

## CITY OF SPOKANE



### NOTICE

#### REGARDING CITY COUNCIL MEETINGS

Notice is hereby given that, pursuant to Governor Jay Inslee's **Ninth** Updated Proclamation **20-28.11**, dated **October 2, 2020**, all public meetings subject to the Open Public Meetings Act, Chapter 42.30 RCW, are to be held remotely and that the in-person attendance requirement in RCW 42.30.030 has been suspended until at least through **November 9, 2020**.

Temporarily and until further notice, the public's ability to attend City Council meetings is by remote access only. In-person attendance is not permitted at this time. The public is encouraged to tune in to the meeting as noted below.

Public comment will be taken virtually on legislative items during the 6:00 p.m. Legislative Session on **October 12, 2020**. Open Forum will not be held and all testimony must be related to the legislative items on the agenda.

The regularly scheduled Spokane City Council 3:30 p.m. Briefing Session and 6:00 p.m. Legislative Session will be held virtually and streamed live online and airing on City Cable 5. Some members of the City Council and City staff will be attending virtually. The public is encouraged to tune in to the meeting live on Channel 5, at <https://my.spokanecity.org/citycable5/live>, or by calling **1-408-418-9388** and entering the access code **966 942 097** for the 3:30 p.m. Briefing Session or \_\_\_\_\_ for the 6:00 p.m. Legislative Session when prompted; meeting password is **0320**.

To participate in virtual public comment:

Sign up to give testimony at <https://forms.gle/RtciKb2tju6322BB7>. You must sign up in order to be called on to testify. The form will be **open at 5:00 p.m. on Monday, October 12, 2020, and will close at 6:00 p.m.** At 6:00 p.m., you will call in to the meeting using the information above. When it is your turn to testify, Council President will call your name and direct you to hit \*3 on your phone to ask to be unmuted. The system will alert you when you have been unmuted and you can begin giving your testimony. When you are done, you will need to hit \*3 again.

**CITY COUNCIL MEETINGS  
RULES – PUBLIC DECORUM**

**Strict adherence to the following rules of decorum by the public will be observed and adhered to during City Council meetings, including open forum, public comment period on legislative items, and Council deliberations:**

- 1. No Clapping!**
- 2. No Cheering!**
- 3. No Booing!**
- 4. No public outbursts!**
- 5. Three-minute time limit for comments made during open forum and public testimony on legislative items!**
- 6. No person shall be permitted to speak at the first open forum more often than once per calendar month.**

**In addition, please silence your cell phones when entering the Council Chambers!**

Further, keep the following City Council Rules in mind:

**Rule 2.2 OPEN FORUM**

- D. The open forum is a limited public forum; all matters discussed in the open forum shall relate to the affairs of the City and items not currently on the current or advance Council agendas. No person shall be permitted to speak in open forum regarding items on the current or advance agendas, pending hearing items, or initiatives or referenda in a pending election. Individuals speaking during the open forum shall address their comments to the Council President and shall not use profanity, engage in obscene speech, or make personal comment or verbal insults about any individual.
- E. To encourage wider participation in open forum and a broad array of public comment and varied points of view from residents of the City of Spokane, no person shall be permitted to speak at the first open forum more often than once per calendar month. Any person may speak at the second open forum if they have not yet spoken in that meeting's first open forum or concerning any agenda item at that day's meeting, unless the meeting is that person's first address at open forum in that month.. There is no limit on the number of regular legislative agenda items on which a member of the public may testify, such as legislative items, special consideration items, hearing items, and other items before the City Council and requiring Council action that are not adjudicatory or administrative in nature, as specified in Rules 5.3 and 5.4.

**Rule 2.7 SERVICE ANIMALS AT CITY COUNCIL MEETINGS**

- B. Service animals must, at all times while present in a City Council meeting, be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices, in which case, the individual must maintain control of the animal through voice, signal, or other effective controls.

**Rule 5.3 PARTICIPATION OF MEMBERS OF THE PUBLIC IN COUNCIL MEETINGS**

- A. Members of the public may address the Council regarding items on the Council's legislative agenda, special consideration items, hearing items, and other items before the City Council requiring Council action that are not adjudicatory or administrative in nature. This rule shall not limit the public's right to speak during the open forum.
- B. No member of the public may speak without first being recognized for that purpose by the Chair. Except for named parties to an adjudicative hearing, a person may be required to sign a sign-up sheet and provide their city of residence as a condition of recognition. In order for a Council member to be recognized by the Chair for the purpose of obtaining the floor, the Council member shall either raise a hand or depress the call button on the dais until recognized by the Council President.
- C. Each person speaking at the public microphone shall verbally identify themselves by name, city of residence, and, if appropriate, representative capacity.
- D. Each speaker shall follow all written and verbal instructions so that verbal remarks are electronically recorded and documents submitted for the record are identified and marked by the Clerk.
- E. In order that evidence and expressions of opinion be included in the record and that decorum befitting a deliberative process be maintained, no modes of expression not provided by these rules, including but not limited to demonstrations, banners, signs, applause, profanity, vulgar language, or personal insults will be permitted.
- F. A speaker asserting a statement of fact may be asked to document and identify the sources of the factual datum being asserted.

- G. When addressing the Council, members of the public shall direct all remarks to the Council President and shall confine remarks to the matters that are specifically before the Council at that time.
- H. When any person, including members of the public, City staff, and others, are addressing the Council, Council members shall observe the same decorum and process, as the rules require among the members inter se. That is, a Council member shall not engage the person addressing the Council in colloquy, but shall speak only when granted the floor by the Council President. All persons and/or Council members shall not interrupt one another. The duty of mutual respect set forth in Rule 1.2 and the rules governing debate set forth in Robert's Rules of Order, newly revised, shall extend to all speakers before the City Council. The City Council Policy Advisor and/or City Attorney shall, with the assistance of Council staff, assist the Council President to ensure that all individuals desiring to speak shall be identified, appropriately recognized, and provided the opportunity to speak.

**Rule 5.4 PUBLIC TESTIMONY REGARDING LEGISLATIVE AGENDA ITEMS – TIME LIMITS**

- A. The City Council shall take public testimony on all matters included on its legislative agenda, with those exceptions stated in Rule 5.4(B). Public testimony shall be limited to the final Council action. Public testimony shall be limited to three (3) minutes per speaker, unless, at their discretion, the Chair determines that, because of the number of speakers signed up to testify, less time will be needed for each speaker in order to accommodate all speakers. The Chair may allow additional time if the speaker is asked to respond to questions from the Council.
- B. No public testimony shall be taken on items on the Council's consent agenda, amendments to legislative agenda items, or procedural, parliamentary, or administrative matters of the Council, including amendments to these Rules.
- C. For legislative or hearing items that may affect an identifiable individual, association, or group, the following procedure may be implemented:
  - 1. Following an assessment by the Chair of factors such as complexity of the issue(s), the apparent number of people indicating a desire to testify, representation by designated spokespersons, etc., the Chair shall, in the absence of objection by the majority of the Council present, impose the following procedural time limitations for taking public testimony regarding legislative matters:
    - a. There shall be up to fifteen (15) minutes for staff, board, or commission presentation of background information, if any.
    - b. The designated representative of the proponents of the issue shall speak first and may include within their presentation the testimony of expert witnesses, visual displays, and any other reasonable methods of presenting the case. Up to thirty (30) minutes shall be granted for the proponent's presentation. If there be more than one designated representative, they shall allocate the allotted time between or among themselves.
    - c. Following the presentation of the proponents of the issue, three (3) minutes shall be granted for any other person not associated with the designated representative of the proponents who wishes to speak on behalf of the proponent's position.
    - d. The designated representative, if any, of the opponents of the issue shall speak following the presentation of the testimony of expert witnesses, visual displays, and any other reasonable methods of presenting the case. The designated representative(s) of the opponents shall have the same amount of time which was allotted to the proponents.
    - e. Following the presentation by the opponents of the issue, three (3) minutes shall be granted for any other person not associated with the designated representative of the opponents who wishes to speak on behalf of the opponents' position.
    - f. Up to ten (10) minutes of rebuttal time shall be granted to the designated
  - 2. In the event the party or parties representing one side of an issue has a designated representative and the other side does not, the Chair shall publicly ask the unrepresented side if they wish to designate one or more persons to utilize the time allotted for the designated representative. If no such designation is made, each person wishing to speak on behalf of the unrepresented side shall be granted three (3) minutes to present their position, and no additional compensating time shall be allowed due to the fact that the side has no designated representative.
  - 3. In the event there appears to be more than two groups wishing to advocate their distinct positions on a specific issue, the Chair may grant the same procedural and time allowances to each group or groups, as stated previously.
- D. The time taken for staff or Council member questions and responses there to shall be in addition to the time allotted for any individual or designated representative's testimony.

# THE CITY OF SPOKANE



## ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, OCTOBER 12, 2020

### MISSION STATEMENT

TO DELIVER EFFICIENT AND EFFECTIVE SERVICES  
THAT FACILITATE ECONOMIC OPPORTUNITY  
AND ENHANCE QUALITY OF LIFE.

MAYOR NADINE WOODWARD

COUNCIL PRESIDENT BREEAN BEGGS

COUNCIL MEMBER KATE BURKE

COUNCIL MEMBER LORI KINNEAR

COUNCIL MEMBER KAREN STRATTON

COUNCIL MEMBER MICHAEL CATHCART

COUNCIL MEMBER CANDACE MUMM

COUNCIL MEMBER BETSY WILKERSON

CITY COUNCIL CHAMBERS  
CITY HALL

808 W. SPOKANE FALLS BLVD.  
SPOKANE, WA 99201



## **CITY COUNCIL BRIEFING SESSION**

Council will adopt the Administrative Session Consent Agenda after they have had appropriate discussion. Items may be moved to the 6:00 p.m. Legislative Session for formal consideration by the Council at the request of any Council Member.

SPOKANE CITY COUNCIL BRIEFING SESSIONS (BEGINNING AT 3:30 P.M. EACH MONDAY) AND LEGISLATIVE SESSIONS (BEGINNING AT 6:00 P.M. EACH MONDAY) ARE BROADCAST LIVE ON CITY CABLE CHANNEL FIVE AND STREAMED LIVE ON THE CHANNEL FIVE WEBSITE. THE SESSIONS ARE REPLAYED ON CHANNEL FIVE ON THURSDAYS AT 6:00 P.M. AND FRIDAYS AT 10:00 A.M.

The Briefing Session is open to the public, but will be a workshop meeting. Discussion will be limited to Council Members and appropriate Staff and Counsel.

### ADDRESSING THE COUNCIL

- No member of the public may speak without first being recognized for that purpose by the Chair. Except for named parties to an adjudicative hearing, a person may be required to sign a sign-up sheet and provide their city of residence as a condition of recognition.
- Each person speaking at the public microphone shall verbally identify themselves by name, city of residency and, if appropriate, representative capacity.
- If you are submitting letters or documents to the Council Members, please provide a minimum of ten copies via the City Clerk. The City Clerk is responsible for officially filing and distributing your submittal.
- In order that evidence and expressions of opinion be included in the record and that decorum befitting a deliberative process be maintained, no modes of expression including but not limited to demonstrations, banners, signs, applause, profanity, vulgar language or personal insults will be permitted.
- A speaker asserting a statement of fact may be asked to document and identify the source of the factual datum being asserted.

**SPEAKING TIME LIMITS:** Unless deemed otherwise by the Chair, each person addressing the Council shall be limited to a three-minute speaking time.

**CITY COUNCIL AGENDA:** The City Council Advance and Current Agendas may be obtained prior to Council Meetings by accessing the City website at [www.spokanecity.org](http://www.spokanecity.org).

# BRIEFING SESSION

(3:30 p.m.)

(Council Chambers Lower Level of City Hall)

(No Public Testimony Taken)

Roll Call of Council

Council Reports

Staff Reports

Committee Reports

Advance Agenda Review

Current Agenda Review

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## ADMINISTRATIVE SESSION

### CONSENT AGENDA

#### REPORTS, CONTRACTS AND CLAIMS

#### RECOMMENDATION

- |  |         |               |
|--|---------|---------------|
| 1. Contract Renewal with Alcohol Monitoring Systems, Inc. (Littleton, CO) for electronic monitoring (GPS and Alcohol Monitoring) as an alternative to incarceration and as a monitoring service for probation and Court from September 1, 2020, through August 31, 2021—\$264,000.<br><b>Michael Diamond</b> | Approve | OPR 2018-0508 |
| 2. Contract Amendment with The Law Firm of Thomas W. McLane, PLLC (Spokane) for legal services and advice regarding the matter of Lonnie Tofsrud v. Spokane Police Department, et. al.—\$50,000. (Total Amount: \$200,000)<br><b>Mike Ormsby</b>   | Approve | OPR 2019-1056 |
| 3. Lease Agreement with Frontier Behavioral Health (Spokane) for office space on the third floor of the Intermodal Facility from August 1, 2020, through midnight on February 28, 2027—\$162,986.16 (revenue).<br><b>Dave Steele</b>   | Approve | OPR 2020-0743 |

- 4. **Spill Prevention, Preparedness, and Response Equipment Grant Agreement with the Washington State Department of Ecology to purchase a dedicated hazmat equipment truck capable of storing Spokane Fire Department’s hazmat response equipment—\$85,000. (Relates to Special Budget Ordinance C35950)**  
**Brian Schaeffer** Approve OPR 2020-0744
- 5. **Report of the Mayor of pending:** Approve & Authorize
  - a. **Claims and payments of previously approved obligations, including those of Parks and Library, through \_\_\_\_\_, 2020, total \$\_\_\_\_\_, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$\_\_\_\_\_.** Payments CPR 2020-0002
  - b. **Payroll claims of previously approved obligations through\_\_\_\_\_, 2020: \$\_\_\_\_\_.** CPR 2020-0003
- 6. **City Council Meeting Minutes: \_\_\_\_\_, 2020.** Approve All CPR 2020-0013

## EXECUTIVE SESSION

(Closed Session of Council)

(Executive Session may be held or reconvened during the 6:00 p.m. Legislative Session)

## CITY COUNCIL SESSION

(May be held or reconvened following the 3:30 p.m. Administrative Session)

(Council Briefing Center)

This session may be held for the purpose of City Council meeting with Mayoral nominees to Boards and/or Commissions. The session is open to the public.

## LEGISLATIVE SESSION

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

WORDS OF INSPIRATION

PLEDGE OF ALLEGIANCE

**ROLL CALL OF COUNCIL**

**ANNOUNCEMENTS**

(Announcements regarding Changes to the City Council Agenda)

**BOARDS AND COMMISSIONS APPOINTMENTS**

(Includes Announcements of Boards and Commissions Vacancies)

**APPOINTMENTS**

**RECOMMENDATION**

Lodging Tax Advisory Committee: One Appointment

Confirm

CPR 2000-0031

Chase Youth Commission: Five Appointments

Confirm

CPR 1985-0131

**ANNUAL MAYORAL STATEMENT OF THE CONDITIONS AND AFFAIRS OF THE CITY**

**ADMINISTRATIVE REPORT**

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**COUNCIL COMMITTEE REPORTS**

(Committee Reports for Finance, Neighborhoods, Public Safety, Public Works, and Planning/Community and Economic Development Committees and other Boards and Commissions)

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**OPEN FORUM – WILL NOT BE HELD**

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**LEGISLATIVE AGENDA**

**SPECIAL BUDGET ORDINANCES**

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinance C35950 amending Ordinance No. C35857 passed by the City Council December 16, 2019, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2020, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2020, and providing it shall take effect immediately upon passage," and declaring an emergency and appropriating funds in:

Fire/EMS Fund

FROM: Washington State Department of Ecology, \$85,000;

TO: Vehicles, same amount.

(This action allows for the purchase of a Haz Mat equipment truck.) (Council Sponsor: Council Member Cathcart) (Relates to Consent Agenda Item No. 4)

**Brian Schaeffer**

## **EMERGENCY ORDINANCES**

(Require Five Affirmative, Recorded Roll Call Votes)

**ORD C35860**      Establishing a local residential tenancy code; recodifying Division I of Title 10 as Title 10A; recodifying Division II of Title 10 as Title 10B; enacting a new Title 10C; enacting new sections 07.08.153 and 18.03.030; and amending sections 08.01.090, 08.01.120, 08.01.180, 08.01.200, 08.02.0206, and 18.01.030 of the Spokane Municipal Code; and declaring an emergency. (Deferred from July 13, 2020, Agenda) (Council Sponsor: Council President Beggs)

**Council President Beggs**

**ORD C35861**      Requiring specific cause for most residential evictions; enacting new sections 18.03.005 and 18.03.030 of the Spokane Municipal Code; and declaring an emergency. (Deferred from July 13, 2020, Agenda) (Council Sponsor: Council President Beggs)

**Council President Beggs**

## **RESOLUTIONS & FINAL READING ORDINANCES**

(Require Four Affirmative, Recorded Roll Call Votes)

**ORD C35924**      Granting Yellowstone Pipe Line Company, a corporation, chartered in the State of Delaware, the nonexclusive right, privilege, authority, and franchise to construct, operate, maintain, remove, replace, and repair existing pipeline facilities together with equipment and appurtenances thereto, for the transportation of petroleum products and byproducts in the public right-of-way within and through the City of Spokane, Spokane County, WA. (Deferred from September 21, 2020, Agenda) (Council Sponsor: Council Member Cathcart)

**Timothy Szambelan**

## **NO FIRST READING ORDINANCES**

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## **NO SPECIAL CONSIDERATIONS**

## **NO HEARINGS**

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**Motion to Approve Advance Agenda for October 12, 2020**  
(per Council Rule 2.1.2)

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**OPEN FORUM (CONTINTUED) – WILL NOT BE HELD**

**ADJOURNMENT**

The October 12, 2020, Regular Legislative Session of the City Council is adjourned to October 19, 2020.

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**NOTES**



**Agenda Sheet for City Council Meeting of:**

10/12/2020

<u>Date Rec'd</u>	10/1/2020
<u>Clerk's File #</u>	OPR 2018-0508
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	CR21984

<u>Submitting Dept</u>	PROBATION SERVICES
<u>Contact Name/Phone</u>	MICHAEL 509-622-5806 DIAMOND
<u>Contact E-Mail</u>	MDIAMOND@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	0690 ALCOHOL MONITORING SYSTEM FOR MUNICIPAL PROBATION

Agenda Wording

Renewal Contract with Alcohol Monitoring Systems, Inc. for electronic monitoring (GPS and Alcohol Monitoring) as an alternative to incarceration and as a monitoring service for probation and Court.

