annual budget; and (b) adopt written rules governing promotional hosting by employees, agents, and the board, including requirements for identifying and evaluating the public benefits to be derived and documenting the public benefits realized.

(2) Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election. [2009 c 167 s 1; 1995 c 396 s 13.]

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.170 Employees—Benefits. The public facilities district shall have authority to create and fill positions, fix wages, salaries, and bonds therefor, pay costs involved in securing or arranging to secure employees, and establish benefits for employees, including holiday pay, vacations or vacation pay, retirement benefits, medical, life, accident, or health disability insurance, as approved by the board. Public facilities district board members, at their own expense, shall be entitled to medical, life, accident, or health disability insurance. Insurance for employees and board members shall not be considered compensation. District coverage for the board is not to exceed that provided public facilities district employees. [1995 c 396 s 14.]

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.180 Service provider agreements—Competitive solicitation process for personal service contracts of one hundred fifty thousand dollars or more—Exceptions. (1) The public facilities district may secure services by means of an agreement with a service provider. The public facilities district shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by district resolution.

(2) For personal service contracts of one hundred fifty thousand dollars or greater not otherwise governed by chapter 39.80 RCW, contracts for architectural and engineering services, a competitive solicitation process is required. The district shall establish the process by resolution, which must at a minimum include the following:

(a) Notice. A notice inviting statements of either qualifications or proposals, or both, from interested parties must be published in a newspaper of general circulation throughout the county in which the district is located at least ten days before the date for submitting the statements of qualifications or proposals.

(b) Description of services required. The request for statements of either qualifications or proposals, or both published or provided to interested parties must describe the services required and list the types of information and data required of each proposal. It may also describe the evaluation criteria and state the relative importance of the criteria if then available.

(c) Review and evaluation. The district shall establish a process to review and evaluate statements of either qualifications or proposals, or both. That process may include a selection board identified by the district or some other panel of evaluators. If appropriate, the reviewers may hear oral presentations by proposers.

(d) Selection. The evaluators shall select and rank the most qualified proposers. In selecting and ranking such proposers, the selection board shall consider the evaluation criteria established by the district and may consider such other information as may be secured during the evaluation process related to a proposer's qualifications and experience.

(e) Negotiations. The district shall enter into contract negotiations with the top-ranked proposer or proposers identified in the selection process. Negotiations may be conducted concurrently or sequentially as may be allowed by law.

(f) Approval. When negotiations are complete, the proposed contract will be presented to the district's governing body at its next regularly scheduled meeting for approval or ratification.

(3) Exceptions. The requirements of this section need not be met in the following circumstances:

(a) Emergency. When the contracting authority makes a finding that an emergency requires the immediate execution of the work involved. As used in this subsection, "emergency" has the same meaning as provided in *RCW 39.29.006;

(b) Contract amendment. Amendments to existing service contracts are exempt from these requirements; and

(c) Sole source. In the event that the services being sought can only be obtained from a single source, then the district shall make a formal written finding stating the factual basis for the exception and the solicitation requirements of this section do not apply. As used in this subsection, "sole source" has the same meaning as provided in *RCW 39.29.006.

(4) Prospective application. Nothing in this section affects the validity or effect of any district contract executed prior to July 26, 2009. [2009 c 533 s 4; 1995 c 396 s 15.]

***Reviser's note:** RCW 39.29.006 was repealed by 2012 c 224 s 29, effective January 1, 2013.

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.190 Purchases and sales—Procedures. In addition to provisions contained in chapter 39.04 RCW, the public facilities district is authorized to follow procedures contained in chapter 39.26 RCW for all purchases, contracts for purchase, and sales. [2015 c 79 s 3; 1995 c 396 s 16.]

Severability—1995 c 396: See note following RCW 36.100.010.

RCW 36.100.200 Revenue bonds—Limitations. (1) A public facilities district may issue revenue bonds to fund revenue generating facilities, or portions of facilities, which it is authorized to provide or operate. Whenever revenue bonds are to be issued, the board of directors of the district shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on such revenue bonds shall exclusively be payable. The board may obligate the district to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements, projects, or facilities, and all related additions, that are funded by the revenue bonds. This amount or proportion shall be a lien and charge against these revenues, subject only to operating and maintenance expenses. The board shall have due regard for the cost of operation and maintenance of the public improvements, projects, or facilities, or additions, that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. The board may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued pursuant to this section shall not be an indebtedness of the district issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the district arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The board of directors of the district shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [1995 c 396 s 17.]