Summary (Background)

The Spokane Municipal Court and Alcohol Monitoring Systems, Inc. entered into a contract for Electronic Monitoring, a jail alternative to incarceration, on August 22, 2018. The probation department entered into an agreement to phase out of probation's former EM equipment vendor, WASPC/BI, with the latest generation of EM equipment (Alcohol Monitoring and GPS). The change in vendors provides improved software interface, alcohol monitoring services, and will save the City approximately \$125K yrly.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	

Expense	\$ 88,000.00	# 1910-18100-23200-54101-99999
Expense	\$ 176,000.00	# 1910-18100-23200-54101-99999
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<b><u>Dept Head</u></b>	DELANEY, HOWARD	<b><u>Study Session\Other</u></b>	PSCHC 10-5-2020
<b><u>Division Director</u></b>	LOGAN, MARY	<b><u>Council Sponsor</u></b>	CM Lori Kinnear
<b><u>Finance</u></b>	WALLACE, TONYA	<u>Distribution List</u>	
<b><u>Legal</u></b>	ODLE, MARI	hdelaney@spokanecity.org; mdiamond@spokanecity.org	
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL	aharte@spokanecity.org; tjones@spokanecity.org	
<u>Additional Approvals</u>		dcoley@spokanecity.org; kbustos@spokanecity.org	
<b><u>Purchasing</u></b>		laga@spokanecity.org; ablain@spokanecity.org	

**Briefing Paper**  
**City of Spokane**  
**Spokane Municipal Court / Public Safety Committee**  
**TBD**

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**Subject**

To renew the contract between the City of Spokane Municipal Court and the Alcohol Monitoring Systems, Inc. for electronic monitoring (GPS and Alcohol Monitoring) as an alternative to incarceration and as a monitoring service for probation and Court.

**Background**

The Spokane Municipal Court and Alcohol Monitoring Systems, Inc. entered into a contract for Electronic Monitoring, a jail alternative to incarceration, on August 22, 2018. The probation department entered into an agreement to phase out of probation's former EM equipment vendor, WASPC/BI, with the latest generation of EM equipment (Alcohol Monitoring and GPS). The change in vendors provides improved software interface, alcohol monitoring services, and will save the City approximately \$125,000 annually in electronic monitoring costs compared to WASPC/BI. This program is heavily utilized by the Court as a sentencing alternative and costs the City as low as \$3.67 per day per offender versus the costs associated with jail incarceration (approximately \$133/day). In August, 2019 the first one-year renewal of the AMS agreement increased the expenditure line to \$264,000.00 as the utilization of jail alternatives, specifically Electronic Monitoring, has increased in both pretrial and post-conviction orders.

**Impact**

Alternatives to incarceration promote opportunities for prosocial activity, allow offenders access to counseling and treatment services, and permit educational and employment engagement.

**Action Requested**

Support the renewal of the electronic monitoring contract for a one-year period ending August 31, 2021. This second one-year extension is the last one-year renewal as outlined by the original AMS agreement dated August 22, 2018.

**Funding**

Criminal Justice Assistance Fund



# Expenditure Control Form



1. All requests being made must be accompanied by this form.
2. Route ALL requests to the Finance Department for signature.
3. If request is greater than \$100,000 it requires signatures by Finance and the City Administrator. Finance Dept. will route to City Administrator.

**Today's Date:** 9/11/2020    **Type of expenditure:** Goods  Services

**Department:** Spokane Municipal Probation Department

**Approving Supervisor:** Michael Diamond

**Amount of Proposed Expenditure:** \$264,000

**Funding Source:** Criminal Justice Assistance Fund

**Please verify correct funding sources. Please indicate breakdown if more than one funding source.**

**Why is this expenditure necessary now?**

The request is to continue the Electronic Monitoring agreement between the City and Alcohol Monitoring Systems originally signed in 2018. The one-year renewal is the second renewal agreed upon in the original contract agreement to provide jail alternatives to the Spokane community members engaged in the Municipal Justice System.

**What are the impacts if expenses are deferred?**

The Municipal Justice System will lose a jail alternative which may result in higher utilization of jail usage with increased costs to the City. In addition, defendants would lose the ability to remain out of custody on Electronic Monitoring to continue their employment, education, vocational training, and/or pro-social engagement in treatment services.

**What alternative resources have been considered?**

The contract agreement with AMS is the only Electronic Monitoring contract with the City. Loss of the AMS contract would be detrimental to the City. There are limited agencies in the Country that provides Electronic Monitoring equipment, services, and database management systems and the AMS agreement provides the best resources for the City.

**Description of the goods or service and any additional information?**

The Electronic Monitoring contract agreement with AMS provides the Municipal Justice System the ability to utilize jail alternatives in lieu of detaining defendants in-custody. Allowing defendants out on EM allows defendants to remain in employment, education, or treatment services promoting a more health and whole community while providing a higher level of safety by the tracking of defendants in coordination with restrictions including No Contact Orders protecting the victims and community.

**Person Submitting Form/Contact:** Michael Diamond, Chief Probation Officer

**FINANCE SIGNATURE:**

**CITY ADMINISTRATOR SIGNATURE:**



**City of Spokane**  
**CONTRACT RENEWAL**  
**Title: ALCOHOL MONITORING SYSTEM FOR**  
**SPOKANE MUNICIPAL PROBATION DEPARTMENT**

This Contract Renewal is made and entered into by and between the **City of Spokane** as (“City”), a Washington municipal corporation, and **ALCOHOL MONITORING SYSTEMS, INC.**, whose address is 1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120 as (“Contractor”), individually hereafter referenced as a “party”, and together as the “parties”.

*WHEREAS, the parties entered into a Contract wherein the Contractor agreed to provide an alcohol monitoring equipment and services to the Spokane Municipal Probation Department; and*

*WHEREAS, the initial contract provided for 2 additional one-year renewals, with this being the 2<sup>nd</sup> of those renewals.*

*-- NOW, THEREFORE, in consideration of these terms, the parties mutually agree as follows:*

**1. CONTRACT DOCUMENTS.**

The original Contract, dated August 7, 2018 and August 22, 2018, any previous amendments, renewals and / or extensions / thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

**1. EFFECTIVE TERM.**

This Contract Renewal shall become effective on September 1, 2020, and shall run through August 31, 2021.

**2. COMPENSATION.**

The City shall pay an estimated maximum annual cost not to exceed **TWO HUNDRED SIXTY FOUR THOUSAND AND 00/100 (\$264,000.00)** for everything furnished and done under this Contract Renewal. This is the maximum amount to be paid under this Renewal, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this Renewal document.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Contract Renewal by having legally-binding representatives affix their signatures below.

**ALCOHOL MONITORING SYSTEMS, INC.**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                      Date

By \_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**  
Certificate of Debarment

**ATTACHMENT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

1. The lower tier contractor certified, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)



STATE OF WASHINGTON  
**BUSINESS LICENSING SERVICE**

**Thank you for filing online**

Our processing time generally takes up to 10 business days. Some endorsements may take more time for state or city approval. You will receive your business license with approved endorsements in the mail. An updated business license will be mailed to you when additional endorsements are approved.

**Confirmation Number:** 0-016-241-325

**Filing Date and Time:** 09/28/2020 11:29:30 AM

**Payment Method:** ACH Debit/E-Check

**Business Entity Information**

Entity Type: Corporation  
Name of Entity: ALCOHOL MONITORING SYSTEMS, INC.  
Account ID: 602959944-001-0001  
Firm Name: ALCOHOL MONITORING SYSTEMS, INC.

<b>Endorsement(s) Applied For</b>	<b>Begin</b>	<b>End</b>	<b>Count</b>	<b>Fee</b>
Spokane General Business - Non-Resident	09/28/2020	09/30/2021	1	\$120.00
				<hr/>
				<b>\$120.00</b>
<b>Fee Type</b>	<b>Begin</b>	<b>End</b>	<b>Count</b>	<b>Fee</b>
BLS Processing Fee	09/28/2020		1	\$0.00
Spokane Employee	09/28/2020		1	\$10.00
				<hr/>
				<b>\$10.00</b>

**Grand Total: \$130.00**

**Washington State Department of Revenue**

Your request has been submitted and your confirmation number is **0-016-241-325**

Below is information from your application

**Filing Date and Time** 9/28/2020 11:29:30 AM

**Legal Entity Name** ALCOHOL MONITORING SYSTEMS, INC.

**UBI** 602-959-944

**Payment Method** ACH Debit/E-Check

**Payment Amount** \$130.00

We will process your business application within the next 10 business days. If you want to check the status of your application, the quickest way is to check

To check the status of your application, click **Manage My Profile**, then select **View, Edit, or Print Drafts or Submissions** in the *Drafts and Submissions* area.

For information on business resources, education, and workshops, go to <https://dor.wa.gov/open-business/apply-business-license>.





**Agenda Sheet for City Council Meeting of:**

08/20/2018

<b>Date Rec'd</b>	8/8/2018
<b>Clerk's File #</b>	OPR 2018-0508
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	CR 19602

<b>Submitting Dept</b>	PROBATION SERVICES
<b>Contact Name/Phone</b>	HOWARD DELANEY 625-4450
<b>Contact E-Mail</b>	HDELANEY@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	0690 ALCOHOL MONITORING SYSTEM FOR MUNICIPAL PROBATION

**Agenda Wording**  
 Agreement with SCRAM for electronic home monitoring (EHM) equipment. Software and training to support municipal probation's jail alternatives program.

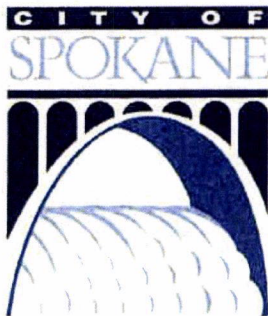
**Summary (Background)**  
 The contract is part of the phase out of probation's former EHM equipment vendor, WASPC/BI, with the latest generation of SCRAM home monitoring equipment and software. This change not only gives the city access to technically superior hardware, based on current EHM program volume, it will save the City approximately \$125,000 annually.

<b>Fiscal Impact</b>	Grant related? NO	<b>Budget Account</b>
	Public Works? NO	
Expense	\$ 175,000	# 1910-18100-23600-55120-54911
Select	\$	#
Select	\$	#
Select	\$	#

<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	DELANEY, HOWARD	<b>Study Session</b>	7/30/18 PSCHC
<b>Division Director</b>	STAAB, TRACY	<b>Other</b>	
<b>Finance</b>		<b>Distribution List</b>	
<b>Legal</b>	ODLE, MARI	hdelaney@spokanecity.org	
<b>For the Mayor</b>	SANDERS, THERESA	aharte@spokanecity.org	
<b>Additional Approvals</b>		tjones@spokanecity.org	
<b>Purchasing</b>		dcoley@spokanecity.org	
		kbustos@spokanecity.org	

APPROVED BY  
 SPOKANE CITY COUNCIL:  
August 20, 2018  
  
 CITY CLERK





City of Spokane

**CONTRACT**

**Title: ALCOHOL MONITORING SYSTEM  
FOR SPOKANE MUNICIPAL PROBATION  
DEPARTMENT**

THIS CONTRACT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **ALCOHOL MONITORING SYSTEMS, INC.**, whose address is 1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120, as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE.** The Company shall provide an alcohol monitoring equipment and services to the Spokane Municipal Probation Department, in accordance with the Company's Master Agency Agreement and Product and Service Agreement, incorporated hereto and attached as Exhibit A. In the event of a conflict between Company's Master Agency Agreement and Product and Service Agreement and this Contract, the terms of this contract will control.
2. **CONTRACT TERM.** The Contract shall begin on September 1, 2018 and run through August 31, 2019, unless terminated sooner. This Contract may be renewed by written agreement of the parties not to exceed two (2) additional two year renewals.
3. **COMPENSATION.** The City shall pay the Company a maximum amount not to exceed **ONE HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$175,000.00)**, including applicable tax, for everything furnished and done under this Contract.
4. **PAYMENT.** The Company shall send its application for payment to Spokane Municipal Probation Department, 1100 West Mallon Avenue, Spokane, WA 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Contractor's application except as provided by state law.
5. **COMPLIANCE WITH LAWS.** Each party shall comply with all applicable federal, state, and local laws and regulations.
6. **ASSIGNMENTS.** This Contract is binding on the parties and their heirs, successors, and assigns. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent.
7. **AMENDMENTS.** This Contract may be amended at any time by mutual written agreement.

8. **ANTI-KICKBACK.** No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Contract shall have or acquire any interest in the Contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Contract.

9. **TERMINATION.** Either party may terminate this Contract in accordance with the Contract documents.

10. **INSURANCE.** During the term of the Agreement, the Company shall maintain in force at its own expense, the following insurance coverages:

A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers; and

B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its officers and employees are additional insureds, but only with respect to the Contractor's services to be provided under this contract;

i. Acceptable supplementary Umbrella insurance coverage, combined with the Company's General Liability insurance policy must be a *minimum* of \$1,000,000, in order to meet the insurance coverages required under this Contract;

C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company shall furnish acceptable Certificates Of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the sixty (60) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. **INDEMNIFICATION.** The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Company's

own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

This section replaces the first paragraph of Section 11 of the Master Agency Agreement.

12. **DEBARMENT AND SUSPENSION.**

The Contractor has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

13. **SEVERABILITY.** In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

14. **STANDARD OF PERFORMANCE.** The silence or omission in the Contract regarding any detail required for the proper performance of the work, means that the Company shall perform the best general practice.

15. **NONDISCRIMINATION.** No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Company.

16. **BUSINESS REGISTRATION REQUIREMENT.** Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

17. **AUDIT / RECORDS.** The Company and its subcontractors shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Contract. The Company and its subcontractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Contract, the federal law shall prevail.

18. **CONFIDENTIALITY/PUBLIC RECORDS.** City will maintain the confidentiality of Company's materials and information only to the extent that is legally allowed in the State of Washington. City is bound by the State Public Records Act, RCW Ch. 42.56. That law presumptively makes all records in the possession of the City public records which are freely available upon request by anyone. In the event that City gets a valid public records request for

Company's materials or information, City will give Company notice and Company will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Company does not get a timely injunction preventing the release of the records, the City will comply with the Public Records Act and release the records.

19. GOVERNING LAW. This agreement is governed by the laws of the State of Washington.

**ALCOHOL MONITORING SYSTEMS, INC.**

**CITY OF SPOKANE**

By *Michael Neal* 8/17/18  
Signature Date

By *David A. Condon* 8/22/18  
Signature Date

Mike Machens  
Type or Print Name

David A. Condon  
Type or Print Name

CFO  
Title

Mayor  
Title

602-959-944  
Firm's UBI #

Attest:

Approved as to form:

*Lafasur*  
City Clerk (ACTM)

*David A. Condon*  
Assistant City Attorney

Attachments that are part of this Agreement:

- Exhibit A – Master Agency Agreement and Product and Service Agreement
- Exhibit – Certificate Regarding Debarment



18-133



**ATTACHMENT B  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

1. The lower tier contractor certified, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  
2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
  
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this exhibit, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The undersigned may contact the City for assistance in obtaining a copy of these regulations.
  
5. I understand that a false statement of this certification may be grounds for termination of the contract.

<u>Alcohol Monitoring Systems, Inc</u> Name of Subrecipient / Contractor / Consultant (Type or Print)	<u>Alcohol Monitoring</u> Program Title (Type or Print)
<u>Mike Machens</u> Name of Certifying Official (Type or Print)	<u>[Signature]</u> Signature
<u>CEO</u> Title of Certifying Official (Type or Print)	<u>8/7/18</u> Date (Type or Print)



1241 West Mineral Avenue, Suite 200  
Littleton, CO 80120

**EXHIBIT A  
TO  
CITY OF SPOKANE CONTRACT  
MASTER AGENCY AGREEMENT**

<b>AGENCY:</b>	<u>SPOKANE MUNICIPAL PROBATION</u>	<b>TELEPHONE:</b>	<u>509-625-4400</u>
<b>ADDRESS:</b>	<u>1100 W. Mallon Ave.</u>	<b>INITIAL CONTRACT TERM:</b>	<u>36 Months</u>
	<u>Spokane, WA 99201</u>		

This **AGENCY PRODUCTS AND SERVICES AGREEMENT** (the "Agreement"), is entered into as of the Effective Date by and between **ALCOHOL MONITORING SYSTEMS, INC.** ("AMS"), a Delaware corporation located at 1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120, and the Agency listed above. This Agreement incorporates by reference any and all Schedules executed by the parties. Capitalized terms not otherwise defined in this Agreement are those as defined in the attached Schedule(s). Should there be a conflict between the terms in this Agreement and those of any Schedule, the terms in the Schedule will prevail. The effective date of the Agreement is the date last signed by AMS (Effective Date").

**1 GENERAL SCOPE OF AGREEMENT.** AMS sells and rents Equipment and provides supporting Services specific to monitoring Clients who are required to or opt to wear such Equipment. AMS desires to sell or rent and Agency desires to order such Equipment and the supporting Services as specified in this Agreement and the attached Schedules in the Territory described on the applicable Schedule.

**2 DEFINITIONS**

"Clients" means individuals who are required or choose to wear the Equipment.

"Effective Date" means the date this Agreement is signed by AMS.

"Equipment" means the hardware identified in the applicable Schedule.

"Monitoring Services" means the remote collection, compilation and reporting of data from the Equipment.

"Monitoring Software" means AMS' proprietary, web-based software applications, depending on the Equipment or Service contracted for, which track and store Client data and other features as may be added from time to time.

"Parts" means peripheral hardware necessary for the support of the Equipment such as, but not limited, to batteries, straps and back-plates.

"Products" means collectively the Equipment and the Parts.

"Rental Equipment" means Equipment rented by AMS to Agency.

"RMA" means a Return Material Authorization issued by AMS.

"Services" means collectively the; (i) the Monitoring Services; (ii) provision of training and certification necessary for Partner to use Products; (iii) provision of technical support and telephone assistance; (iv) scheduled Equipment (v) maintenance; (vi) disaster recovery and backup services for Client data stored using the Monitoring Software; and (v) provision of such other Services and support functions as may be agreed to in writing by the parties and made part of this Agreement.

"Territory" means the geographic area type as defined on each Schedule in which Agency may provide the Products and Services to Clients.

"Third Party Contractor" means Agency's third party subcontractors to whom Agency is subcontracting any of Agency's work or responsibilities under this Agreement.

**3 GENERAL BUSINESS TERMS**

**3.1 Payment Terms.**

**3.1.1 Purchased Products.** Products will be invoiced at the time of shipment. The price of the Products does not include applicable taxes and is due and payable in U.S. dollars within ten (10) days of date of invoice.

**3.1.2 Rental Equipment.** Rental Equipment Fees will be invoiced monthly to Agency by AMS based on the specific pricing option for the Rental Equipment on or before the tenth (10<sup>th</sup>) day of each month and shall be paid by Agency to AMS within thirty (30) days from the date of such invoice.

**3.1.3 Monitoring Service and Other Fees.** Service fees will be invoiced by AMS on a monthly basis as incurred and shall be paid by Agency within thirty (30) days from the date of such invoice. Other fees include, but are not limited to, fees for the following: Court appearances whereby AMS is requested by Agency to be a witness in a court case; manual check-in for inactive Equipment; repair or replacement not covered by the Maintenance and Repair Policy under Section 7 and Equipment returned to AMS without an RMA. Unless set forth on an applicable Schedule, fees will be charged at AMS' then prevailing rates.

**3.1.4 Currency; Invoiced Taxes.** All fees are payable in U.S. Dollars. In addition, Agency is responsible for the timely payment of all taxes invoiced by AMS related to the purchase price for Products, Rental Equipment Fees, Services and any other fees set forth on the Schedule(s).

**3.2. Ordering; Freight Terms; Order Cancellation and Reschedule.**

**3.2.1 Orders.** AMS may provide Agency with AMS' standard order form to use for when Agency places orders under this Agreement. Agency may use its own purchase order form in addition to the AMS order form. All terms on any Agency purchase order shall not alter or amend the terms of this Agreement and any additional or varying terms contained in such instrument are expressly rejected.

**3.2.2 Freight Terms.** Products ordered by Agency shall be shipped to Agency's designated facility, AMS paying ground freight, and AMS bearing the risk of loss of damage until Products are delivered to Agency's dock, at which time any visible damage to the outermost packaging must be noted on the Bill of Lading. AMS shall determine the type of packaging, mode of transportation for all shipments including for returns. Any returns must be accompanied by an RMA. Orders expedited at Agency's request will be shipped FOB Origin, with all freight costs to be paid by the Agency.

**3.2.3 Order Cancellation and Reschedule.** Orders for Products, once accepted by AMS, are non-cancelable, and Products are non-returnable, except in accordance with the Maintenance and Repair Policy set forth in this Agreement or the terms, if any, in the applicable Schedule. Upon AMS agreement, Agency can reschedule orders one time upon thirty (30) days written notice prior to the shipment date. Any such rescheduled delivery date must be within thirty (30) days of the original delivery date.

**3.3 Taxes.** Agency shall be solely responsible for all taxes related to Products or Services provided to it by AMS under this Agreement including, by way of example and not limitation, sales, use, property, excise, value added, and gross receipts irrespective of whether the Products are purchased or rented. If Agency is exempt from taxes of any kind Agency will provide appropriate exemption documentation for all such taxes applicable to the transactions contemplated by this Agreement.

**3.4 Failure to Make Payments and Suspension of Services.** Late paid invoices will be subject to interest, accruing from the due date at the rate of either one-and-one-half percent (1.5%) per month or the highest rate specified by applicable statute, whichever is lower. In addition, if Agency fails to pay any amount when due under this Agreement, AMS will provide written notice to Agency of such failure. If Agency does not pay any outstanding amount due within five (5) business days of the date of such notice, AMS may do any of the following; (i) reject orders from Agency for additional Products or withhold delivery of Products already ordered but not yet shipped; (ii) suspend access to the Services until Agency pays all outstanding amounts in full; and (iii) proceed with termination of this Agreement and any applicable Schedules in accordance with the terms in Section 9.3 of this Agreement.

**3.5 Title to Equipment; Rental Equipment.**

**3.5.1 Title to Equipment.** Title to purchase Equipment transfers to Agency upon delivery to the freight carrier. Title to any Rental Equipment shall remain with AMS, unless such Equipment is later purchased by the Agency.

**3.5.2 Rental Equipment.** Agency may rent Equipment from AMS in quantities agreed to by the parties. Agency will not encumber or dispose of any Rental Equipment. Agency will inventory Rental Equipment in a location that is used and operated by Agency authorized personnel only. All Rental Equipment maintained in Agency's inventory location will be handled in accordance with industry standard practices for prevention of loss or physical damage, including that which may be caused by electronic static discharge and environmental concerns. Agency will be responsible to and reimburse AMS for all loss to AMS resulting from damage, theft, destruction or any other loss whatsoever of Rental Equipment received by Agency. In the event of the loss or damage to any of the Rental Equipment, Agency agrees to pay AMS the Replacement Fee amounts specified on the relevant Schedule. AMS reserves the right, at its sole option, to reduce Agency's inventory of Rental Equipment, if Agency does not remit the Replacement Fee within thirty (30) days from the date of receipt of AMS' invoice. Agency will cooperate with AMS in the preparation and filing of any documents considered necessary by AMS to preserve AMS' title and ownership rights to the Rental Equipment. Upon reasonable notice, AMS reserves the right to audit Rental Equipment inventory on a quarterly basis. At all times throughout the Term, Agency will procure and maintain risk insurance to specifically cover loss or damage to Rental Equipment while in Agency's possession up to the equivalent of the Replacement Fee for the Rental Equipment. At the end of

the rental period, Agency must obtain an RMA and ship returned Rental Equipment to AMS with freight to be paid by Agency and risk of loss or damage to remain with Agency until delivery to AMS.

#### **4 USE RESTRICTIONS; FIRMWARE LICENSE; OWNERSHIP; LIMITED LICENSE; DISCLAIMER**

**4.1 Use Restrictions: No Modification.** Agency shall not do any of the following acts: (i) wilfully tamper with the security of the Monitoring Software or Equipment; (ii) access data on the Monitoring Software not intended for Agency; (iii) log into an unauthorized server or account on the Monitoring Software; (iv) attempt to probe, scan or test the vulnerability of the Monitoring Software or to breach the security or authentication measures without proper authorization; (v) wilfully render any part of Monitoring Software unusable; (vi) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Monitoring Software; (vii) modify, translate, or create derivative works based on the Monitoring Software; (viii) rent, lease, distribute, license, sublicense, sell, resell, assign, or otherwise commercially exploit the Monitoring Software or make the Monitoring Software available to a third party other than as contemplated in this Agreement; (ix) use the Monitoring Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; (x) publish or disclose to third parties any evaluation of the Monitoring Software without AMS' or its third party supplier's prior written consent; (xi) remove, modify, obscure any copyright, trademark, patent or other proprietary notice that appears on the Monitoring Software; or (xii) create any link to the Monitoring Software or frame or mirror any content contained or accessible from the Monitoring Software. Except as expressly provided in this Agreement, no right or license is granted hereunder, by implication, estoppel or otherwise.

**4.2 Firmware License.** The Products contain firmware developed and owned by AMS or its third party supplier. Agency is hereby granted a limited, non-exclusive, non-transferable, royalty-free license, for the Term, as defined in Section 9.1 below, to use the firmware in the Products. Use of the Parts may be subject to third party license agreements. AMS and its third party suppliers shall retain all rights to the firmware contained in the Products. Any applicable license shall be deemed to be in effect upon delivery of the Products.

**4.3 Ownership: Limited License.** Agency acknowledges that all right, title and interest in any software or firmware provided under this Agreement and all modifications and enhancements thereof, including all rights under copyright and patent and other intellectual property rights, belong to and are retained solely by AMS or its third party suppliers. This Agreement provides Agency only the rights expressly granted in this Agreement. Further, if Agency suggests any new features or functionality for the Equipment, Monitoring Software or Parts that AMS or its third party suppliers subsequently incorporate into the Products or Monitoring Software, any such new features or functionality shall be the sole and exclusive property of AMS or its third party suppliers and shall be free from any confidentiality restrictions that might otherwise be imposed upon AMS pursuant to Section 8 below

**4.4 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, AMS DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. AMS SHALL HAVE NO LIABILITY WHATSOEVER AS A RESULT OF THE EQUIPMENT BEING LOCATED IN AN AREA NOT COVERED BY APPROPRIATE WIRELESS COVERAGE (IF APPLICABLE), OR IF THE EQUIPMENT FAILS TO ESTABLISH A CONNECTION WITH THE MONITORING SOFTWARE OR THE MONITORING SERVICES ARE DISABLED DUE TO NETWORK RELATED ISSUES.** Without limiting the express warranties set forth in this Agreement, AMS does not warrant that the Services will meet Agency's requirements or that access to and use of the Monitoring Services will be uninterrupted or free of errors. AMS cannot and does not guarantee the privacy, security, authenticity and non-corruption of any information transmitted through, or stored in any system connected to, the Internet. Neither AMS nor its third party suppliers shall be responsible for any delays, errors, failures to perform, or disruptions in the Monitoring Services caused by or resulting from any act, omission or condition beyond AMS' or its third party supplier's reasonable control.

#### **5 SERVICE TERMS**

**5.1 Service Scope.** AMS will provide Agency with the Services and support functions per the terms in this Agreement. Unless otherwise expressly agreed to by the parties, AMS is not obligated to and will not provide Services for any Equipment not obtained directly from AMS.

**5.2 Monitoring Service Availability.** AMS shall use commercially reasonable efforts to make the Monitoring Services available for twenty-four (24) hours a day, seven (7) days a week. Agency agrees that from time to time the Monitoring Services may be inaccessible or inoperable for reasons beyond the reasonable control of AMS, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which AMS may undertake; or (iii) interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other similar failures. Agency will not be entitled to any setoff, discount, refund or other credit as a result of unavailability of the Monitoring Services unless expressly provided in this Agreement...

**5.3 Monitoring Software Security.** AMS shall use commercially reasonable efforts to prevent unauthorized access to restricted areas of the Monitoring Software and any databases or other sensitive material. AMS reserves the right to deactivate or suspend access to the Monitoring Software by a user if such user is found or reasonably suspected to be using his/her access



to facilitate illegal, abusive or unethical activities. Such activities include pornography, obscenity, violations of law or privacy, hacking, computer viruses, or any harassing or harmful materials or uses. Agency agrees to hold AMS harmless from any claims resulting from such use.

**5.4 Access to Monitoring Software.** Agency agrees to limit requests for access to the Monitoring Software to Agency personnel who are authorized to enroll Clients, set notification options and otherwise access the information residing within the Monitoring Software. AMS will provide to Agency user names, passwords and other information necessary to access the Monitoring Software. Agency is responsible for keeping its user names and passwords protected as Confidential Information as defined in and per the terms of Section 8 of this Agreement and for any communications or transactions made using its user names and passwords. Agency personnel are responsible for changing their respective user names and passwords if they believe that either have been stolen or might otherwise be misused. Agency shall provide written notice to AMS within ten (10) days if any previously authorized personnel status changes such that access should no longer be allowed, including but not limited to termination or resignation of any Agency personnel who had access to the Monitoring Software. These requirements are subject to change based on periodic review by AMS of its information security needs.

**5.5 Equipment and Utilities.** Agency is responsible and shall bear the costs associated with providing and maintaining internet access and all necessary telecommunications equipment, software and other materials necessary for accessing the Monitoring Software. Agency agrees to notify AMS of any changes in the foregoing, including any system configuration changes or any hardware or software upgrades, which may affect Agency's ability to access the Monitoring Software.

**5.6 Equipment Maintenance.** AMS and Agency shall establish a routine maintenance program designed to keep the Equipment in good repair, working order and condition in accordance with AMS' then-published specifications, including establishing a schedule that will ensure the return of the Equipment to AMS at approximately annual intervals. Unless otherwise agreed, Agency shall be responsible for collecting any Equipment from Clients that is scheduled for maintenance and (ii) shipping it to AMS having first obtained a RMA number from AMS. Such maintenance program shall not cover Equipment damaged or rendered inoperative for any cause not due to defects covered by the service and repair policy in the Agreement. Agency shall not, without prior approval from AMS, send to AMS for maintenance any Equipment not then scheduled for maintenance. Equipment returned to AMS for any reason, including rental returns, damages, and scheduled repairs, that are not accompanied with a properly issued RMA may be assessed a returned administrative charge.

**5.7 Training and Certification.** AMS will provide Agency personnel with on-line, training and certification in the use of the Products at AMS' current training rates as quoted by AMS to Agency.

**5.8 Additional or Changes to Services.** From time-to-time, AMS may revise the scope of the Services, subcontract or delegate to a third party some or all of the provision of the Services, or make substitutions, additions, modifications and improvements to Monitoring Software and/or Services. Additionally, as a part of these changed Services, AMS also may determine, at its sole option, to discontinue providing Services hereunder for specific versions of the Products upon a minimum of one (1) year prior notice to Agency.

## **6. AGENCY RESPONSIBILITIES.**

**6.1 Equipment.** Agency shall be solely responsible for the management and supervision of the Equipment and any personnel or Clients using the Equipment and the Monitoring Software, as well as the selection and implementation of the Client enrollment, monitoring and notification options provided for the Monitoring Software. For avoidance of doubt, Agency is solely responsible for the management of the Clients, including the response to any Client violations reported by AMS or its third party providers. AMS is not responsible or liable for Agency's failure to properly fulfill its foregoing responsibilities.

**6.2 Agreements with Clients.** Agency shall obtain the necessary written consent from any Client authorizing the tracking and/or monitoring of the Equipment by AMS or its subcontractors. Agency is solely responsible for notifying Clients in writing of any restrictions or limitations on the use of the Equipment of which it is made aware by AMS. These mandatory restrictions and prohibitions to be communicated to Clients are available on the Monitoring Software platform in the form of a "Participant Agreement". This Participant Agreement is not intended to cover all possible requirements of the relationship between Agency and its Clients and should be reviewed by Agency's legal advisors prior to use. Agency agrees to indemnify and hold AMS harmless from any claim resulting from the failure of Agency to notify Clients of the restrictions and prohibitions on use of the Equipment and to obtain Client's written consent authorizing the tracking and or monitoring of the Equipment by AMS or its subcontractors.

**6.3 Third Party Call Center Support.** If Agency determines that it will establish and use a third party call center to monitor and receive alerts from the Monitoring Software, then Agency will notify AMS and shall ensure that personnel certified by AMS will operate the call center. Agency shall be responsible for all acts and omissions of the third party call center personnel granted access to Monitoring Software as if they were employees of Agency.

## **7 MAINTENANCE AND REPAIR**

**7.1 Maintenance and Repair Policy.** Provided Agency; (i) pays to AMS the Service fee(s) for Equipment; and (ii) installs the Equipment in accordance with AMS' instructions, for all Equipment manufactured by and ordered directly from AMS, AMS will provide the necessary maintenance and repair for such Equipment at AMS' expense to enable it to function with the Monitoring Software in a manner substantially in accordance with the performance parameters specified in the documentation for the specific Equipment. For any Parts manufactured by third parties and sold by AMS, any service or repair commitment for that Part shall be solely as described in the relevant Schedule for that Part. Products returned to AMS under warranty must be returned within thirty (30) days of issuance of the RMA. Agency must return damaged or defective Products to AMS, freight prepaid, and Agency is responsible for the risk of loss or damage during shipment for both shipment of damaged Product units back to AMS and the cost of return shipment of replaced or repaired Products back to Agency.

**7.2 Maintenance and Repair Policy Exclusions.** The above policy does not cover Equipment that is obtained from sources outside of AMS or is defective due to (i) improper use or installation, damage, accident, abuse or alteration; (ii) failure to comply with the operating and maintenance instructions set forth in the documentation for the specific Equipment; (iii) servicing of the Equipment by anyone not authorized by AMS; (iv) failure of Agency to obtain reasonable and necessary maintenance of the Equipment as contemplated under the Agreement; (v) use of Parts in the repair of the Equipment that have not been approved in writing by AMS for use in the Equipment; or (vi) use in connection with a third party product other than that as approved in writing by AMS.

**7.3 Sole Remedy.** In the event of a breach of the above Maintenance and Repair policy, Agency's sole remedy shall be, at AMS' option, the repair or replacement of the defective Equipment or Part by AMS.

**7.4 Product Changes; Retrofit Activities.** AMS shall have the right at any time (i) to change the design or specifications of any Equipment without notice and without obligation to make the same or any similar change on any Equipment previously purchased by Agency; and (ii) to retrofit or replace (during routine maintenance or otherwise) any Equipment to incorporate any upgrades or updates then available. However, nothing herein shall obligate AMS to provide Agency with all new models of Equipment at no additional cost, and AMS may charge a fee for Equipment model upgrades in certain circumstances including, but not limited to, a new line of products or a change in underlying technology or technological advancements requiring significant changes to an existing Equipment model. Regarding the foregoing, in any case where AMS charges a fee for an Equipment model upgrade, it will provide no less than six (6) months' notice to Agency prior to discontinuing the sale or rental of the discontinued Equipment model. In addition, AMS will continue to offer repair and/or replacement services for the discontinued Equipment models under the Maintenance and Repair Policy referenced in this Section 7 for no less than three (3) years after the date of notice of Equipment discontinuation as provided by AMS to Agency.

## 8 CONFIDENTIAL INFORMATION

**8.1 Confidential Information.** In connection with this Agreement a party ("Discloser") may furnish to the other party ("Recipient") software, user and training manuals, data, Client information, designs, drawings, tracings, plans, layouts, specifications, samples, equipment and other information provided by or on behalf of Discloser to Recipient, that should reasonably have been understood by Recipient, because of (i) legends or other markings, or (ii) the circumstance of disclosure or the nature of the information itself, to be proprietary and confidential to Discloser or to a third party ("Confidential Information"). Confidential Information specifically includes all information accessed by Agency via the Monitoring Software. Confidential Information may be disclosed in written or other tangible form (including digital or other electronic media) or by oral, visual or other means. Each party agrees not to disclose to the other party any confidential or proprietary information of third parties unless authorized to do so. The parties each agree to treat this Agreement, including all exhibits hereto, as Confidential Information of each party.

**8.2 Nondisclosure.** It is agreed that, after receipt of Confidential Information of the other party, Recipient shall: (i) restrict the dissemination of such Confidential Information to those employees who need to use the Confidential Information in the performance of this Agreement, and (ii) to use no less than a reasonable standard of care in safeguarding against unauthorized disclosure of such Confidential Information. Recipient agrees to have an appropriate nondisclosure agreement signed by each of its employees, agents and contractors who may be exposed to Discloser's Confidential Information.

**8.3 Exceptions from Confidential Information.** Confidential Information shall not include information that: (i) is or becomes part of the public domain without violation of this Agreement by Recipient, (ii) is already in Recipient's possession free of any restriction on use or disclosure, (iii) becomes available to Recipient from a third party provided that such party was free from restriction on disclosure of the information or (iv) has been independently developed by Recipient.

**8.4 Required Disclosures.** If Recipient is required by legal proceeding discovery request, "open records" or equivalent request, investigative demand, subpoena, court or government order to disclose Confidential Information, Recipient may disclose such Confidential Information provided that: (i) the disclosure is limited to the extent and purpose legally required; and (ii) prior to any disclosure, Recipient shall immediately notify Discloser in writing of the existence, terms and conditions of the required disclosure and, at Discloser's request and expense, cooperate in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

## 9 TERM AND TERMINATION

9.1 **Term.** This Agreement shall commence from the Effective Date and shall continue for the period specified on page one (the "Initial Term") unless earlier terminated in accordance with the provisions of this Agreement. After the Initial Term expires, this Agreement can be extended by mutual written agreement of the parties for additional terms (each a "Renewal Term"). The Initial Term, together with any Renewal Term, is referred to as the "Term".

9.2 **Termination for Convenience.** This Agreement may be terminated for convenience at any time upon thirty (30) days prior written notice by one party to the other.

9.3 **Termination for Breach.** Either party may terminate this Agreement; (i) if a voluntary or involuntary petition in bankruptcy, receivership, assignment for the benefit of creditors or other similar insolvency action is filed or levied against the other party and not discharged within sixty (60) days after the filing or levied thereof; (ii) by written notice by the non-breaching party, if the other party fails to cure any nonpayment of money owed to the other party under this Agreement within thirty (30) days of such notice; (iii) by written notice by the non-breaching party, if the other party fails to cure any material breach of this Agreement (other than non-payments described in clause (ii) above) within sixty (60) days of such notice (it is understood; however, that a violation of law, breach of confidentiality or misuse of access grants that cannot be cured shall be grounds for immediate termination); or (iv) immediately, by written notice by the non-breaching party, upon the second commission of a previously remedied material breach under clause (iii) above.

9.4 **Termination for Non-Appropriation of Funds.** In the event that Agency is unable to continue to make payments required hereunder due to a failure of the responsible governmental entity to make available funding to the level and in the amount required to remain in compliance with Agency's financial obligations; hereunder, then upon the occurrence of such a non-appropriation event and on the date that the requisite funding ceases to be available to the Agency, Agency may terminate this Agreement, without further financial obligation or liability to AMS other than to pay for Products and Services previously delivered to Agency or performed for Agency.