Severability—1995 c 396: See note following RCW 36.100.010.

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

RCW 36.100.205 Bonds issued are securities. Bonds issued under this chapter are hereby made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds and other obligations of the state are now or may hereafter be authorized by law. [2010 1st sp.s. c 15 s 11.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

RCW 36.100.210 Tax on admissions. A public facility district may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to a regional center, as defined in RCW 35.57.020. This includes a tax on persons who are admitted free of charge or at reduced rates if other persons pay a charge or a regular higher charge for the same privileges or accommodations.

The term "admission charge" includes:

(1) A charge made for season tickets or subscriptions;

(2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;

(3) A charge made for food and refreshment if free entertainment, recreation, or amusement is provided;

(4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege

for which a general admission is charged, the combined charges shall be considered as the admission charge;

(5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile. [1999 c 165 s 17.]

RCW 36.100.220 Tax on vehicle parking charges. (1) A public facility district may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is owned or leased by the public facility district as part of a regional center, as defined in RCW 35.57.020, or a baseball stadium, as defined in RCW 82.14.0485. No county, city, or town within which the regional center or baseball stadium is located may impose a tax of the same or similar kind on any vehicle parking charges at the facility.

(2) For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred.

(3) The tax authorized under this section must be at the rate of not more than ten percent. The tax authorized by this section with respect to a parking facility associated with a baseball stadium must be used exclusively to fund repair, reequipping, and capital improvement of the baseball stadium, and is not subject to the requirements of RCW 36.100.010(4). [2011 1st sp.s. c 38 s 3; 1999 c 165 s 18.]

RCW 36.100.230 Transfer of property, assets, and other interests from state convention and trade center public nonprofit to district—Necessary actions. (1) On the transfer date the board of directors of a public nonprofit corporation formed under *RCW 67.40.020 that owns and operates a state convention and trade center must transfer all lands, facilities, equipment, assets, other interests in real, personal, and intangible property, and interests under contracts, leases, licenses, and agreements under the control of that board of directors to a public facilities district created as provided in RCW 36.100.010 by the county in which the convention and trade center is located pursuant to an agreement with the public facilities district, subject to the review and approval of the state treasurer.

(2) No real estate excise tax or other excise tax may be imposed with respect to the transfer of assets of the public nonprofit corporation to the public facilities district.

(3) For the purposes of this section, "transfer date" means the date on or prior to June 30, 2011, on which provision has been made for all of the following, pursuant to agreements and other necessary arrangements approved by the state treasurer:

(a) The redemption, prepayment, or legal defeasance on or prior to the transfer date of all outstanding borrowings and other financing obligations of the state of Washington and the public nonprofit corporation with respect to the state convention and trade center, including state bonds and certificates of participation and related financing contracts;

(b) The transfer to the public facilities district on the transfer date of the balances on deposit in the state convention and trade center operations account, the state convention and trade center account and other accounts relating to the state convention and trade center, including the revenues identified under (g)(ii) of this subsection (3);

(c) The imposition by the public facilities district of excise taxes on the sale of or charge made for the furnishing of lodging under RCW 36.100.040 (4) and (5) at the maximum rates permitted in those subsections;

(d) The transfer of all other assets and liabilities and, to the extent permissible by their terms, the assignment or transfer of all contracts and agreements of the public nonprofit corporation from the public nonprofit corporation to the public facilities district;

(e) The execution of an agreement settling all claims in the case of Tourism Alliance, a Washington nonprofit corporation; Craig Schafer; Claridge LLC, a Washington limited liability company; R.C. Hedreen Corporation, a Washington corporation; and on behalf of taxpayers, Andrew Olsen, Amy L. Dee, Christopher M. Dee, Clipper Navigation, Inc., a Washington corporation v. State of Washington and James L. McIntire, in his official capacity as State Treasurer of the State of Washington;

(f) The payment or provision for payment of all fees, costs, and expenses incurred by the state of Washington and the public nonprofit corporation to effect such transfer;

(g) An agreement of the public facilities district to transfer to the state on June 30, 2011, an amount equal to (i) the revenues from the tax imposed under RCW 36.100.040(5) during the state fiscal year ending June 30, 2011, plus (ii) the revenues from the tax imposed under **RCW 67.40.130 during the state fiscal year ending June 30, 2011; and

(h) The agreement between the state treasurer and the public facilities district, referred to in RCW 36.100.040(6)(c)(i). [2010 1st sp.s. c 15 s 8.]