9.5 **Survival.** This Section, any indemnity obligations of either party, and Sections 4.3, 4.4, 6, 8, 11, 12.1 and 12.2 shall survive termination of this Agreement.

## 10 EFFECT OF TERMINATION

10.1 **Payments; Return of Equipment.** Upon any termination of this Agreement or any Schedule incorporated by reference herein, Agency shall provide AMS with all outstanding payments due and, within ten (10) days of the termination, return to AMS all Equipment not owned by Agency or, if so directed by AMS, to AMS' third party supplier. Upon termination of this Agreement, each party shall deliver or destroy all Confidential Information of the other party which is in its possession, care or control within thirty (30) days of termination except for backup and archived Client data.

## 11 ALLOCATION OF LIABILITY

Each party agrees, to the extent allowed by law, to defend, indemnify and hold the other party and its officers, directors, shareholders, employees and third party suppliers (collectively, the "Indemnified Parties") harmless from and against all losses, damages and expenses, including reasonable attorneys' fees, in connection with any claims against the Indemnified Parties arising out of or related to the negligence or willful misconduct of the other party's employees or agents. Further, Agency shall indemnify and hold harmless AMS and its officers, directors, shareholders, employees and third party suppliers against the acts of any Client assigned to wear the Equipment, including claims for personal, injury property damage or death. An indemnifying party shall have the foregoing obligation only if the other party provides: (i) a prompt written request for indemnification and defense in such claim or action; (ii) sole control of the defense and settlement thereof; and (iii) all available information, assistance and authority reasonably necessary to settle and defend any such claim or action.

EXCEPT AS ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL A PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, (OR USE THEREOF), OR BUSINESS INTERRUPTION ARISING OUT OF ANY ACTS OR FAILURES TO ACT, WHETHER SUCH DAMAGES ARE LABELED IN STRICT LIABILITY, TORT, CONTRACT OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

AMS HAS NO RESPONSIBILITY OR LIABILITY FOR ACTS THAT MAY BE COMMITTED BY INDIVIDUALS WHILE THEY ARE CLIENTS. EXCEPT AS LIMITED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL THE TOTAL LIABILITY OF AMS FOR ALL CLAIMS OF ANY KIND WHATSOEVER, AND UNDER ANY THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY AGENCY TO AMS DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EARLIEST EVENT GIVING RISE TO THE CLAIM.

The limitations set forth in this Section 11 shall apply even if any exclusive remedy in this Agreement fails of its essential purpose. The allocation of liability in this Section 11 represents the agreed and bargained for understanding of the parties and each party's compensation hereunder reflects such allocations.

## 12 MISCELLANEOUS PROVISIONS

**12.1 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to its conflicts of laws provisions. AMS and Agency hereby irrevocably consent to jurisdiction, service of process and venue in the City and County of Denver, Colorado.

**12.2 Arbitration.** Disputes arising under this Agreement that cannot be resolved informally by the parties through good faith negotiations shall be resolved by arbitration before a sole arbitrator appointed and operating pursuant to the Federal Arbitration Act and Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted in the City and County of Denver, Colorado. The written decision of the arbitrator shall be final, binding and convertible to a court judgment in any appropriate jurisdiction. Each party shall bear its own expenses with respect to such arbitration and shall share equally in the expenses of the arbitrator and the fees of the American Arbitration Association.

**12.3 Injunctive Relief.** Notwithstanding anything above to the contrary, either party at any time may apply to a court having jurisdiction thereof for a temporary restraining order, preliminary injunction or other appropriate order where such relief may be necessary to protect its interests (including, without limitation, any breach of the obligations under Sections 4 and/or 8), without any showing or proving of any actual damages and without posting a bond or other security.

### **12.4 Non-Discrimination and Business Code of Conduct.**

**12.4.1 Non-discrimination.** To the extent not exempt, the parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

**12.5 Records Retention and Audit Rights.** Agency will retain all records relating to the Agreement or any Schedule for a period of seven (7) years after termination of the Agreement or applicable Schedule. During the Term, upon ten (10) days prior written notice, and not more than once per year (unless circumstances warrant additional audits as described below), AMS may audit Agency's procedures and records that relate to the obligations under this Agreement. Notwithstanding the foregoing, the parties agree that AMS may conduct an audit at any time, in the event of (i) audits required by governmental or regulatory authorities or (ii) investigations of a breach of this Agreement.

**12.6 Assignment.** Except as expressly permitted herein, neither party may transfer or assign this Agreement, in whole or in part, without the written consent of the other party and any such attempt at transfer or assignment shall be void. Notwithstanding the foregoing, AMS may transfer or assign this Agreement to an entity that is an affiliate of AMS or, in the event of a sale of all or substantially all of its assets or equity, each without the consent of Agency. This Agreement shall extend to and be binding upon any successors and permitted assigns of the parties.

**12.7 No Agency; Independent Contractor.** The use of the term "Agency" in this Agreement is solely for convenience and is not intended to make either party an agent of the other party. This Agreement does not constitute and shall not be construed as constituting an agency, distributorship or joint venture business arrangement between the parties. AMS is to be and shall remain an independent contractor with respect to Products provided or Services performed under this Agreement. AMS may subcontract the performance of any of its obligations under this Agreement. However, such subcontracting will not relieve AMS of its obligations under this Agreement.

**12.8 Force Majeure.** Except for the obligation to make payments as provided herein, neither party shall be in default under this Agreement by reason of its delay in the performance of, or failure to perform, any of its obligations under this Agreement, if, and to the extent that, such delay or failure is caused by strikes, wars, natural disasters, acts of the public enemy, government restrictions or acts of terrorism. Upon claiming any excuse or delay under this Section, such party shall promptly notify the other party, use reasonable efforts to remove the cause and continue its performance under this Agreement whenever the cause is removed.

**12.9 Notices.** All notices, requests, demands or communications required or permitted hereunder shall be in writing, delivered personally or by electronic mail, facsimile or overnight delivery service at the respective addresses set forth herein (or at such other addresses as shall be given in writing by either party to the other). All notices, requests, demands or communications shall be deemed effective upon receipt for personal delivery, or on the business day following the date of sending by electronic mail, facsimile or overnight delivery service.

**12.10 Waiver; Severability.** Any waiver of any default or breach of this Agreement shall be effective only if in writing and signed by an authorized representative of the party providing the waiver. No such waiver shall be deemed to be a waiver of any other or subsequent breach or default. If any provision of this Agreement is held to be invalid, the remaining portions of this Agreement shall remain in full force.

**12.11 Publicity.** AMS shall have the right to issue news releases, press releases or other communications regarding this Agreement to potential investors and customers. However, AMS shall not disclose any names of Clients without the prior written approval of the Client and Agency.

12.12 **Headings.** Headings used in this Agreement are for convenience of reference only and shall not be construed as altering the meaning of this Agreement or any of its parts.

12.13 **Execution.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that signatures on this Agreement, as well as any other documents to be executed under this Agreement, may be delivered by facsimile or email and signed using a portable document format or an electronic signature in lieu of an original signature, and the parties agree to treat such signatures as original signatures and agree to be bound by this provision.

12.14 **Entire Agreement.** This Agreement constitutes the entire understanding of the parties, and supersedes all prior or contemporaneous written and oral agreements, representations or negotiations with respect to the subject matter hereof. This Agreement may not be modified or amended except in writing and signed by both parties.

IN WITNESS WHEREOF, the parties' hereto have caused this Agreement to be executed by their dully authorized representatives as of the date last signed by AMS.

**SPOKANE MUNICIPAL PROBATION**

**ALCOHOL MONITORING SYSTEMS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Clerk of Agency

By: *Michael Machens*  
Name: Mike Machens  
Title: CFO

Signed by AMS and effective as of: 8/7/18  
Effective Date

**PRODUCT AND SERVICE SCHEDULE  
TO  
MASTER AGENCY AGREEMENT**

**AGENCY:** SPOKANE MUNICIPAL PROBATION

This **PRODUCT AND SERVICES SCHEDULE** ("Schedule") to the **MASTER AGENCY AGREEMENT** (the "Agreement") is entered into on the date last signed by AMS by and between Alcohol Monitoring Systems, Inc. ("AMS") and the Agency identified above. This Schedule is incorporated by reference into the Agreement effective \_\_\_\_\_ executed by the parties. Unless otherwise defined herein, capitalized terms in this Schedule are those as defined in the Agreement. This Schedule is effective on the date signed by AMS.

AMS hereby desires to provide Agency with the Equipment and sell the Agency supporting Services and Agency desires to order such Equipment and purchase such Services as defined in this Schedule during the Term.

**1. DEFINITIONS**

- a. "Active Equipment" means any Equipment unit actively using the Monitoring Software.
- b. "Additional Monitoring Services" means, if Agency is purchasing such services, the additional Monitoring Services provided by AMS and as further defined on Attachment 1, at the pricing set forth in Attachment 1, Schedule A
- c. "CAM Equipment" means, if applicable per the pricing table below, an ankle bracelet device that continuously monitors alcohol levels and if configured as a kit, the base station.
- d. "Service Fee" as used on the Schedule(s) means the Monitoring Service fee charged by AMS to Agency per each Equipment unit, per day using the Monitoring Services.
- e. "Equipment" means collectively the GPS equipment, CAM equipment, various base stations, the Remote Breath Analyzer, the Radio Frequency House Arrest bracelet, Wireless Multi-connect devices and various base stations if sold separately rather than in kit configuration.
- f. "High Priority Alerts" are Equipment generated alerts that signal; (i) the Client violated the exclusion/inclusion zone(s), or failed to return to or leaves without proper authorization an assigned location; (ii) device and/or strap tampering; (iii) evidence of communication and/or location failure; or (iv) any other alert types required by Agency.
- g. "GPS Equipment" means, if applicable per the pricing table below, a device that monitors Client's geophysical location based on exclusion and inclusion zones and includes the base station if configured as a kit.
- h. "House Arrest Equipment" means, if applicable per the pricing table below, an electronic ankle device that monitors Client's adherence to a home arrest curfew schedule and includes the base station if configured as a kit.
- i. "Remote Breath Equipment" means, if applicable per the pricing table below, a device that measures alcohol levels in the breath and may have facial recognition capabilities.
- j. "SLA" means the Service Level Agreement Information document, which is attached to this Schedule as Attachment 1 and is only applicable if Agency is purchasing or renting Equipment with Additional Monitoring Services. Specific SLA protocols will be agreed to in a separate SLA document signed by Agency.
- k. "Wireless Base Station" means, if applicable per the pricing table below, an AMS device that uses cellular transmission to connect with another device, such as a GPS or CAM bracelet.
- l. "Wireless Multi-connect Device" means, if applicable per the pricing table below, a third-party wireless device that connects multiple electronic hardware devices, such a CAM bracelet to a base station.

**2. TERRITORY: City of Spokane in the State of Washington**

### 3. EQUIPMENT AND SERVICE LIMITATIONS AND SPECIAL REQUIREMENTS

#### 3.1 GENERAL EQUIPMENT LIMITATIONS

#### 3.1 GENERAL EQUIPMENT LIMITATIONS

3.1.1 **Alcohol Detection.** The CAM Equipment is not designed to give immediate notification of alcohol detection.

3.1.2 **Tamper Efforts.** AMS makes no assurances that the any Equipment worn by a Client will detect all tamper efforts.

3.1.3 **Submergence in Water or Other Liquid.** Equipment is not designed for submergence in liquids. Certain Equipment can tolerate limited water exposure such as that encountered when showering.

3.1.4 **Failure by Agency to Adhere to Maintenance Schedules.** AMS bears no liability for Agency's failure to adhere to Equipment maintenance notifications and/or schedules related to equipment and calibration.

#### 3.2 REMOTE BREATH EQUIPMENT LIMITATIONS

3.2.1 **Set Up.** Agency is responsible for entering and updating schedules for each Client and setting up all relevant notifications, including all methods and events. Further, Agency is responsible for establishing a program providing the necessary criteria to interpret all testing results provided by AMS. The Equipment is intended to be used to determine if a Client has consumed alcohol. It is a professional device designed to be used by trained Agency personnel in conjunction with a routine Agency-run equipment maintenance and calibration oversight program. Use by untrained personnel or without periodic maintenance or calibration may result in invalid results or incorrect interpretation of results.

3.2.2 **Breath Test Results.** AMS will not analyze or interpret testing results, reporting histories, or provide an opinion as to whether the Client has consumed alcohol. The concentration of alcohol in the blood of the Client cannot be exactly determined by using a breath alcohol-screening device. Blood alcohol concentration depends on a number of variables including, but not limited to, the amount of alcohol consumed, the rate at which it was consumed, body size, age, physical health and the rate of which the Client metabolizes alcohol. No vehicle or machinery should ever be operated after alcohol consumption, regardless of the breath test result as even small quantities of alcohol can result in driving impairment.

3.2.3 **Other Limitations.** The SCRAM Remote Breath Equipment is not waterproof and should not be immersed in or exposed in any way to liquids. Equipment damaged by Clients or by exposure to water will not be repaired and is subject to the lost/damaged Equipment unit replacement fee.

3.3 **ADDITIONAL MONITORING SERVICES – 24/7 REQUIREMENTS.** Additional Monitoring Services are supported by a separate SLA document, which must be completed for each Client. Each SLA specifies, among other things, the type, description and price of the Monitoring Services to be provided. Any modifications of the terms of the SLA shall be made solely in writing and mutually executed by the parties and any other attempt to modify the terms of the SLA shall be void. AMS is not liable for; (i) the actions or inactions of Agency or its employees, contractors and agents that result in delay or error in the Services; (ii) failure to report Client non-compliant activities to appropriate supervising authorities when potential bond, parole or probation violations have occurred; or (iii) inaccurate information provided or input into the Monitoring Software, including Client or other contact information, GPS inclusion/exclusion zone set up and offender schedule information and associated protocols.

3.4 **WIRELESS EQUIPMENT AND NETWORK LIMITATIONS.** AMS provides a choice of data network providers as a part of its Services for the Wireless Multi-connect Device and other Equipment. AMS accepts no responsibility or liability for wireless data coverage or lack thereof. No data will be transmitted when a data network that is supporting the Equipment is not available. Wireless Multi-connect Devices do not provide caller location or caller identification.

### 4 EQUIPMENT AND SERVICE PRICING. Pricing is in accordance with the GSA Schedule #GS-07F-0003Y

**4.1 Purchased Equipment.**

Equipment Type	Quantity	Price per Unit	Service Fee per Unit, per Day
CAM Kit Landline Base Station	1 - 49	\$1405.54	\$3.93
CAM Bracelet	1 - 49	\$1108.00	\$3.93
CAM Kit Wireless Base Station	1 - 49	\$1561.00	\$3.93
GPS Bracelet	1 - 49	\$604.00	\$2.57
House Arrest Kit Landline Base Station	1 - 49	\$558.59	\$1.70
House Arrest Kit Wireless Base Station	1 - 49	\$776.00	\$1.00
Remote Breath Equipment	1 - 49	\$850.00	\$2.80
CAM/House Arrest Landline Base Station	1 - 49	\$374.81	NA
CAM/House Arrest Wireless Base Station	1 - 49	\$585.00	\$1.00

**4.2 Rental Equipment Price**

Equipment Type	Quantity	Rental Equipment Fee, per Unit, per Day	Service Fee per Unit, per Day	Daily Service Fee per Unit (includes Rental Equipment Fee)	Shelf Fee
CAM Kit Landline Base Station	1 - 49	\$1.99	\$3.93	\$5.92	\$1.82
CAM Kit Wireless Base Station	1 - 49	\$3.20	\$3.93	\$7.13	\$1.82
GPS Bracelet	1 - 49	\$0.79	\$2.57	\$3.36	\$0.74
House Arrest Kit Landline Base Station	1 - 49	\$0.81	\$1.70	\$2.51	0.70
House Arrest Kit Wireless Base Station	1 - 49	\$0.81	\$1.70	\$2.51	\$1.21
Remote Breath Equipment	1 - 49	\$2.70	\$2.80	\$5.50	\$1.48
CAM/House Arrest Wireless Base Station Standalone	1 - 49	\$0.20	\$1.00	1.20	NA

**Note:** If purchasing/renting the Wireless Base Station kitted with CAM or House Arrest Equipment, the Service Fee will be invoiced at the amount for CAM or House Arrest Kit listed above, plus the Service Fee amount listed above for the CAM or House Arrest Wireless Base station as if it were purchased/rented as a standalone unit



**5 ADDITIONAL SERVICES**

**Training:** AMS will provide Agency personnel with training in the use of the Products. Any such training will be at no charge to Agency.

**Ethernet Communication:** \$0.50 per Equipment unit, per day

**Calibration Kits and Associated Consumables:** AMS will provide 1 calibration kit for each order with a quantity of 25 Remote Breath Equipment units.

**Calibration Fee:** AMS will calibrate Remote Breath Equipment for a charge of \$50 Equipment unit.

**6 SHELF FEE; SHELF ALLOWANCE; LOSS AND DAMAGE ALLOWANCE; LOST AND DAMAGE FEE:**

**Shelf Fee:** A Shelf Fee is only charged if there is an amount in the Rental Equipment Fee column in the table above and there is a Shelf Allowance percentage listed below.

**Shelf Allowance:** GPS, CAM, House Arrest, Remote Breath: 20%

**Loss and Damage Allowance:** 5%

**Loss and Damage Fee:** The replacement fee for Rental Equipment lost or damage beyond repair will be the purchase price, per unit, listed above or as follows. For Parts it will be the current replacement cost from the manufacturer. GPS refurbishment fee will be \$365.20 for those units that can be repaired

**7 SPECIAL TERMS: NA**

**IN WITNESS WHEREOF,** the parties' hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last signed by AMS.

THIS SCHEDULE, AND THE AGREEMENT OF WHICH IT IS A PART, IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PRIOR SCHEDULE AND ANY PROPOSALS AND UNDERSTANDINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS SCHEDULE. By execution, both signers certify that each is authorized to execute the Schedule on behalf of their respective companies.

**SPOKANE MUNICIPAL PROBATION**

**ALCOHOL MONITORING SYSTEMS, INC.**

By: \_\_\_\_\_

By: Michael Ward

Name: \_\_\_\_\_

Name: Mike Machens

Title: \_\_\_\_\_

Title: CFO

Date: \_\_\_\_\_

Signed by AMS and effective as of: 8/7/18  
Effective Date

ATTACHMENT 1 – MONITORING SERVICE LEVEL AGREEMENT  
TO  
PRODUCT AND SERVICES SCHEDULE  
TO  
MASTER AGENCY AGREEMENT

1 OVERVIEW

The following information details the alert and notification protocols that AMS will provide to Agency for those Clients using Equipment that requires Additional Monitoring Services and is incorporated by reference into the Product and Services Schedule to the Master Agency Agreement between the parties.