Reviser's note: *(1) RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 s 15, effective December 30, 2010.

**(2) RCW 67.40.130 was repealed by 2010 1st sp.s. c 15 s 14, effective November 30, 2010.

Contingent effective date—2010 1st sp.s. c 15 s 14: "Section 14 of this act is effective contingent upon the transfer date occurring in section 8 of this act. If the transfer date occurs in section 8 of this act, section 14 of this act is effective on the transfer date. For the purposes of this section, "transfer date" has the same meaning as provided in section 8 of this act." [2010 1st sp.s. c 15 s 16.] The transfer date is November 30, 2010, and section 14 of this act takes effect November 30, 2010.

Contingent effective date—2010 1st sp.s. c 15 s 15: "Section 15 of this act is effective contingent upon the transfer date occurring in section 8 of this act. If the transfer date occurs in section 8 of this act, section 15 of this act is effective thirty days after the transfer date in section 8 of this act. For the purposes of this section, "transfer date" has the same meaning as provided in section 8 of this act." [2010 1st sp.s. c 15 s 17.] The transfer date is November 30, 2010, and section 15 of this act takes effect December 30, 2010.

Notice of effective dates—2010 1st sp.s. c 15 ss 16 and 17: "The state treasurer must provide written notice of the effective dates in sections 16 and 17 of this act to the department of revenue, the office of the code reviser, and others as deemed appropriate by the state treasurer." [2010 1st sp.s. c 15 s 18.] Written notice of the effective dates in sections 16 and 17 of this act [November 30, 2010, and December 30, 2010, respectively] was provided by the state treasurer to the office of the code reviser on November 18, 2010.

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

RCW 36.100.240 Eminent domain authorized. (1) Any county with a population of one million five hundred thousand or more that creates a public facilities district pursuant to this chapter to acquire, own, and operate a convention and trade center transferred from a public nonprofit corporation is authorized to acquire by condemnation property or property rights as may be necessary to carry out the purposes of such district. If the legislative body of such county chooses to exercise its authority to acquire property by eminent domain on behalf of such public facilities district, it must do so pursuant to the procedures set forth in chapter 8.08 RCW.

(2) The accomplishment of the activities authorized by this chapter is declared to be a strictly public purpose of the municipality or municipal entities authorized to perform the same.

(3) The powers and authority conferred by this section are in addition and supplemental to existing powers or authority. Nothing contained in this section limits any other powers or authority of any agency, political subdivision, or unit of local government of this state. [2010 1st sp.s. c 15 s 12.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

RCW 36.100.905 Construction—2010 1st sp.s. c 15. Nothing in chapter 15, Laws of 2010 1st sp. sess. may be construed to limit the authority of a public nonprofit corporation under *chapter 67.40 RCW prior to November 30, 2010. [2010 1st sp.s. c 15 s 10.]

***Reviser's note:** A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 s 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 s 15, effective December 30, 2010.

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

MANAGER'S REPORT

DATE: September 2, 2025

TO: Ellensburg City Council

FROM: Heidi Behrends Cerniwey, City Manager

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1. **Waste Management Annual Adjustment**
   Waste Management has notified the City of the annual increase allowed by contract. The rate increase will become effective October 1, 2025. The increase includes a rate increase of 4.430% CPI for (Water and Sewer and Trash Collection Services); an increase in Business and Occupation (B&O) tax that was implemented by the Washington State Legislature (1.75% to 2.1% or 0.35% increase); as well as an increase in disposal costs at the Kittitas County Transfer Station of 13.291%. See attached letter from Waste Management along with corresponding rates for October 1, 2025.