1.1 SERVICES

- 1.1.1 **Additional Monitoring Services.** AMS will provide Additional Monitoring Services on a 24/7, 365 day basis. The Monitoring Services are provided by AMS and not a third party. Services generally consist of outbound calls made by AMS to Probation Officers, law enforcement or Clients, telephone calling or customized Monitoring Services based on alert protocol specifications entered into the Monitoring Software.
- 1.1.2 **Contact Information and Monitoring Service Level Agreement Form.** Agency will contract AMS to configure the Monitoring Software to maintain all alert protocols and contact information.
- 1.1.3 **Alert Protocols.** Agency will contact AMS to set up alert protocols that will be documented in a separate SLA for each Customer.
- 1.1.4 **Alert Response Time.** AMS will respond to outbound alerts within 30 minutes of receiving notification of alert and will follow the protocols as configured for Agency.
- 1.1.5 **Recording.** The Monitoring Software will record inbound and outbound requests made by telephone. For quality purposes AMS will provide individual recordings of the telephone transactions upon written request.
- 1.1.6 **Reporting.** Upon written request, AMS will provide Agency with the following information:
- Number of alerts received for a specific period of time
  - Average time to respond to alerts
  - Results/notes of calls

1.2 **PRICE AND PAYMENT.** Additional Monitoring Service standard fees are identified on Schedule A hereto, but will be formally agreed to in the SLA, and will be invoiced by AMS on a monthly basis as incurred and shall be paid by Agency the payment terms set forth in the Agreement from the date of such invoice and the remedies under the Agreement shall apply to any non-payment.

**SCHEDULE A – ADDITIONAL MONITORING SERVICE FEES**  
**TO**  
**ATTACHMENT 1 –SERVICE LEVEL AGREEMENT**  
**TO**  
**PRODUCT AND SERVICES SCHEDULE**  
**TO**  
**PRODUCT AND SERVICES AGENCY AGREEMENT**

**SERVICE LEVEL CHOSEN:** \_\_\_\_\_

**SERVICE APPLICABLE PRODUCT(s):** Check the box for the Product(s) you are purchasing the Additional Services for.

**CAM**           
 **REMOTE BREATH**           
 **HOUSE ARREST**           
 **GPS**   

ADDITIONAL MONITORING SERVICES	CAM	REMOTE BREATH, HOUSE ARREST, GPS ( Per Day, Per Client)
<b>Standard (Included in Services Fee)</b>		
<ul style="list-style-type: none"> <li>• 24/7/365 monitoring services</li> <li>• Online training and certifications</li> <li>• Automated alert notifications delivered via text, email or page</li> <li>• Daily summary reports</li> <li>• 24/7 alert generation and analysis</li> </ul>	No Additional Charge	No Additional Charge
<b>Premier</b>		
<ul style="list-style-type: none"> <li>• Standard, plus:</li> <li>• High priority alert investigation/ handling/ resolution</li> <li>• Manual outbound officer and offender calls</li> <li>• Closed loop documentation of alert handling/ resolution (1-3 calls per alert)</li> </ul>	Not Available	\$1.00
<b>Premier Plus</b>		
<ul style="list-style-type: none"> <li>• Premier, plus:</li> <li>• Outbound offender and officer calls based on defined protocols and escalation procedures per SLA</li> <li>• Escalated alert notifications to officers and/or supervisors (e.g. highest authority for notification) (&gt;3 calls per alert)</li> </ul>	Not Available	\$1.25/day/Client
<b>Customized Services</b>		
For data entry, schedule changes, on-site training, operational assessments, agency and court reporting packages	Priced for each service in the SLA	Priced for each service in the SLA



# CERTIFICATE OF LIABILITY INSURANCE

5/1/2019

DATE (MM/DD/YYYY)

8/10/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


<b>PRODUCER</b> Lockton Companies 8110 E. Union Avenue Suite 700 Denver CO 80237 (303) 414-6000	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): FAX (A/C, No):		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> Alcohol Monitoring Systems, Limited 1373359 Level 18 40 Bank St. (HQ3) Canary Wharf, London E145NR	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> Underwriters at Lloyds of London		10736
	<b>INSURER B:</b> Evanston Insurance Company		35378
	<b>INSURER C:</b>		
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** 15546666                      **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR Deductible: \$50,000  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	N	N	CJ1002118	5/1/2018	5/1/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$	N	N	MKLVEUL100753	5/1/2018	5/1/2019	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$ XXXXXXXX
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		NOT APPLICABLE			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
A	Professional Liability-Claims Made	N	N	CJ1002118	5/1/2018	5/1/2019	\$1,000,000 Per claim \$1,000,000 Agg \$50,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b> 15546666 Spokane Municipal Court Probation 1100 W Mallon Ave Spokane WA 99260	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**Agenda Sheet for City Council Meeting of:**  
10/12/2020

<b>Date Rec'd</b>	9/28/2020
<b>Clerk's File #</b>	OPR 2019-1056
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	CITY ATTORNEY
<b>Contact Name/Phone</b>	MIKE ORMSBY 6287
<b>Contact E-Mail</b>	MORMSBY@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	0500 SPECIAL COUNSEL CONTRACT AMENDMENT

**Agenda Wording**

The Firm acts as OUTSIDE SPECIAL COUNSEL providing legal services and advice to the City regarding the matter of LONNIE TOFSRUD v. SPOKANE POLICE DEPARTMENT, ET. AL.

**Summary (Background)**

Additional funds are required. This contract amendment is for \$50,000.00. The total amount under the original contract and this amendment is \$200,000.00.

<b>Fiscal Impact</b>	Grant related? NO	<b>Budget Account</b>
	Public Works? NO	

Expense	\$ 50,000.00	# 0000-00000-00000-00000 - from Claims
Select	\$	#
Select	\$	#
Select	\$	#

**Approvals**

<b>Dept Head</b>	PICCOLO, MIKE
<b>Division Director</b>	
<b>Finance</b>	WALLACE, TONYA
<b>Legal</b>	ODLE, MARI
<b>For the Mayor</b>	ORMSBY, MICHAEL

**Council Notifications**

<b>Study Session\Other</b>	10/5 Committee
<b>Council Sponsor</b>	Lori Kinnear

**Additional Approvals**

<b>Purchasing</b>	sfaggiano@spokanecity.org
	james.scott@ascrisk.com
	tstrothman@spokanecity.org
	rkokot@spokanecity.org



# Expenditure Control Form

1. All requests being made must be accompanied by this form.
2. Route **ALL** requests to the Finance Department for signature.
3. If request is greater than \$100,000 it requires signatures by Finance and the City Administrator. Finance Dept. will route to City Administrator.

<b>Today's Date:</b>	<b>Type of expenditure:</b>	Goods	Services
<b>Department:</b>			
<b>Approving Supervisor:</b>			
<b>Amount of Proposed Expenditure:</b>			
<b>Funding Source:</b>			
<b>Please verify correct funding sources. Please indicate breakdown if more than one funding source.</b>			
<b>Why is this expenditure necessary now?</b>			
<b>What are the impacts if expenses are deferred?</b>			
<b>What alternative resources have been considered?</b>			
<b>Description of the goods or service and any additional information?</b>			
<b>Person Submitting Form/Contact:</b>			
<b>FINANCE SIGNATURE:</b> <i>Tonya Wallace</i>		<b>CITY ADMINISTRATOR SIGNATURE:</b> <i>Scott Simman</i>	



**City of Spokane**  
**OUTSIDE COUNSEL  
CONTRACT AMENDMENT**

This Contract Amendment is made and entered into by and between the **City of Spokane** as (“City”), a Washington municipal corporation, and **THE LAW FIRM OF THOMAS W. MCLANE, PLLC**, whose address is 103 East Indiana Avenue, Suite A, Spokane, Washington 99207, as (“Firm”), individually hereafter referenced as a “party”, and together as the “parties”.

*WHEREAS, the parties entered into a Contract wherein the Firm agreed to act as OUTSIDE SPECIAL COUNSEL providing legal services and advice to the City regarding the matter of LONNIE TOFSRUD v. SPOKANE POLICE DEPARTMENT, ET. AL., and*

*WHEREAS, additional funds are necessary, thus the original Contract needs to be formally Amended by this written document; and*

*-- NOW, THEREFORE, in consideration of these terms, the parties mutually agree as follows:*

**1. CONTRACT DOCUMENTS.**

The Contract, dated November 19, 2019 and November 20, 2019, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

**2. EFFECTIVE DATE.**

This Contract Amendment shall become effective on September 1, 2020.

**3. COMPENSATION.**

The City shall pay an additional amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** for everything furnished and done under this Contract Amendment. The total amount under the original contract, all previous amendments and this Amendment is **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)**.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Contract Amendment by having legally-binding representatives affix their signatures below.

**THE LAW FIRM OF  
THOMAS W. MCLANE, PLLC**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature Date

By \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney





**Agenda Sheet for City Council Meeting of:**

10/12/2020

<b>Date Rec'd</b>	9/30/2020
<b>Clerk's File #</b>	OPR 2020-0743
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	ASSET MANAGEMENT
<b>Contact Name/Phone</b>	DAVE STEELE X6064
<b>Contact E-Mail</b>	DSTEELE@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	5900 NEW PROPERTY LEASE WITH FRONTIER BEHAVIOR HEALTH AT INTERMODAL

**Agenda Wording**

New Lease with Frontier Behavioral Health (Spokane, WA) for office space on the 3rd floor of the intermodal facility. The lease term dates are August 1, 2020, through Midnight on February 28, 2027.

**Summary (Background)**

The Intermodal Facility is owned by the City and supported by the general fund, leasing space in the building to 3rd parties helps activate the space, increases foot traffic, and provides revenue to offset the cost to the General Fund. \* New lease with Frontier Behavior Health for office space on the 3rd floor. \* The tenant will be providing tenant improvements as a lease revenue offset for the first 19 months, and then will be paying full service market rate for the remainder of the lease term.

<b>Fiscal Impact</b>	Grant related? NO	<b>Budget Account</b>
	Public Works? NO	

Revenue	\$ 162,986.16 (cash rent revenue)	# 1570-23100-99999-36250-99999
Neutral	\$ 27,168.64 (leasehold excise tax)	# 0100-99999-99999-24502-81084
Revenue	\$ 48,607.13 (noncash rent revenue)	# 1570-23100-99999-36250-99999
Expense	\$ 48,607.13 (leasehold improvements)	# 1570-23100-18200-5XXXX-99999

<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	STEELE, DAVID	<b>Study Session\Other</b>	Finance 9-21-2020
<b>Division Director</b>	WALLACE, TONYA	<b>Council Sponsor</b>	CM Candace Mumm
<b>Finance</b>	HUGHES, MICHELLE	<b>Distribution List</b>	
<b>Legal</b>	PICCOLO, MIKE	dsteele@spokanecity.org; ewickert@spokanecity.org	
<b>For the Mayor</b>	ORMSBY, MICHAEL	laga@spokanecity.org; kbustos@spokanecity.org	
<b>Additional Approvals</b>		ablain@spokanecity.org	
<b>Purchasing</b>		jlargent@spokanecity.org	
		nzollinger@spokanecity.org	

## Briefing Paper Finance Committee

<b>Division &amp; Department:</b>	Finance – Asset Management
<b>Subject:</b>	Property Lease Agreement with Frontier Behavior Health @ Intermodal Facility
<b>Date:</b>	00/31/2020
<b>Author (email &amp; phone):</b>	<a href="mailto:dsteale@spokanecity.org">dsteale@spokanecity.org</a> 625-6064
<b>City Council Sponsor:</b>	Councilwoman Mumm
<b>Executive Sponsor:</b>	Tonya Wallace
<b>Committee(s) Impacted:</b>	N/A
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	2020-2025 Six Year Citywide Capital Improvement Program.
<b>Strategic Initiative:</b>	
<b>Deadline:</b>	9/21/2020
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	New property lease with Frontier Behavior Health at the Intermodal Facility
<b>Background/History:</b> The Intermodal Facility is owned by the City and supported by the general fund, leasing space in the building to 3 <sup>rd</sup> parties helps activate the space, increases foot traffic, and provides revenue to offset the cost to the General Fund.	
<b>Executive Summary:</b>	
<ul style="list-style-type: none"> <li>• New lease with Frontier Behavior Health for office space on the 3<sup>rd</sup> floor.</li> <li>• The tenant will be providing tenant improvements as a lease revenue offset for the first 19 months, and then will be paying full service market rate for the remainder of the lease term.</li> </ul>	
<b>Budget Impact:</b>	
Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.) <i>Match requirements will be determined at the time of award.</i>	
<b>Operations Impact:</b>	
Consistent with current operations/policy? <input type="checkbox"/> Yes <input type="checkbox"/> No N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input type="checkbox"/> No N/A Specify changes required: Known challenges/barriers:	



# Expenditure Control Form

1. All requests being made must be accompanied by this form.
2. Route **ALL** requests to the Finance Department for signature.
3. If request is greater than \$100,000 it requires signatures by Finance and the City Administrator. Finance Dept. will route to City Administrator.

<b>Today's Date:</b>	<b>Type of expenditure:</b>	Goods	Services
<b>Department:</b>			
<b>Approving Supervisor:</b>			
<b>Amount of Proposed Expenditure:</b>			
<b>Funding Source:</b>			
<b>Please verify correct funding sources. Please indicate breakdown if more than one funding source.</b>			
<b>Why is this expenditure necessary now?</b>			
<b>What are the impacts if expenses are deferred?</b>			
<b>What alternative resources have been considered?</b>			
<b>Description of the goods or service and any additional information?</b>			
<b>Person Submitting Form/Contact:</b>			
<b>FINANCE SIGNATURE:</b>		<b>CITY ADMINISTRATOR SIGNATURE:</b>	
_____		_____	



**Goodale & Barbieri Company**  
818 W. Riverside Ave Ste 300  
Spokane, WA 99201  
Phone: 509-459-6109  
Fax: 509-344-4939

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Association  
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Form: GR\_LS  
Multi Tenant Gross Lease  
Rev. 1/2011  
Page 1 of 22

**LEASE AGREEMENT**  
(Multi Tenant Gross Lease)

THIS LEASE AGREEMENT (the "Lease") is entered into and effective as of this        day of July, 2020, between City of Spokane, a Washington State Municipal Corporation ("Landlord"), and Frontier Behavioral Health, a Washington Public Benefit Corporation ("Tenant"). Landlord and Tenant agree as follows:

**1. LEASE SUMMARY.**

- a. **Leased Premises.** The leased commercial real estate i) consists of an agreed area of approximately +/- 2,566 rentable square feet and is outlined on the floor plan attached as Exhibit A (the "Premises"); ii) is located on the land legally described on attached Exhibit B; and iii) is commonly known as 221-F Spokane Intermodal Facility at 221 W 1st Avenue Spokane, WA 99201 (suite number and address). The Premises do not include, and Landlord reserves, the exterior walls and roof of the Premises; the land beneath the Premises; the pipes and ducts, conduits, wires, fixtures, and equipment above the suspended ceiling; and the structural elements of the building in which the Premises are located (the "Building"). The Building, the land upon which it is situated, all other improvements located on such land, and all common areas appurtenant to the Building are referred to as the "Property." The Building and all other buildings on the Property as of the date of this Lease consist of an agreed area of +/- 27920 rentable square feet.
- b. **Lease Commencement Date.** The term of this Lease shall be for a period of seventy nine (79) months and shall commence on August 1, 2020 or such earlier or later date as provided in Section 3 (the "Commencement Date"). Tenant shall have no right or option to extend this Lease, unless otherwise set forth in a rider attached to this Lease (e.g., Option to Extend Rider, CBA Form OR).
- c. **Lease Termination Date.** The term of this Lease shall expire at midnight on February 28, 2027 or such earlier or later date as provided in Section 3 (the "Termination Date").
- d. **Base Rent.** The base monthly rent shall be (check one):  \$       , or  according to the Rent Rider attached hereto ("Base Rent"). Rent shall be payable at Landlord's address shown in Section 1(h) below, or such other place designated in writing by Landlord. TENANT ACKNOWLEDGES AND AGREES TO PAY THE APPROPRIATE LEASEHOLD EXCISE TAX DURING THE MONTHS OF \$0.00 RENT AS SHOWN IN THE RENT RIDER. THE MONTHLY AMOUNT FOR THE LEASEHOLD EXCISE TAX DURING ZERO LEASE YEAR IS \$328.48 PER MONTH. FROM LEASE YEAR 1 UNTIL THE LEASE EXPIRATION, THE LEASEHOLD EXCISE TAX IS INCORPORATED IN THE MONTHLY RENT AMOUNT.
- e. **Prepaid Rent.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$        as prepaid rent, to be applied to the Rent due for months        through        of the Lease.
- f. **Security Deposit.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$ 2,886.75 to be held as a security deposit pursuant to Section 5 below. The security deposit shall be in the form of (check one):  cash,  letter of credit according to the Letter of Credit Rider (CBA Form LCR) attached hereto, or  check.
- g. **Permitted Use.** The Premises shall be used only for general office and for no other purpose without the prior written consent of Landlord (the "Permitted Use").
- h. **Notice and Payment Addresses.**  
Landlord: City of Spokane c/o Goodale & Barbieri Co.  
818 W. Riverside Ave, Ste 300  
Spokane, WA 99201  
Fax No.: 509-344-4939  
Email: info@g-b.com
- Tenant: Frontier Behavioral Health ATTN: AP  
107 S. Division Street



**Goodale & Barbieri Company**  
 818 W. Riverside Ave Ste 300  
 Spokane, WA 99201  
 Phone: 509-459-6109  
 Fax: 509-344-4939

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Form: GR\_LS  
 Multi Tenant Gross Lease  
 Rev. 1/2011  
 Page 2 of 22

**LEASE AGREEMENT**  
 (Multi Tenant Gross Lease)

Spokane, WA 99202

Fax No.:

Email: CDUNLAK@FBHWA.ORG

**2. PREMISES.**

- a. **Lease of Premises.** Landlord leases to Tenant, and Tenant leases from Landlord the Premises upon the terms specified in this Lease.
- b. **Acceptance of Premises.** Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural condition of the Premises or the condition of all mechanical, electrical, and other systems on the Premises. Except for any tenant improvements to be completed by Landlord as described on attached Exhibit C ( the "Landlord's Work"), Tenant shall be responsible for performing any work necessary to bring the Premises into a condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had adequate opportunity to investigate the Premises; acknowledges responsibility for making any corrections, alterations and repairs to the Premises (other than the Landlord's Work); and acknowledges that the time needed to complete any such items shall not delay the Commencement Date.
- c. **Tenant Improvements.** Attached Exhibit C sets forth all of Landlord's Work, if any, and all tenant improvements to be completed by Tenant (the "Tenant's Work"), if any, that will be performed on the Premises. Responsibility for design, payment and performance of all such work shall be as set forth on attached Exhibit C. If Tenant fails to notify Landlord of any defects in the Landlord's Work within thirty (30) days of delivery of possession to Tenant, Tenant shall be deemed to have accepted the Premises in their then condition. If Tenant discovers any major defects in the Landlord's Work during this 30-day period that would prevent Tenant from using the Premises for the Permitted Use, Tenant shall notify Landlord and the Commencement Date shall be delayed until Landlord has notified Tenant that Landlord has corrected the major defects and Tenant has had five (5) days to inspect and approve the Premises. The Commencement Date shall not be delayed if Tenant's inspection reveals minor defects in the Landlord's Work that will not prevent Tenant from using the Premises for the Permitted Use. Tenant shall prepare a punch list of all minor defects in Landlord's Work and provide the punch list to Landlord, which Landlord shall promptly correct. TENANT MAY NOT MAKE ANY REPAIRS, ALTERATIONS, OR ADDITIONS TO THE PREMISES WITHOUT FIRST PROCURING LANDLORD'S WRITTEN CONSENT.

3. **TERM.** The term of this Lease shall commence on the Commencement Date specified in Section 1, or on such earlier or later date as may be specified by notice delivered by Landlord to Tenant advising Tenant that the Premises are ready for possession and specifying the Commencement Date, which shall not be less than \_\_\_ days (thirty (30) days if not filled in) following the date of such notice.

- a. **Early Possession.** If Landlord permits Tenant to possess and occupy the Premises prior to the Commencement Date specified in Section 1, then such early occupancy shall not advance the Commencement Date or the Termination Date set forth in Section 1, but otherwise all terms and conditions of this Lease shall nevertheless apply during the period of early occupancy before the Commencement Date.
- b. **Delayed Possession.** Landlord shall act diligently to make the Premises available to Tenant; provided, however, neither Landlord nor any agent or employee of Landlord shall be liable for any damage or loss due to Landlord's inability or failure to deliver possession of the Premises to Tenant as provided in this Lease. If possession is delayed, the Commencement Date set forth in Section 1 shall also be delayed. In addition, the Termination Date set forth in Section 1 shall be modified so that the length of the Lease term remains the same. If Landlord does not deliver possession of the Premises to Tenant within \_\_\_ days (sixty (60) days if not filled in) after the Commencement Date specified in Section 1, Tenant may elect to cancel this Lease by giving notice to Landlord within ten (10) days after such time period ends. If Tenant



**Goodale & Barbieri Company**  
818 W. Riverside Ave Ste 300  
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Phone: 509-459-6109  
Fax: 509-344-4939

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Form: GR\_LS  
Multi Tenant Gross Lease  
Rev. 1/2011  
Page 3 of 22

**LEASE AGREEMENT**  
(Multi Tenant Gross Lease)

gives notice of cancellation, the Lease shall be cancelled, all prepaid rent and security deposits shall be refunded to Tenant, and neither Landlord nor Tenant shall have any further obligations to the other. The first "Lease Year" shall commence on the Commencement Date and shall end on the date which is twelve (12) months from the end of the month in which the Commencement Date occurs. Each successive Lease Year during the initial term and any extension terms shall be twelve (12) months, commencing on the first day following the end of the preceding Lease Year. To the extent that the tenant improvements are not completed in time for the Tenant to occupy or take possession of the Premises on the Commencement Date due to the failure of Tenant to fulfill any of its obligations under this Lease, the Lease shall nevertheless commence on the Commencement Date set forth in Section 1.

**4. RENT.**

- a. **Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the monthly Base Rent stated in Section 1 in advance on or before the first day of each month during the Lease term beginning on (check one):  the Commencement Date, or  \_\_\_\_\_ (if no date specified, then on the Commencement Date), and shall also pay any other additional payments due to Landlord ("Additional Rent") (collectively, "rent" or "Rent") when required under this Lease. Payments for any partial month at the beginning or end of the Lease shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Rent, and upon failure of Tenant to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay rent.
- b. **Late Charges; Default Interest.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall pay Landlord an amount equal to the greater of \$100 or five percent (5%) of the delinquent amount for the cost of collecting and handling such late payment in addition to the amount due and as Additional Rent. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord's option, bear interest at the rate of fifteen percent (15%) per annum, or the highest rate of interest allowable by law, whichever is less (the "Default Rate"). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.
- c. **Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section.

5. **SECURITY DEPOSIT.** Upon execution of this Lease, Tenant shall deliver to Landlord the security deposit specified in Section 1 above. Landlord's obligations with respect to the security deposit are those of a debtor and not of a trustee, and Landlord may commingle the security deposit with its other funds. If Tenant breaches any covenant or condition of this Lease, including but not limited to the payment of Rent, Landlord may apply all or any part of the security deposit to the payment of any sum in default and any damage suffered by Landlord as a result of Tenant's breach. Tenant acknowledges, however, that the security deposit shall not be considered as a measure of Tenant's damages in case of default by Tenant, and any payment to Landlord from the security deposit shall not be construed as a payment of liquidated damages for Tenant's default. If Landlord applies the security deposit as contemplated by this Section, Tenant shall, within five (5) days after written demand therefor by Landlord, deposit with Landlord the amount so applied. If Tenant complies with all of the covenants and conditions of this Lease throughout the Lease term, the security deposit shall be repaid to Tenant without interest within thirty (30) days after the surrender of the Premises by Tenant in the condition required by Section 12 of this Lease.
6. **USES.** The Premises shall be used only for the Permitted Use specified in Section 1 above, and for no other business or purpose without the prior written consent of Landlord. No act shall be done on or around the Premises that is unlawful or that will increase the existing rate of insurance on the Premises, the Building, or



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the Property, or cause the cancellation of any insurance on the Premises, the Building, or the Property. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done on the Premises, the Building, or the Property which will obstruct or interfere with the rights of other tenants or occupants of the Property, or their employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, or to injure or annoy such persons.

7. **COMPLIANCE WITH LAWS.** Tenant shall not cause or permit the Premises to be used in any way which violates any law, ordinance, or governmental regulation or order. Landlord represents to Tenant that as of the Commencement Date, to Landlord's knowledge but without duty of investigation, and with the exception of any Tenant's Work, the Premises comply with all applicable laws, rules, regulations, or orders, including without limitation, the Americans With Disabilities Act, if applicable, and Landlord shall be responsible to promptly cure at its sole cost any noncompliance which existed on the Commencement Date. Tenant shall be responsible for complying with all laws applicable to the Premises as a result of the Permitted Use, and Tenant shall be responsible for making any changes or alterations as may be required by law, rule, regulation, or order for Tenant's Permitted Use at its sole cost and expense. Otherwise, if changes or alterations are required by law, rule, regulation, or order unrelated to the Permitted Use, Landlord shall make changes and alterations at its expense.
8. **UTILITIES AND SERVICES.** Landlord shall provide the Premises the following services: water and electricity for the Premises seven (7) days per week, twenty-four (24) hours per day, and heating, ventilation and air conditioning from 12:00 a.m. to 11:59 p.m. Monday through Friday; 12:00 a.m. to 11:59 p.m. on Saturday; and 12:00 to 11:59 p.m. on Sunday, and Landlord shall also provide janitorial service to the Premises and Building five (5) nights each week, exclusive of holidays. Heating, ventilation and air conditioning services will also be provided by Landlord to the Premises during additional hours on reasonable notice to Landlord, at Tenant's sole cost and expense, at an hourly rate reasonably established by Landlord from time to time and payable by Tenant, as and when billed, as Additional Rent. If water and electricity services are not separately metered to the Premises, Tenant shall pay its proportionate share of all charges for any utilities that are jointly metered based on the ratio which the rentable square feet of the Premises bears to the total rentable square feet served by the joint meters. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility charges which are above those usual and customary for the Permitted Use, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage.

Tenant shall furnish all other utilities (including, but not limited to, telephone, Internet, and cable service if available) and other services which Tenant requires with respect to the Premises, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises, and of all other utilities and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord as described above. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof.

9. **TAXES.** EXCEPTING ANY SUMS NOW OR HEREAFTER PAYABLE AS LEASEHOLD EXCISE TAX PURSUANT TO RCW. CH. 82.29A, WHICH IS INCLUDED IN THE BASE RENT, Tenant shall pay all taxes, assessments, liens and license fees ("Taxes") levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such liens, related to or required by Tenant's use of the Premises as well as all Taxes on Tenant's personal property located on the Premises. Landlord shall pay all Taxes with respect to the Building and the Property, including any Taxes resulting from a reassessment of the Building or the Property due to a change of ownership or otherwise.

### 10. COMMON AREAS

- a. **Definition.** The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general, non-exclusive use and convenience of Tenant with other tenants and which are not leased or held for the exclusive use of a particular tenant. To



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the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mall areas, common heating, ventilating and air conditioning systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. Landlord reserves the use of exterior walls and the roof, and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.

- b. **Use of the Common Areas.** Tenant shall have the non-exclusive right, in common with such other tenants to whom Landlord has granted or may grant such rights, to use the Common Areas. Tenant shall abide by rules and regulations adopted by Landlord from time to time and shall use its best efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, to comply with those rules and regulations, and not interfere with the use of Common Areas by others.
- c. **Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. In performing such maintenance, Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

- 11. **ALTERATIONS.** Tenant may make alterations, additions or improvements to the Premises, including any Tenant Work identified on attached Exhibit C (the "Alterations"), only with the prior written consent of Landlord, which, with respect to Alterations not affecting the structural components of the Premises or utility systems therein, shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have thirty (30) days in which to respond to Tenant's request for any Alterations so long as such request includes the names of Tenant's contractors and reasonably detailed plans and specifications therefor. The term "Alterations" shall not include the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures that may be performed without damaging existing improvements or the structural integrity of the Premises, the Building, or the Property, and Landlord's consent shall not be required for Tenant's installation or removal of those items. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications approved by Landlord, using contractors approved by Landlord, and in a manner so as to not unreasonably interfere with other tenants. Tenant shall pay, when due, or furnish a bond for payment (as set forth in Section 19) all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or the Property or any interest therein. Tenant shall remove all Alterations at the end of the Lease term unless Landlord conditioned its consent upon Tenant leaving a specified Alteration at the Premises, in which case Tenant shall not remove such Alteration, and it shall become Landlord's property. Tenant shall immediately repair any damage to the Premises caused by removal of Alterations.
- 12. **REPAIRS AND MAINTENANCE; SURRENDER.** Tenant shall, at its sole expense, maintain the Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition, including all HVAC components and other utilities and systems to the extent exclusively serving the Premises. Landlord shall maintain and repair the Building structure, foundation, subfloor, exterior walls, roof structure and surface, and HVAC components and other utilities and systems serving more than just the Premises, and the Common Areas. Tenant shall not damage any demising wall or disturb the structural integrity of the Premises, the Building, or the Property and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be





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responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord may at Landlord's option enter upon the Premises after ten (10) days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof together with interest thereon at the default rate set forth in Section 4 shall be due and payable as Additional Rent to Landlord together with Tenant's next installment of Base Rent. Upon expiration of the Lease term, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises, together with all keys, to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved, reasonable wear and tear and insured casualty excepted.

13. **ACCESS AND RIGHT OF ENTRY .** After twenty-four (24) hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term, and (b) posting "for lease" signs within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term.
14. **SIGNAGE.** Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install any approved signage at Tenant's sole expense and in compliance with all applicable laws. Tenant shall not damage or deface the Premises in installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal.
15. **DESTRUCTION OR CONDEMNATION**
  - a. **Damage and Repair.** If the Premises or the portion of the Building or the Property necessary for Tenant's occupancy are partially damaged but not rendered untenable, by fire or other insured casualty, then Landlord shall diligently restore the Premises and the portion of the Property necessary for Tenant's occupancy to the extent required below and this Lease shall not terminate. Tenant may, however, terminate the Lease if Landlord is unable to restore the Premises within six (6) months of the casualty event by giving twenty (20) days notice of termination.

The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if twenty-five percent (25%) or less of each of those areas are damaged. If insurance proceeds are not available or are not sufficient to pay the entire cost of restoring the Premises, or if Landlord's lender does not permit all or any part of the insurance proceeds to be applied toward restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.

If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or fifty percent (50%) or more of the rentable area of the Property are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises and the portion of the Property necessary for Tenant's occupancy to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Lease term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease. If, within sixty (60) days after receipt by Landlord from Tenant of notice that Tenant deems the Premises or the portion of the Property necessary for Tenant's occupancy untenable, Landlord fails to notify Tenant of its election to restore those areas, or if Landlord is unable to restore those areas within six (6) months of



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the date of the casualty event, then Tenant may elect to terminate the Lease upon twenty (20) days' notice to Landlord unless Landlord, within such twenty (20) day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable.

If Landlord restores the Premises or the Property under this Section, Landlord shall proceed with reasonable diligence to complete the work, and the base monthly rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a Rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises or the Property. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant; any alterations or improvements paid for by Tenant; any Tenant Work identified in Exhibit C (regardless of who may have completed them); Tenant's furniture; or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

- b. **Condemnation.** If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall terminate at the option of either Landlord or Tenant as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises or the portion of the Property taken by the condemning authority. All Rents and other payments shall be paid to that date.

If the condemning authority takes a portion of the Premises or of the Building or the Property necessary for Tenant's occupancy that does not render them untenable, then this Lease shall continue in full force and effect and the base monthly rent shall be equitably reduced based on the proportion by which the floor area of any structures is reduced. The reduction in Rent shall be effective on the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if twenty-five percent (25%) or less of each of those areas are condemned. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises or the Building or the Property and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses if Tenant may terminate the Lease under this Section, provided that in no event shall Tenant's claim reduce Landlord's award.

### 16. INSURANCE.

- a. **Tenant's Liability Insurance.** During the Lease term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall name Landlord, its property manager (if any), and other parties designated by Landlord as additional insureds using an endorsement form acceptable to Landlord, and shall insure Tenant's activities and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees with respect to the Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000, and a deductible of not more than \$10,000. Tenant's insurance will be primary and noncontributory with any liability insurance carried by Landlord. Landlord may also require Tenant to obtain and maintain business income coverage for at least six (6) months, business auto liability coverage, and, if applicable to Tenant's Permitted Use, liquor liability insurance and/or warehouseman's coverage.



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- b. **Tenant's Property Insurance.** During the Lease term, Tenant shall pay for and maintain special form clauses of loss coverage property insurance (with coverage for earthquake if required by Landlord's lender and, if the Premises are situated in a flood plain, flood damage) for all of Tenant's personal property, fixtures and equipment in the amount of their full replacement value, with a deductible of not more than \$10,000.
- c. **Miscellaneous.** Tenant's insurance required under this Section shall be with companies rated A-/VII or better in Best's Insurance Guide, and which are admitted in the state in which the Premises are located. No insurance policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or a reduction in coverage except after thirty (30) days prior notice to Landlord. Tenant shall deliver to Landlord upon commencement of the Lease and from time to time thereafter, copies of the insurance policies or evidence of insurance and copies of endorsements required by this Section. In no event shall the limits of such policies be considered as limiting the liability of Tenant under this Lease. If Tenant fails to acquire or maintain any insurance or provide any policy or evidence of insurance required by this Section, and such failure continues for three (3) days after notice from Landlord, Landlord may, but shall not be required to, obtain such insurance for Landlord's benefit and Tenant shall reimburse Landlord for the costs of such insurance upon demand. Such amounts shall be Additional Rent payable by Tenant hereunder and in the event of non-payment thereof, Landlord shall have the same rights and remedies with respect to such non-payment as it has with respect to any other non-payment of Rent hereunder.
- d. ~~LANDLORD'S INSURANCE; LANDLORD SHALL CARRY SPECIAL FORM CLAUSES OF LOSS COVERAGE PROPERTY INSURANCE OF THE BUILDING SHELL AND CORE IN THE AMOUNT OF THEIR FULL REPLACEMENT VALUE, AND SUCH OTHER INSURANCE OF SUCH TYPES AND AMOUNTS AS LANDLORD, IN ITS DISCRETION, SHALL DEEM REASONABLY APPROPRIATE;~~
- e. **Waiver of Subrogation.** Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by property insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the property insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective property insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such property policies or to the extent of liabilities exceeding the limits of such policies.

**17. INDEMNIFICATION**

- a. **Indemnification by Tenant.** Tenant shall defend, indemnify, and hold Landlord harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Tenant or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Tenant. Tenant shall use legal counsel reasonably acceptable to Landlord in defense of any action within Tenant's defense obligation.
- b. **Indemnification by Landlord.** Landlord shall defend, indemnify and hold Tenant harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Landlord or Landlord's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Landlord. Landlord shall use legal counsel reasonably acceptable to Tenant in defense of any action within Landlord's defense obligation.
- c. **Waiver of Immunity.** Landlord and Tenant each specifically and expressly waive any immunity that each may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Neither party's



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indemnity obligations under this Lease shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts.

- d. **Exemption of Landlord from Liability.** Except to the extent of claims arising out of Landlord's gross negligence or intentional misconduct, Landlord shall not be liable for injury to Tenant's business or assets or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, other licensees or invitees, or any other person in or about the Premises or the Property.
- e. **Survival.** The provisions of this Section shall survive expiration or termination of this Lease.
18. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing same, including attorneys' fees, upon demand of Landlord, up to a maximum of \$1,250.

If Tenant is a partnership, limited liability company, corporation, or other entity, any transfer of this Lease by merger, consolidation, redemption or liquidation, or any change in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor, if required, for the payment of Rent and performance of all terms of this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreement and documents.

19. **LIENS.** Tenant shall not subject the Landlord's estate to any liens or claims of lien. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, within ten (10) days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.
20. **DEFAULT.** The following occurrences shall each constitute a default by Tenant (an "Event of Default"):
- a. **Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' notice from Landlord of the failure to pay.
- b. **Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least fifteen (15) consecutive days without prior notice to Landlord), or abandonment by Tenant of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.
- c. **Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of



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any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within sixty (60) days after its institution or commencement.

- d. **Levy or Execution.** The taking of Tenant's interest in this Lease or the Premises, or any part thereof, by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within fifteen (15) days after being levied.
- e. **Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of thirty (30) days after notice by Landlord to Tenant of the breach.
- f. **Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date or failure by Tenant to commence any Tenant Improvement in a timely fashion.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than thirty (30) days after notice by Tenant to Landlord. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform of any of its obligations to the standard prescribed in this Lease.

Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

- 21. **REMEDIES.** Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.
  - a. **Termination of Lease.** Landlord may terminate Tenant's interest under the Lease, but no act by Landlord other than notice of termination from Landlord to Tenant shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the rent and other sums that would have been owing by Tenant under this Lease for the balance of the Lease term, less the net proceeds, if any, of any re-letting of the Premises by Landlord subsequent to the termination, after deducting all of Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses described below.
  - b. **Re-Entry and Reletting.** Landlord may continue this Lease in full force and effect, and without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Landlord may relet the Premises, or any part of them, in Landlord's or Tenant's name for the account of Tenant, for such period of time and at such other terms and conditions as Landlord, in its discretion, may



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determine. Landlord may collect and receive the rents for the Premises. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay Landlord all Reletting Expenses (defined below); second, to pay any indebtedness of Tenant to Landlord other than rent; third, to the rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue. Re-entry or taking possession of the Premises by Landlord under this Section shall not be construed as an election on Landlord's part to terminate this Lease, unless a notice of termination is given to Tenant. Landlord reserves the right following any re-entry or reletting, or both, under this Section to exercise its right to terminate the Lease. Tenant will pay Landlord the rent and other sums which would be payable under this Lease if repossession had not occurred, less the net proceeds, if any, after reletting the Premises and after deducting Landlord's Reletting Expenses. "Reletting Expenses" are defined to include all expenses incurred by Landlord in connection with reletting the Premises, including without limitation, all repossession costs, brokerage commissions and costs of securing new tenants, attorneys' fees, remodeling and repair costs, costs for removing persons or property, costs for storing Tenant's property and equipment, and costs of tenant improvements and rent concessions granted by Landlord to any new Tenant, prorated over the life of the new lease.