2. City to Hold Second Community Conversation Workshop to Discuss DEI

The City of Ellensburg is holding the second of two Community Conversation Workshops to allow community members to participate in a structured conversation about an amendment to the City's Comprehensive Plan, focused around Chapter 9 which addresses Diversity, Equity, and Inclusion (DEI). Community members are encouraged to attend one of these workshops, structured in the same manner but held at different times to allow for broader participation. The final workshop is scheduled:

- Saturday, September 6, 2025, from 1:30-3:30 p.m.
  Hal Holmes Community Center, 209 N Ruby Street, Ellensburg, WA

The goal of the workshops is to clearly capture the range of community positions on the issue and to identify residents to attend the follow-up dialogue on Chapter 9 amendment through a Common Ground Workshop—held on October 4, 2025, where attendance will be limited. The sessions are designed to ensure the range of positions are accurately recorded. During the Community Conversation session you can expect:

- Organized Intake Process: Participants will be grouped by viewpoint to confirm positions on Chapter 9 and reasons for these positions.

- Respectful Process: Trained facilitators from within and outside the Ellensburg community will guide the process.
- Transparent Written Record (Conversation Workshops will not be video recorded): The viewpoints provided will inform the follow-up "Common Ground" workshop. The outcome of this second workshop will be a series of suggested solutions for Chapter 9 of the Comprehensive Plan to be presented to Council/City.

The Common Ground Workshop is scheduled for Saturday, October 4, 2025, from 10:00 a.m.-3:30 p.m. at Hal Holmes Community Center, 209 N Ruby Street, Ellensburg, WA. This workshop will follow the Braver Angels organization's "Common Ground" structure where, "…a small, balanced group of Reds and Blues dive deep on an issue to identify areas of common interest, discuss possible solutions and develop unanimously held Points of Agreements on values, concerns and policies."

The City of Ellensburg strives to make our services, programs, and activities readily accessible. Please submit requests for language assistance or reasonable accommodation to the ADA Coordinator by calling (509) 962-7222 or by email at ADAcoordinator@ellensburgwa.gov. Five (5) business days' notice is appreciated. For questions, contact the City Manager's Office at (509) 962-7221.

3. The Wall That Heals Schedule of Events at Rotary Park

- **Procession Arrival of The Wall that Heals** – September 2, 2:00 p.m.
- **Building The Wall That Heals** - September 3, 8:00 a.m. – 2:30 p.m.
  Volunteer Orientation - September 3, 6:00 – 7:30 p.m.
- **The Wall That Heals is Open to the Public** - Beginning Thursday, September 4, 2025, through 2:00 p.m. on Sunday, September 7, 2025, The Wall That Heals will be open to the public 24 hours per day.
- **Opening Ceremony** - September 4, 9:00 -10:00 a.m.
- **Agent Orange Candlelight Ceremony** - Friday evening, September 5, at 7:00 p.m. (sunset)
- **Closing Ceremony** - Date: September 7, 1:45 – 2:00 p.m.
- **Take Down** - September 7, 2:15 – 7:00 p.m.

Find more information or volunteer at:
https://www.thewallthathealsellensburg2025.com/events

4. Coffee with Council on September 10

The Ellensburg City Council is hosting Coffee with City Council on Wednesday, September 10, 2025, from 4-6 p.m. at the Ellensburg Public Library, located at 209 N. Ruby St. Stop by for a cup of coffee and conversation with a couple of Councilmembers.

5. Central Transit Strategic Plan Survey Closes September 26

The City of Ellensburg is updating the Ellensburg Central Transit Strategic Plan and has launched a survey to learn about residents' experiences and priorities related to services. The survey, available at www.ellensburgwa.gov/transitsurvey takes about ten minutes to complete. The survey is available in English and Spanish. The survey closes September 26, 2025.