- c. **Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Lease term or any extension thereof.
  - d. **Nonpayment of Additional Rent.** All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.
  - e. **Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.
22. **MORTGAGE SUBORDINATION AND ATTORNMENT.** This Lease shall automatically be subordinate to any mortgage or deed of trust created by Landlord which is now existing or hereafter placed upon the Premises including any advances, interest, modifications, renewals, replacements or extensions ("Landlord's Mortgage"). Tenant shall attorn to the holder of any Landlord's Mortgage or any party acquiring the Premises at any sale or other proceeding under any Landlord's Mortgage provided the acquiring party assumes the obligations of Landlord under this Lease. Tenant shall promptly and in no event later than fifteen (15) days after request, execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may reasonably require as further evidence of this subordination and attornment. Notwithstanding the foregoing, Tenant's obligations under this Section to subordinate in the future are conditioned on the holder of each Landlord's Mortgage and each party acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage not disturbing Tenant's occupancy and other rights under this Lease, so long as no uncured Event of Default by Tenant exists.
23. **NON-WAIVER.** Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of



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Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.

24. **HOLDOVER.** If Tenant shall, without the written consent of Landlord, remain in possession of the Premises and fail to return the Premises to Landlord after the expiration or termination of this Lease, the tenancy shall be a holdover tenancy and shall be on a month-to-month basis, which may be terminated according to Washington law. During such tenancy, Tenant agrees to pay to Landlord 150% of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.
25. **NOTICES.** All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1; or (iii) upon confirmed transmission by facsimile to the other party at the facsimile numbers set forth in Section 1. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by notice delivered in conformance with this Section.
26. **COSTS AND ATTORNEYS' FEES.** If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such action, whether in mediation or arbitration, at trial, on appeal, or in any bankruptcy proceeding.
27. **ESTOPPEL CERTIFICATES.** Tenant shall, from time to time, upon written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the total rentable square footage of the Premises; (ii) the date the Lease term commenced and the date it expires; (iii) the amount of minimum monthly Rent and the date to which such Rent has been paid; (iv) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; (v) that this Lease represents the entire agreement between the parties; (vi) that all obligations under this Lease to be performed by either party have been satisfied; (vii) that there are no existing claims, defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; (viii) the amount of Rent, if any, that Tenant paid in advance; (ix) the amount of security that Tenant deposited with Landlord; (x) if Tenant has sublet all or a portion of the Premises or assigned its interest in the Lease and to whom; (xi) if Tenant has any option to extend the Lease or option to purchase the Premises; and (xii) such other factual matters concerning the Lease or the Premises as Landlord may reasonably request. Tenant acknowledges and agrees that any statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within ten (10) days to Landlord's request for the statement required by this Section, Landlord may provide the statement and Tenant shall be deemed to have admitted the accuracy of the information provided by Landlord.
28. **TRANSFER OF LANDLORD'S INTEREST.** This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for security purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee.
29. **LANDLORD'S LIABILITY.** Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Premises, as the same



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may from time to time be encumbered. In no event shall Landlord or its partners, shareholders, or members, as the case may be, ever be personally liable hereunder.

30. **RIGHT TO PERFORM.** If Tenant shall fail to timely pay any sum or perform any other act on its part to be performed hereunder, Landlord may make any such payment or perform any act on Tenant's behalf. Tenant shall, within ten (10) days of demand, reimburse Landlord for its expenses incurred in making such payment or performance. Landlord shall (in addition to any other right or remedy of Landlord provided by law) have the same rights and remedies in the event of the nonpayment of sums due under this Section as in the case of default by Tenant in the payment of Rent.
31. **HAZARDOUS MATERIAL.** As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment. Landlord represents and warrants to Tenant that, to Landlord's knowledge without duty of investigation, there is no Hazardous Material on, in, or under the Premises as of the Commencement Date except as may otherwise have been disclosed to Tenant in writing before the execution of this Lease. If there is any Hazardous Material on, in, or under the Premises as of the Commencement Date which has been or thereafter becomes unlawfully released through no fault of Tenant, then Landlord shall indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, incurred or suffered by Tenant either during or after the Lease term as the result of such contamination.

Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about, or disposed of on the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, except with Landlord's prior consent and then only upon strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Premises or the Property; damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Property, or elsewhere; damages arising from any adverse impact on marketing of space at the Premises or the Property; and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees incurred or suffered by Landlord either during or after the Lease term. These indemnifications by Landlord and Tenant include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Material present in the Premises, or in soil or ground water on or under the Premises. Tenant shall immediately notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any unlawful release of any Hazardous Material on the Premises or the Property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises and the Property to the condition existing prior to the release of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval may be withheld at Landlord's sole discretion. The provisions of this Section shall survive expiration or termination of this Lease.

32. **QUIET ENJOYMENT.** So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.





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33. **MERGER.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.
34. **GENERAL.**
- a. **Heirs and Assigns.** This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.
  - b. **Brokers' Fees.** Tenant represents and warrants to Landlord that except for Tenant's Broker, if any, described and disclosed in Section 36 of this Lease), it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Landlord against any loss, cost, liability or expense incurred by Landlord as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant. Landlord represents and warrants to Tenant that except for Landlord's Broker, if any, described and disclosed in Section 36, it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Tenant against any loss, cost, liability or expense incurred by Tenant as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Landlord.
  - c. **Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended except in writing, signed by Landlord and Tenant.
  - d. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.
  - e. **Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.
  - f. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington.
  - g. **Memorandum of Lease.** Neither this Lease nor any memorandum or "short form" thereof shall be recorded without Landlord's prior consent.
  - h. **Submission of Lease Form Not an Offer.** One party's submission of this Lease to the other for review shall not constitute an offer to lease the Premises. This Lease shall not become effective and binding upon Landlord and Tenant until it has been fully signed by both of them.
  - i. **No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Building shall in no way effect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.
  - j. **Authority of Parties.** Each party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against the party on signing.



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k. **Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.

35. **EXHIBITS AND RIDERS.** The following exhibits and riders are made a part of this Lease, and the terms thereof shall control over any inconsistent provision in the sections of this Lease:

- Exhibit A: Floor Plan/Outline of the Premises
- Exhibit B: Legal Description of the Property
- Exhibit C: Tenant Improvement Schedule

CHECK THE BOX FOR ANY OF THE FOLLOWING THAT WILL APPLY. CAPITALIZED TERMS USED IN THE RIDERS SHALL HAVE THE MEANING GIVEN TO THEM IN THE LEASE.

- Rent Rider
- Arbitration Rider
- Letter of Credit Rider
- Guaranty of Tenant's Lease Obligations Rider
- Parking Rider
- Option to Extend Rider
- Rules and Regulations

36. **AGENCY DISCLOSURE.** At the signing of this Lease, Landlord is represented by Goodale & Barbieri Company (insert both the name of the Broker and the Firm as licensed) (the "Landlord's Broker"); and Tenant is represented by \_\_\_\_\_ (insert both the name of the Broker and the Firm as licensed) (the "Tenant's Broker").

This Agency Disclosure creates an agency relationship between Landlord, Landlord's Broker (if any such person is disclosed), and any managing brokers who supervise Landlord Broker's performance (collectively the "Supervising Brokers"). In addition, this Agency Disclosure creates an agency relationship between Tenant, Tenant's Broker (if any such person is disclosed), and any managing brokers who supervise Tenant's Broker's performance (also collectively the "Supervising Brokers"). If Tenant's Broker and Landlord's Broker are different real estate licensees affiliated with the same Firm, then both Tenant and Landlord confirm their consent to that Firm and both Tenant's and Landlord's Supervising Brokers acting as dual agents. If Tenant's Broker and Landlord's Broker are the same real estate licensee who represents both parties, then both Landlord and Tenant acknowledge that the Broker, his or her Supervising Brokers, and his or her Firm are acting as dual agents and hereby consent to such dual agency. If Tenant's Broker, Landlord's Broker, their Supervising Brokers, or their Firm are dual agents, Landlord and Tenant consent to Tenant's Broker, Landlord's Broker and their Firm being compensated based on a percentage of the rent or as otherwise disclosed on an attached addendum. Neither Tenant's Broker, Landlord's Broker nor either of their Firms are receiving compensation from more than one party to this transaction unless otherwise disclosed on an attached addendum, in which case Landlord and Tenant consent to such compensation. Landlord and Tenant confirm receipt of the pamphlet entitled "The Law of Real Estate Agency."

37. **COMMISSION AGREEMENT.** If Landlord has not entered into a listing agreement (or other compensation agreement with Landlord's Broker), Landlord agrees to pay a commission to Landlord's Broker (as identified in the Agency Disclosure paragraph above) as follows:  — \$ \_\_\_\_\_  — \_\_\_\_\_ % of the gross rent payable pursuant to the Lease

— \$ \_\_\_\_\_ per square foot of the Premises

— Other \_\_\_\_\_

Landlord's Broker  shall  shall not (shall not if not filled in) be entitled to a commission upon the extension by Tenant of the Lease term pursuant to any right reserved to Tenant under the Lease calculated  as



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provided above or  as follows \_\_\_\_\_ (if no box is checked, as provided above). Landlord's Broker  shall  shall not (shall not if not filled in) be entitled to a commission upon any expansion of the Premises pursuant to any right reserved to Tenant under the Lease, calculated  as provided above or  as follows \_\_\_\_\_ (if no box is checked, as provided above).

Any commission shall be earned upon execution of this Lease, and paid one-half upon execution of the Lease and one-half upon occupancy of the Premises by Tenant. Landlord's Broker shall pay to Tenant's Broker (as identified in the Agency Disclosure paragraph above) the amount stated in a separate agreement between them or, if there is no agreement, \$ \_\_\_\_\_ or \_\_\_\_\_ % (complete only one) of any commission paid to Landlord's Broker, within five (5) days after receipt by Landlord's Broker.

If any other lease or sale is entered into between Landlord and Tenant pursuant to a right reserved to Tenant under the Lease, Landlord  shall  shall not (shall not if not filled in) pay an additional commission according to any commission agreement or, in the absence of one, according to the commission schedule of Landlord's Broker in effect as of the execution of this Lease. Landlord's successor shall be obligated to pay any unpaid commissions upon any transfer of this Lease and any such transfer shall not release the transferor from liability to pay such commissions.

**38. BROKER PROVISIONS**

LANDLORD'S BROKER, TENANT'S BROKER AND THEIR FIRMS HAVE MADE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PREMISES, THE MEANING OF THE TERMS AND CONDITIONS OF THIS LEASE, LANDLORD'S OR TENANT'S FINANCIAL STANDING, ZONING, COMPLIANCE OF THE PREMISES WITH APPLICABLE LAWS, SERVICE OR CAPACITY OF UTILITIES, OPERATING COSTS, OR HAZARDOUS MATERIALS. LANDLORD AND TENANT ARE EACH ADVISED TO SEEK INDEPENDENT LEGAL ADVICE ON THESE AND OTHER MATTERS ARISING UNDER THIS LEASE.



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IN WITNESS WHEREOF this Lease has been executed the date and year first above written.

\_\_\_\_\_  
 LANDLORD

\_\_\_\_\_  
 LANDLORD

\_\_\_\_\_  
 BY

\_\_\_\_\_  
 ITS

\_\_\_\_\_  
 TENANT

\_\_\_\_\_  
 TENANT

\_\_\_\_\_  
 BY

\_\_\_\_\_  
 ITS

*[Handwritten Signature]*  
 JEFF THOMAS  
 CEO



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STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF Spokane )

I certify that I know or have satisfactory evidence that Jeff Thomas is the person who appeared before me and said person acknowledged that Jeff Thomas signed this instrument, on oath stated that Jeff Thomas was authorized to execute the instrument and acknowledged it as the CEO of FBH to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.  
 Dated this 22<sup>nd</sup> day of July, 2020



Lee Anne Teague  
 (Signature of Notary)  
 Lee Anne Teague  
 (Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,  
 residing at Spokane WA  
 My appointment expires August 9, 2020

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF Spokane )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and said person acknowledged that \_\_\_\_\_ signed this instrument, on oath stated that \_\_\_\_\_ was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 (Signature of Notary)  
 \_\_\_\_\_  
 (Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,  
 residing at \_\_\_\_\_  
 My appointment expires \_\_\_\_\_



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STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 (Signature of Notary)

\_\_\_\_\_  
 (Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at \_\_\_\_\_  
 My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 (Signature of Notary)

\_\_\_\_\_  
 (Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at \_\_\_\_\_  
 My appointment expires \_\_\_\_\_



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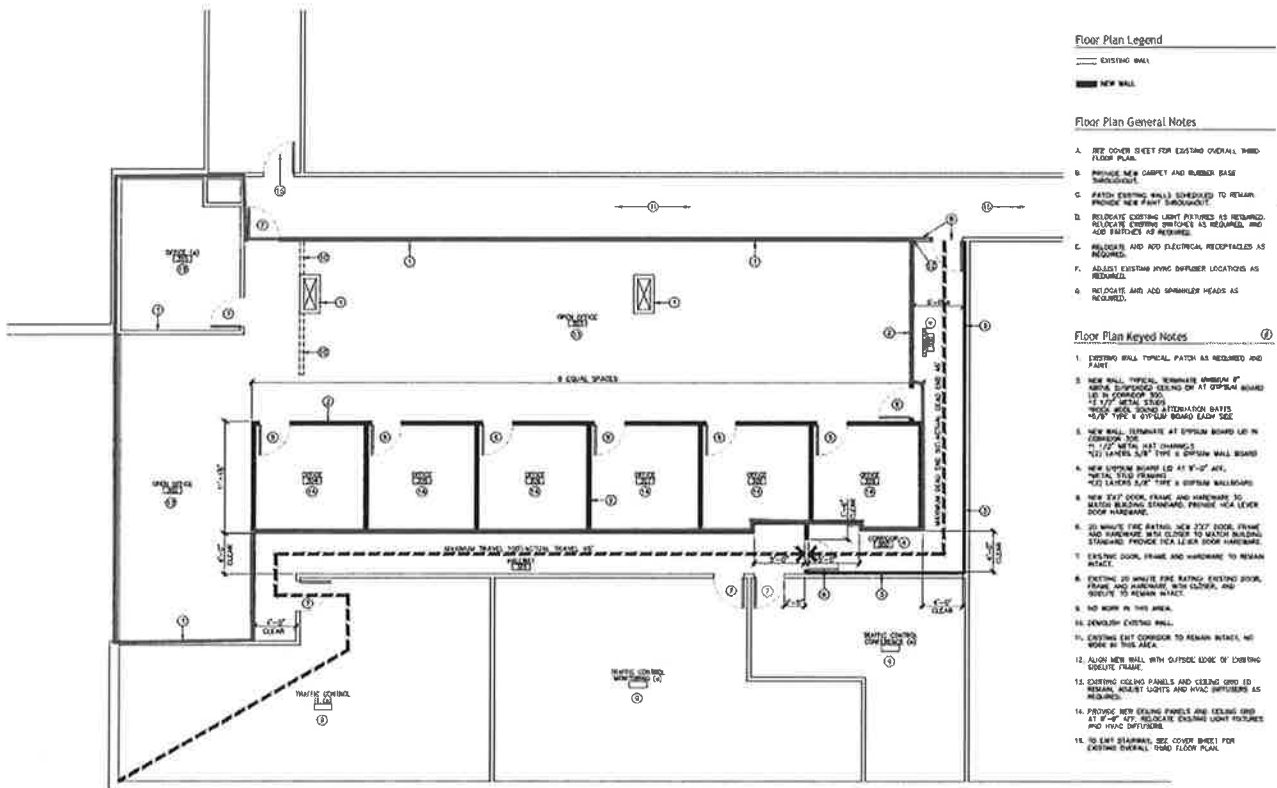


Form: GR\_LS  
 Multi Tenant Gross Lease  
 Rev. 1/2011  
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**LEASE AGREEMENT**  
 (Multi Tenant Gross Lease)

**EXHIBIT A**

[Floor Plan/Outline of the Premises]



**Floor Plan Legend**

- EXISTING WALL
- NEW WALL

**Floor Plan General Notes**

- A. SEE COVER SHEET FOR EXISTING OVERALL THIRD FLOOR PLAN.
- B. PROVIDE NEW CARPET AND RUBBER BASE UNDERCUT.
- C. PATCH EXISTING WALLS SCHEDULED TO REMAIN. PROVIDE NEW PAINT THROUGHOUT.
- D. RELOCATE EXISTING LIGHT FIXTURES AS REQUIRED. RELOCATE EXISTING SWITCHES AS REQUIRED, AND ADD SWITCHES AS REQUIRED.
- E. RELOCATE AND ADD ELECTRICAL RECEPTACLES AS REQUIRED.
- F. ADD/RELOCATE EXISTING SPRINKLER LOCATIONS AS REQUIRED.
- G. RELOCATE AND ADD SPRINKLER HEADS AS REQUIRED.

**Floor Plan Keyed Notes**

1. EXISTING WALL TYPICAL PATCH AS REQUIRED AND PAINT.
2. NEW WALL, TYPICAL, REMAINER SPREAD 1/2" ABOVE SCHEDULED CEILING OR AT OFFICEM BOARD LVL IN CORRIDOR 300.  
 1/2" METAL STUD  
 1/2" METAL STUD ATTACHMENT DATUM  
 1/2" METAL STUD BOARD EASY SEE
3. NEW WALL, TERMINATE AT OFFICEM BOARD LVL IN CORRIDOR 300.  
 1/2" METAL STUD CHANGING  
 1/2" METAL STUD TYPE IN OFFICEM WALL BOARD
4. NEW OFFICEM BOARD LVL AT 1/2" METAL STUD FRAMES  
 1/2" METAL STUD TYPE IN OFFICEM WALLBOARD
5. NEW EXIT DOOR, FRAME AND HARDWARE TO MEET BUILDING STANDARD, PROVIDE 1/2" LEVER DOOR HARDWARE.
6. 20 WHITE FIRE RATING, NEW EXIT DOOR, FRAME AND HARDWARE WITH CLEAR TO MEET BUILDING STANDARD, PROVIDE 1/2" LEVER DOOR HARDWARE.
7. EXISTING DOOR, FRAME AND HARDWARE TO REMAIN IN PLACE.
8. EXISTING 20 WHITE FIRE RATING EXISTING DOOR, FRAME AND HARDWARE WITH CLEAR, AND REMOVE TO REMAIN IN PLACE.
9. NO WORK IN THIS AREA.
10. DEMOLISH EXISTING WALL.
11. EXISTING EXIT CORRIDOR TO REMAIN INTACT, NO WORK IN THIS AREA.
12. ALIGN NEW WALL WITH OUTSIDE EDGE OF EXISTING SCHEDULE FRAME.
13. EXISTING CEILING PANELS AND CEILING GRID TO REMAIN, REMOVE LIGHTS AND VENT DIFFUSERS AS REQUIRED.
14. PROVIDE WITH CEILING PANELS AND CEILING GRID AT 1/2" METAL STUD, RELOCATE EXISTING LIGHT FIXTURES AND VENT DIFFUSERS.
15. NO LIFT STAIRWELL, SEE COVER SHEET FOR EXISTING OVERALL THIRD FLOOR PLAN.

Floor Plan  
 SCALE: 1/4" = 1'-0"



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**LEASE AGREEMENT**  
(Multi Tenant Gross Lease)

**EXHIBIT B**

[Legal Description of the Property]

EVERGREEN CITY SHORT PLAT Z2003-44 LT "B" (OPERATING PROPRT IN NE1/4-19-25-43) EXC  
192088SQFT FOR LEASE NO.500,728 TO CITY OF SPOKANE AS AMENDED 2002.