6. Take The Ellensburg Parks, Recreation, Open Space and Sustainable

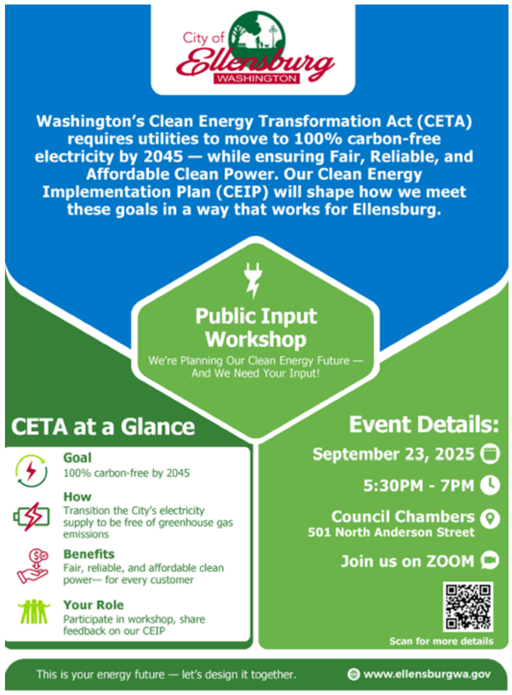
Funding Community Survey

The City of Ellensburg is developing a Parks, Recreation, Open Space, and Sustainable Funding Plan (PROS Plan) to identify an investment strategy for enhancing parks, recreation facilities, and trails … and we need your help!

Our goal is to create a shared community vision for improving the City's park and recreation system. Please share your thoughts with us, and encourage your family, friends, co-workers, teammates, and neighbors to do the same. The survey takes about 10 minutes to complete and is available in English and Spanish. It will remain open from mid-August through mid-September. A link can be found on the City website at: https://survey.alchemer.com/s3/8414857/ellensburg-pros-community-survey

7. Clean Energy Implementation Plan (CEIP) Public Input Workshop

The City of Ellensburg is holding a public input workshop for community members to provide feedback on the City's Clean Energy Implementation Plan (CEIP). Scheduled for completion this year, the CEIP will outline how the City of Ellensburg will continue to deliver safe, reliable, affordable, and clean electricity from 2026 through 2029. The workshop will be held from 5:30-7 p.m. on September 23, 2025, in the City Hall Council Chambers, 501 N. Anderson St. A remote attendance option will be available and will be posted at www.ellensburgwa.gov/ceip ahead of the workshop.



8. Next Ellensburg Academy on September 24

Join the next session of the Ellensburg Academy at 6 p.m. September 24 in the Hal Holmes Community Center, 209 N. Ruby St. Learn about economic development, Ellensburg history and historic preservation, and trees and weeds. The Ellensburg Academy is a series of civic education workshops designed to inform residents and community stakeholders about the operations of City government and what is involved in delivering and maintaining services to the residents of Ellensburg.

9. Preview of September 15 Council Agenda

On the next City Council meeting agenda, you can expect to see the second reading of Ordinance 4971 which includes changes required by HB 1337 removing some barriers to development of Accessory Dwelling Units (ADUs). Also planned for consideration is an Interlocal Agreement for a Countywide Economic Development Partnership; a final Property Transfer Agreement between the City, Kittitas County, and CWU; and an amendment to the Interlocal Agreement for Consolidated Lodging Tax Grant Process and administrative costs.

Waste Management
720 4th Ave, Suite 400
Kirkland, WA 98033

August 26, 2025

Ryan Lyyski
Public Works Director
City of Ellensburg
501 N. Anderson Street
Ellensburg, WA 98926
lyyskir@ci.ellensburg.wa.us

Re: 2025 Annual Rate Adjustment, B&O Increase, and Disposal Increase

Please find the enclosed 2025 rate schedule for solid waste collection and recycling services provided by WM to the residents and businesses of the City of Ellensburg.

These rates are based upon the published Consumer Price Index, in the U.S. city average area for All Urban Consumers, Water and sewer and trash collection services, as prepared by The United States Department of Labor, Bureau of Labor Statistics for the annual period ending January 2025. This year's index changes are described on the attached page. WM is allowed 100% of the CPI which results in a 4.430% increase.

In addition, Washington State Legislature passed House Bill 2081, increasing the Business and Occupation (B&O) tax rate from 1.75% to 2.1% assessed on businesses operating in the State of Washington effective October 1, 2025. This results in an increased tax of 0.35%.

Section 3.3.5 Other Modifications, of WM's contract with the City states:

> *If new City, Kittitas County or Washington State taxes are imposed or the rates of existing taxes are changed after the execution date of this Contract, and the impact of these changes results in increased or decreased Contractor costs, the Contractor's rates set forth in Attachment B shall be adjusted accordingly.*

Further, Kittitas County has approved a new disposal rate for 2025 resulting in a solid waste disposal increase of $158.00 per ton to $179.00 per ton. WM is allowed 100% of the disposal increase which results in a 13.291% increase based on container content weights.

Enclosed with this letter is an updated 2025 rate schedule also reflecting the new disposal fees. Please review this schedule and let me know of any discrepancies as WM will adjust our billing system to reflect the new disposal fees effective October 1, 2025.

Sincerely,

Kelly Emerson

KELLY EMERSON
Contract Compliance Administrator
Public Sector, Pacific Northwest
kemerson@wm.com

City of Ellensburg

Attachment B

(All rates are Monthly unless denoted otherwise)

		October 2024 6th Amendment	October 2025 CPI Adjustment	October 2025 Disposal Increase	October 2025 B&O Increase
		CPI Increase 0.000%	CPI Increase 4.430%	Disposal Increase 13.29%	B&O Increase 0.350%
Residential Rates (Includes curbside recycling)	**Pounds Per Unit**	**10/1/2024 Monthly Rate**	**10/1/2025 Monthly Rate**	**10/1/2025 Monthly Rate**	**10/1/2025 Monthly Rate**
Weekly curbside collection Service					
1-20 gallon Cart	9.81	$ 21.33	$ 22.27	$ 22.72	$ 22.79
1-35 gallon Cart 1x Mo	21.45	$ 13.67	$ 14.27	$ 14.49	$ 14.54
1 - 35 gallon Cart	17.16	$ 24.42	$ 25.50	$ 26.29	$ 26.38
1 - 64 gallon Cart	34.32	$ 36.29	$ 37.89	$ 39.47	$ 39.60
1 - 96 gallon Cart	51.48	$ 48.63	$ 50.78	$ 53.16	$ 53.34
(If the customer requires multiple cart service, in any combination, the rates shown above will be multiplied by the number and size of carts requested.)					
Miscellaneous Services					
Garbage Extras (35 gallon cart or equivalent)	17.16	$ 6.71	$ 7.00	$ 7.18	$ 7.20
Oversize or Overweight units		$ 9.39	$ 9.80	$ 9.80	$ 9.83
Drive-in charge		$ 6.70	$ 6.99	$ 6.99	$ 7.01
Carryouts per cart (over 5ft. but not over 25ft.)		$ 1.46	$ 1.52	$ 1.52	$ 1.52
Carryouts per cart (over 25ft. and each increment of 25ft thereafter)		$ 1.06	$ 1.10	$ 1.10	$ 1.10
Return Trips - cans (per pickup)		$ 6.20	$ 6.47	$ 6.47	$ 6.49
Redelivery Fee (per delivery)		$ 19.32	$ 20.17	$ 20.17	$ 20.24
Contamination Charge		$ 31.79	$ 33.19	$ 33.19	$ 33.30
Subcription Yardwaste Collection					
1 - 96 gallon Cart (weekly collection April-November / monthly collection December-March)		$ 20.81	$ 21.73	$ 21.73	$ 21.80
Cart Redelivery fee (per delivery, if service is discontinued at any time and recommenced within		$ 30.89	$ 32.25	$ 32.25	$ 32.36
Yardwaste Extras (32 gallon can or equivalent)		$ 3.70	$ 3.86	$ 3.86	$ 3.87
Temporary containers		**10/1/2024 Rate/ Pickup**	**10/1/2025 Rate/ Pickup**	**10/1/2025 Rate/ Pickup**	**10/1/2025 Rate/ Pickup**
1 yard	100.05	$ 63.99	$ 66.82	$ 67.88	$ 68.11
1.50 yard	150.08	$ 69.35	$ 72.42	$ 74.02	$ 74.27
2 yard	200.1	$ 80.16	$ 83.71	$ 85.84	$ 86.14
3 yard	300.15	$ 102.68	$ 107.22	$ 110.42	$ 110.80
4 yard	400.2	$ 124.79	$ 130.31	$ 134.58	$ 135.05
6 yard	600.3	$ 168.60	$ 176.06	$ 182.46	$ 183.09
8 yard	800.4	$ 208.54	$ 217.77	$ 226.32	$ 227.11
Commercial Rates	**Pounds Per Unit**	**10/1/2024 Monthly Rate**	**10/1/2025 Monthly Rate**	**10/1/2025 Monthly Rate**	**10/1/2025 Monthly Rate**
Commercial Carts:					
1 - 35 gallon Cart	17.34	$ 27.42	$ 28.63	$ 29.43	$ 29.53
1 - 64 gallon Cart	31.70	$ 39.58	$ 41.33	$ 42.79	$ 42.93
1 - 96 gallon Cart	47.55	$ 56.68	$ 59.19	$ 61.39	$ 61.60
Extras (35 gallon cart or equivalent)	17.34	$ 7.59	$ 7.92	$ 8.10	$ 8.12
(If the customer requires multiple cart service, in any combination, the rates shown above will be multiplied by the number and size of carts requested.)					
Miscellaneous Services (Commercial)					
Return Trips (per pickup) - Carts		$ 6.14	$ 6.41	$ 6.41	$ 6.43
Carryouts per can per pickup (over 5ft. but not over 25ft.))		$ 0.25	$ 0.26	$ 0.26	$ 0.26
Carryouts per can per pickup (over 25ft. and each increment of 25ft thereafter)		$ 0.14	$ 0.14	$ 0.14	$ 0.14
Return Trips (per pickup) - Containers		$ 14.42	$ 15.05	$ 15.05	$ 15.10
Roll-Out Container		$ 3.40	$ 3.55	$ 3.55	$ 3.56
Disconnect Hydraulics		$ 28.62	$ 29.88	$ 29.88	$ 29.98
Unlock Container		$ 18.55	$ 19.37	$ 19.37	$ 19.43
Gate Opening		$ 18.55	$ 19.37	$ 19.37	$ 19.43
Redelivery Fee (per delivery)		$ 19.14	$ 19.98	$ 19.98	$ 20.04
Container Swap for Clean Container (instead of curb powerwash which is not avail).		$ 31.54	$ 32.93	$ 32.93	$ 33.04
Commercial Containers (weekly service):	**Pounds Per Unit**	**10/1/2024 Monthly Rate**	**10/1/2025 Monthly Rate**	**10/1/2025 Monthly Rate**	**10/1/2025 Monthly Rate**
1 yard	100.05	$ 156.85	$ 163.79	$ 168.42	$ 169.00
1.50 yard	150.08	$ 179.96	$ 187.93	$ 194.88	$ 195.56
2 yard	200.10	$ 226.87	$ 236.91	$ 246.17	$ 247.03
3 yard	300.15	$ 324.54	$ 338.91	$ 352.80	$ 354.03
4 yard	400.20	$ 420.21	$ 438.82	$ 457.33	$ 458.93
6 yard	600.30	$ 609.94	$ 636.95	$ 664.72	$ 667.04
8 yard	800.40	$ 783.06	$ 817.74	$ 854.78	$ 857.77
3 yard Compactor	900.45	$ 705.69	$ 736.95	$ 778.66	$ 781.38
4 yard Compactor	1200.60	$ 941.17	$ 982.86	$ 1,038.48	$ 1,042.11
6 yard Compactor	1800.90	$ 1,428.46	$ 1,491.73	$ 1,575.11	$ 1,580.62
Extra Uncompacted Cubic Yard/Pickup	100.05	$ 32.62	$ 34.06	$ 35.12	$ 35.24
Extra Lift		$ 36.20	$ 37.80	$ 37.80	$ 37.93
Extra Lift Compactor		$ 108.60	$ 113.41	$ 113.41	$ 113.80
(If the customer requires multiple cart service, in any combination, the rates shown above will be multiplied by the number and size of carts requested.)					

		October 2024 6th Amendment	October 2025 CPI Adjustment	October 2025 Disposal Increase	October 2025 B&O Increase
Monthly Rent		10/1/2024 Monthly Rate	10/1/2025 Monthly Rate	10/1/2025 Monthly Rate	10/1/2025 Monthly Rate
1 yard		$ 10.15	$ 10.59	$ 10.59	$ 10.62
1.50 yard		$ 12.21	$ 12.75	$ 12.75	$ 12.79
2 yard		$ 12.29	$ 12.83	$ 12.83	$ 12.87
3 yard		$ 19.14	$ 19.98	$ 19.98	$ 20.04
4 yard		$ 19.74	$ 20.61	$ 20.61	$ 20.68
6 yard		$ 24.66	$ 25.75	$ 25.75	$ 25.84
8 yard		$ 28.70	$ 29.97	$ 29.97	$ 30.07
Special pick up rate(per pickup)		10/1/2024 Rate/ Pickup	10/1/2025 Rate/ Pickup	10/1/2025 Rate/ Pickup	10/1/2025 Rate/ Pickup
1 yard	100.05	$ 41.85	$ 43.70	$ 44.77	$ 44.92
1.50 yard	150.08	$ 47.22	$ 49.31	$ 50.91	$ 51.08
2 yard	200.1	$ 57.99	$ 60.55	$ 62.68	$ 62.89
3 yard	300.15	$ 80.57	$ 84.13	$ 87.33	$ 87.63
4 yard	400.2	$ 102.69	$ 107.23	$ 111.50	$ 111.89
6 yard	600.3	$ 146.41	$ 152.89	$ 159.29	$ 159.84
8 yard	800.4	$ 186.34	$ 194.59	$ 203.13	$ 203.84
3 yard Compactor	900.45	$ 162.86	$ 170.07	$ 179.69	$ 180.31
4 yard Compactor	1200.6	$ 217.25	$ 226.87	$ 239.68	$ 240.51
6 yard Compactor	1800.9	$ 329.80	$ 344.40	$ 363.65	$ 364.92
Temporary containers					
delivery fee		$ 50.62	$ 52.86	$ 52.86	$ 53.04
daily rent		$ 2.36	$ 2.46	$ 2.46	$ 2.46
extra yardage charge(per yard)	100.05	$ 31.38	$ 32.77	$ 33.83	$ 33.94
Roll Off Rates		10/1/2024 Rate/ Haul	10/1/2025 Rate/ Haul	10/1/2025 Rate/ Haul	10/1/2025 Rate/ Haul
Permanent haul fees					
Under 30 Yard		$ 185.54	$ 193.75	$ 193.75	$ 194.42
Compactors (all sizes)		$ 221.27	$ 231.07	$ 231.07	$ 231.87
Permanent rent fees		10/1/2024 Monthly Rent	10/1/2025 Monthly Rent	10/1/2025 Monthly Rent	10/1/2025 Monthly Rent
Under 30 Yard		$ 88.31	$ 92.22	$ 92.22	$ 92.54
30 yard and Greater		$ 132.94	$ 138.82	$ 138.82	$ 139.30
Temporary haul fees		10/1/2024 Rate/ Haul	10/1/2025 Rate/ Haul	10/1/2025 Rate/ Haul	10/1/2025 Rate/ Haul
Under 30 Yard		$ 212.00	$ 221.39	$ 221.39	$ 222.16
30 yard and Greater		$ 212.00	$ 221.39	$ 221.39	$ 222.16
Temporary rent fees		10/1/2024 Daily Rent	10/1/2025 Daily Rent	10/1/2025 Daily Rent	10/1/2025 Daily Rent
Under 30 Yard		$ 3.41	$ 3.56	$ 3.56	$ 3.57
30 yard and Greater		$ 5.16	$ 5.38	$ 5.38	$ 5.39
Delivery Charge		10/1/2024 Monthly Rate	10/1/2025 Monthly Rate	10/1/2025 Monthly Rate	10/1/2025 Monthly Rate
Roll off temporary		$ 72.31	$ 75.51	$ 75.51	$ 75.77
Disposal per ton		$ 159.80	$ 179.00	$ 179.00	$ 179.00
Disposal per yard (CDL)		$ 13.41	$ 17.00	$ 17.00	$ 17.00
Additional Services:					
Additional Mileage Charge for hauls to other sites / charge per mile		$ 4.81	$ 5.02	$ 5.02	$ 5.03
Steam Cleaning (per yard)		$ 12.93	$ 13.50	$ 13.50	$ 13.54
Pickup and redelivery charge for cleaning containers		$ 33.36	$ 34.83	$ 34.83	$ 34.95
Return Trip - Drop box (per pickup)		$ 25.47	$ 26.59	$ 26.59	$ 26.68
Time for Delivery Driver (per hour)		$ 168.49	$ 175.95	$ 175.95	$ 176.56
Cost of extra person (per minute)		$ 2.81	$ 2.93	$ 2.93	$ 2.94
Disconnect Hydraulics		$ 28.62	$ 29.88	$ 29.88	$ 29.98
The Contractor shall charge Drop-box customers the actual disposal cost, plus the Washington State Business and Occupation Tax, plus ten percent (10%) to reflect the Contractor's margin and costs related to handling the pass-through disposal component of that service.		11.75%	11.75%	11.75%	12.10%