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**LEASE AGREEMENT**  
(Multi Tenant Gross Lease)

**EXHIBIT C**

[Tenant Improvement Schedule]

**1. Tenant Improvements to be Completed by Landlord**

Except as otherwise stated in the Lease, Landlord is providing the space in As Is condition.

**2. Tenant Improvements to be Completed by Tenant**

Tenant to submit a scope of work and architectural plans to Landlord for Landlords approval, of which won't be unreasonably withheld, prior to commencement of any work. Landlord and Tenant both approve the alterations described in the drawings and specifications attached to this Exhibit ("Tenant's Work"). Tenant shall use licensed contractors and obtain all necessary lien releases upon completion of work. Any alterations to the Premises shall be made at Tenant's sole expense and shall become the property of the Landlord at the termination of this Lease. Upon termination of this lease, Tenant shall have the right to remove all movable improvements, furnishings, and trade fixtures placed therein by Tenant which can be removed without material injury to the Premises, and will repair any damage by the elements occasioned by such removal. Tenant shall keep the Premises, the Building, and the Land free and clear from any liens and lien claims arising or performed, materials furnished or obligations incurred by or on behalf of Tenant. Tenant shall indemnify and hold Landlord harmless from liability for losses or damage which is resulting directly or indirectly from any such liens or lien claim or from any work performed on or about the Premises by Tenant, its Agents, Employees, Contractors or Subcontractors, except to the extent resulting from Landlord's failure to perform its duties to construct the Premises as provided herein. If any such lien or lien claim is filed against the Premises, Building or Land, Tenant shall cause the same to be discharged within thirty (30) days after the date of filing.



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Form: RR  
 Rent Rider  
 Rev 1/2011  
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**RENT RIDER**

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This Rent Rider ("Rider") is a part of the lease agreement dated \_\_\_\_\_ (the "Lease") between City of Spokane, a Washington State Municipal Corporation ("Landlord") and Frontier Behavioral Health, a Washington Public Benefit Corporation ("Tenant") concerning the space commonly known as 221-F (the "Premises"), located at the property commonly known as Spokane Intermodal Facility at 221 W 1st Avenue, Spokane, WA, 99201 (the "Property").

- 1. BASE MONTHLY RENT SCHEDULE.** Tenant shall pay Landlord base monthly rent during the Lease Term according to the following schedule:

Lease Year (Stated in Years or Months)	Base Monthly Rent Amount
<u>Zero Lease Year (Months 1-19)</u>	<u>\$ 0.00</u>
<u>First Lease Year (Months 20-31)</u>	<u>\$ 2,886.75</u>
<u>Second Lease Year (Months 32-43)</u>	<u>\$ 2,973.35</u>
<u>Third Lease Year (Months 44-55)</u>	<u>\$ 3,062.55</u>
<u>Fourth Lease Year (Months 56-67)</u>	<u>\$ 3,154.43</u>
<u>FIFTH LEASE YEAR (MONTHS 68-79)</u>	<u>\$3,249.06</u>

- 2. CONSUMER PRICE INDEX ADJUSTMENT ON BASE MONTHLY RENT.** The base monthly rent shall be increased on the first day of the second year of the Lease and on the first day of each year of the Lease thereafter (each, an "Adjustment Date") during the term of this Lease (but not during any extension term(s) unless specifically set forth elsewhere in the Lease or another Rider attached thereto). The increase shall be determined in accordance with the increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items for the geographical statistical area in which the Premises is located on the basis of 1982-1984 equals 100) (the "Index"). The base monthly rent payable immediately prior to the applicable adjustment date shall be increased by the percentage that the Index published for the date nearest preceding the applicable Adjustment Date has increased over the Index published for the date nearest preceding the first day of the Lease Year from which the adjustment is being measured. Upon the calculation of each increase, Landlord shall notify Tenant of the new base monthly rent payable hereunder. Within twenty (20) days of the date of Landlord's notice, Tenant shall pay to Landlord the amount of any deficiency in Rent paid by Tenant for the period following the subject Adjustment Date, and shall thereafter pay the increased Rent until receiving the next notice of increase from Landlord. If the components of the Index are materially changed after the Commencement Date, or if the Index is discontinued during the Lease term, Landlord shall notify Tenant of a substitute published index which, in Landlord's reasonable discretion, approximates the Index, and shall use the substitute index to make subsequent adjustments in base monthly rent. In no event shall base monthly rent be decreased pursuant to this Rider.

INITIALS: LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT CD DATE 7/21/20  
 LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_



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Form: OR  
 Option to Extend Rider  
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 Page 1 of 2

**OPTION TO EXTEND RIDER**

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This Option to Extend Rider ("Rider") is made part of the lease agreement dated \_\_\_\_\_, 20 20 \_\_\_\_\_ (the "Lease") between City of Spokane, a Washington State Municipal Corporation ("Landlord") and Frontier Behavioral Health, a Washington Public Benefit Corporation ("Tenant") concerning the leased space commonly known as 221-F (the "Premises"), located at the property commonly known as Spokane Intermodal Facility at 221 W 1st Avenue, Spokane, WA 99201 (the "Property").

1. **Extension of Lease.** Provided Tenant is not in default of any provision of the Lease at the time that Tenant exercises the right to extend the Lease or at the time the new term begins, Tenant shall have two (2) (zero if not completed) successive options to extend the term of the Lease for five (5) years each. The term of the Lease shall be extended on the same terms, conditions and covenants set forth in the Lease, except that (i) the amount of the Base Rent stated in the Lease shall be adjusted as set forth below (provided, however, that Base Rent shall not be decreased); (ii) there shall be no free or abated rent periods, tenant improvement allowances or other concessions that may have been granted to Tenant at the beginning of the initial term hereof; and (iii) after exercise of Tenant's final extension term option, there shall be no further extension or renewal term options.
2. **Notice.** To extend the Lease, Tenant must deliver written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the then-current Lease term. Time is of the essence of this Rider.
3. **Monthly Rent.** Landlord and Tenant shall make a good faith effort to determine and agree on the fair market value of rent for the Premises for the next term of the Lease.
  - a. **Failure to Agree on Rent.** If Landlord and Tenant are unable to agree on the fair market rental value for the Premises within thirty (30) days after Tenant gives notice to extend, they shall then have ten (10) days to select or, appoint one real estate appraiser to determine the fair market value of rent for the Premises. All appraisers selected or appointed pursuant to this Rider shall be a Member of the American Institute of Real Estate Appraisers ("M.A.I.") with at least ten (10) years experience appraising commercial properties in the commercial leasing market in which the Premises are located, or equivalent. The appraiser appointed shall determine the fair market rental value for the Premises within twenty (20) days of appointment, which determination shall be final, conclusive, and binding upon both Landlord and Tenant, and Base Rent shall be adjusted accordingly for the new term. The appraiser's fees and expenses shall be shared equally between the parties.
  - b. **Failure to Appoint One Appraiser.** If Landlord and Tenant cannot mutually agree upon an appraiser, then either party may give the other party written notice that it has selected and appointed an M.A.I. appraiser, complete with the name, address, and other identifying information about the appraiser. The party receiving such notice shall then have ten (10) days to select and appoint its own M.A.I. appraiser and respond by giving written notice to the other party, complete with the name, address, and other identifying information about the appraiser. If, however, the responding party fails to select and appoint an appraiser and give notice to the other party within ten (10) days, the determination of the appraiser first appointed shall be final, conclusive and binding upon both parties, and the Base Rent shall be adjusted accordingly for the new term. The appraiser's fees and expenses shall be shared equally between the parties.
  - c. **Method of Determining Rent.** The appraisers appointed shall proceed to determine fair market rental value within twenty (20) days following their appointment. The conclusion shall be final, conclusive and binding upon both Landlord and Tenant. If the appraisers should fail to agree, but the difference in their conclusions as to fair market rental value is ten percent (10%) or less of the lower of the two appraisals, then the fair market rental value shall be deemed to be the average of the two, and Base Rent shall be adjusted accordingly for the new term. If the two appraisers should fail to agree on the fair market rental

INITIALS: LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT CP DATE 7/21/20  
 LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_



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**OPTION TO EXTEND RIDER**

value, and the difference between the two appraisals exceeds ten percent (10%) of the lower of the two appraisals, then the two appraisers shall appoint a third M.A.I.-qualified appraiser. If they fail to agree on a third appraiser within ten (10) days after their individual determination of the fair market rental value, either party may apply to the courts for the county in which the Premises are located, requesting the appointment of a the third M.A.I.-qualified appraiser. The third appraiser shall promptly determine the fair market rental value of the Premises. The parties shall then take the average of the two appraisals that are closest in value, which shall then constitute the fair market value; shall be final, conclusive and binding upon both parties; and Base Rent shall be adjusted accordingly for the new term. Each party shall pay the fees and expenses for its own appraiser. In the event a third appraiser must be appointed, his or her fees and expenses shall be borne equally by the parties.

INITIALS: LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT CD DATE 7/21/20  
 LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_



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 Parking Rider  
 Rev. 1/2011  
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**PARKING RIDER**

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This Parking Rider ("Rider") is made part of the lease agreement dated \_\_\_\_\_, 20 20 (the "Lease") between City of Spokane, a Washington State Municipal Corporation ("Landlord") and Frontier Behavioral Health, a Washington Public Benefit Corporation ("Tenant") concerning the leased space commonly known as 221-F (the "Premises"), located at the property commonly known as Spokane Intermodal Facility at 221 W 1st Avenue Spokane WA 99201 (the "Property").

**1. Tenant's Parking Rights.** Tenant's right to park on the Property shall be as follows (check one):

- Tenant shall be entitled to use parking stalls on the Property or other designated parking area on a (check one)  reserved  unreserved (unreserved, if neither box checked) basis at the prevailing monthly rate established by Landlord from time to time. Tenant shall comply with the reasonable rules and regulations which Landlord or its parking operator may adopt from time to time for the safe and orderly operation of the parking areas.
- Free Parking.** Tenant shall be entitled to share parking with Landlord's other tenants in the designated parking areas at no charge. Tenant shall be responsible for ensuring compliance with the terms of the Lease, this Rider, and any reasonable rules and regulations adopted by Landlord from time to time for the safe and orderly sharing of parking.
- No Parking.** The Lease does not include parking on the Property, and Tenant shall park off the Property at Tenant's own expense.

**2. "Tenant."** For purpose of this Rider only, the term "Tenant" shall include Tenant and Tenant's employees, ~~officers, contractors, licensees, agents, and invitees,~~ except as follows: \_\_\_\_\_.

TENANT UNDERSTANDS AND ACKNOWLEDGES THAT PARKING IS APPORTIONED IN CONFORMITY WITH CONTROLLING ZONING ORDINANCES AND THAT LANDLORD SHALL HAVE THE RIGHT TO MAKE SUCH REGULATIONS AS LANDLORD DEEMS DESIRABLE FOR THE CONTROL OF PARKING AUTOMOBILES ON THE REAL PROPERTY UNDER LANDLORD'S CONTROL, INCLUDING THE RIGHT TO DESIGNATE CERTAIN AREAS FOR PARKING OF THE TENANT, EMPLOYEES OF TENANT, CUSTOMERS AND OTHER TENANTS OF SAID BUILDINGS. TENANT SHALL BE ENTITLED TO USE PARKING STALLS ON THE PROPERTY OR OTHER DESIGNATED PARKING AREA ON A UNRESERVED BASIS. TENANT SHALL COMPLY WITH THE REASONABLE RULES AND REGULATIONS WHICH LANDLORD OR ITS PARKING OPERATOR MAY ADOPT FROM TIME TO TIME FOR THE SAFE AND ORDERLY OPERATION OF THE PARKING AREAS. TENANT AND LANDLORD HEREBY AGREE THAT PARKING IS NOT GUARANTEED AS A PROVISION OF THIS LEASE AGREEMENT.

INITIALS: LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT GL DATE 7/21/20  
 LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_



**Agenda Sheet for City Council Meeting of:**  
10/12/2020

<b>Date Rec'd</b>	10/1/2020
<b>Clerk's File #</b>	OPR 2020-0744
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	FIRE
<b>Contact Name/Phone</b>	BRIAN SCHAEFFER X7001
<b>Contact E-Mail</b>	BSCHAEFFER@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	1970 DEPARTMENT OF ECOLOGY GRANT FOR HAZMAT VEHICLE

**Agenda Wording**

State grant with the Department of Ecology for \$85,000 to purchase a dedicated Haz Mat equipment truck capable of storing SFD's hazmat response equipment.

**Summary (Background)**

The Fire Department was awarded an \$85,000 grant to purchase a dedicated Haz Mat equipment truck capable of storing SFD's hazmat response equipment. Currently, SFD stores hazmat equipment in a variety of locations, a practice solely based on the availability of space. With a dedicated hazmat equipment truck, SFD will be able to more rapidly respond to hazardous materials releases. The estimated cost of this vehicle is approx. \$142,000, the balance of which will be paid for with our SIP loan.

<b>Fiscal Impact</b>	Grant related? YES	<b>Budget Account</b>
	Public Works? NO	

Expense	\$ 85,000	# 1970-93542-94000-56404-99999
Revenue	\$ 85,000	# 1970-93542-99999-33431-99999
Select	\$	#
Select	\$	#

<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	SCHAEFFER, BRIAN	<b>Study Session\Other</b>	10/05/2020 and 03/04/2019 PSCHC
<b>Division Director</b>	SCHAEFFER, BRIAN	<b>Council Sponsor</b>	Lori Kinner
<b>Finance</b>	HUGHES, MICHELLE	<b>Distribution List</b>	
<b>Legal</b>	ODLE, MARI	fireaccounting@spokanecity.org	
<b>For the Mayor</b>	ORMSBY, MICHAEL	kbustos@spokanecity.org	
<b>Additional Approvals</b>		joberg@spokanecity.org	
<b>Purchasing</b>		tmwilliams@spokanecity.org	
<b>GRANTS &amp; CONTRACT MGMT</b>	BROWN, SKYLER		

## Briefing Paper

### Public Safety and Community Health

<b>Division &amp; Department:</b>	Fire
<b>Subject:</b>	SBO/Grant Acceptance for Department of Ecology Grant
<b>Date:</b>	09/23/2020
<b>Contact (email &amp; phone):</b>	Tom Williams (X7002), tmwilliams@spokanecity.org Kim Bustos (X7155), kbustos@spokanecity.org
<b>City Council Sponsor:</b>	Lori Kinnear
<b>Executive Sponsor:</b>	Brian Schaeffer
<b>Committee(s) Impacted:</b>	Public Safety and Community Health Committee
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Budget
<b>Strategic Initiative:</b>	Safe and Healthy
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	SBO to purchase Haz Mat vehicle in accordance w/grant agreement and obtain reimbursement from DOE.
<p><u>Background/History:</u></p> <p>In 2018, the Fire Department was awarded a Department of Ecology Equipment Grant for \$94,000 to purchase a foam trailer for the purpose of mitigating oil spills. In 2020, the Fire Department was awarded an \$85,000 grant to purchase a dedicated Haz Mat equipment truck capable of storing SFD's hazmat response equipment. Currently, SFD stores hazmat equipment in a variety of locations, a practice solely based on the availability of space. With a dedicated hazmat equipment truck, SFD will be able to more rapidly respond to hazardous materials releases.</p> <p>This grant application was originally briefed on 03/04/2019 but the grant acceptance has been delayed. Also, the amount of the grant was significantly reduced from over \$300,000 to \$85,000.</p> <p>An SBO is needed to provide the budget authority for this purchase. The estimated cost of this vehicle is approximately \$142,000, the balance of which will be paid for with our SIP loan.</p>	
<p><u>Executive Summary:</u></p> <p>State grant with the Department of Ecology for \$85,000 to purchase a dedicated Haz Mat equipment truck capable of storing SFD's hazmat response equipment.</p>	
<p><u>Budget Impact:</u></p> <p>Approved in current year budget?    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure?    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.) No match required. Will need to budget in the future for on-going maintenance and support.</p>	
<p><u>Operations Impact:</u></p> <p>Consistent with current operations/policy?    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Requires change in current operations/policy?    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	



# Expenditure Control Form

1. All requests being made must be accompanied by this form.
2. Route **ALL** requests to the Finance Department for signature.
3. If request is greater than \$100,000 it requires signatures by Finance and the City Administrator. Finance Dept. will route to City Administrator.

<b>Today's Date:</b>	<b>Type of expenditure:</b>	Goods	Services
<b>Department:</b>			
<b>Approving Supervisor:</b>			
<b>Amount of Proposed Expenditure:</b>			
<b>Funding Source:</b>			
<b>Please verify correct funding sources. Please indicate breakdown if more than one funding source.</b>			
<b>Why is this expenditure necessary now?</b>			
<b>What are the impacts if expenses are deferred?</b>			
<b>What alternative resources have been considered?</b>			
<b>Description of the goods or service and any additional information?</b>			
<b>Person Submitting Form/Contact:</b>			
<b>FINANCE SIGNATURE:</b>		<b>CITY ADMINISTRATOR SIGNATURE:</b>	
_____		_____	





## Agreement No. SPPREG-2020-Spokane-00017

### SPILL PREVENTION, PREPAREDNESS, AND RESPONSE EQUIPMENT GRANT AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

SPOKANE CITY OF

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and Spokane city of, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

---

#### GENERAL INFORMATION

Project Title:	City of Spokane Fire Department Spill Response Capacity Building
Total Cost:	\$85,000.00
Total Eligible Cost:	\$85,000.00
Ecology Share:	\$85,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	04/01/2020
The Expiration Date of this Agreement is no later than:	06/30/2021
Project Type:	Equipment Cache Grant

#### Project Short Description:

Increase SFD's hazardous spill response capacity for greater Spokane area.

#### Project Long Description:

Protect citizens and the environment to the greatest degree possible by increasing SFD's spill response capacity through consolidation and augmentation of necessary equipment in a manner that allows for rapid deployment and containment. With additional spill response equipment, chemical detection systems, and training, SFD will be able to dramatically reduce the time needed to identify, respond to, and stabilize chemical threats. The requested equipment will allow for increased response capability via rapid on-scene deployment of stabilization equipment as well as rapid response to catastrophic airborne (plume), ground, and water way releases. Additionally, the equipment will increase safety and deployment with mutual aid partners by streamlining response to an incident and providing improved real-time information through increased monitoring capability. The goal of this project is to maximize response efforts and

Agreement No: SPPREG-2020-Spokane-00017  
Project Title: City of Spokane Fire Department Spill Response Capacity Building  
Recipient Name: Spokane city of

minimize impact to responders, citizens, and the environment.

Overall Goal:

Increase capacity to meet Hazmat Team responsibilities as outlined in the CEMP. Increase accountability in Incident Command. Decrease amount of time needed to determine the scope and magnitude of a hazardous materials incident. Establish tactical risk management plans more effectively and efficiently. Provide highest quality Hazmat expertise and equipment to a Hazmat incident. Decrease response times to Hazmat incidents by supplementing SFD's fleet with additional Hazmat-specific equipment to ensure rapid deployment to scene. Increase safety and efficiency during incident stabilization through rapid unknown chemical substance size up and risk assessment by utilizing state-of-the-art chemical detection equipment combined with gold-standard personnel training in current Hazmat best practices. Increase capacity for coordinated response with partnering agencies.

Agreement No: SPPREG-2020-Spokane-00017  
Project Title: City of Spokane Fire Department Spill Response Capacity Building  
Recipient Name: Spokane city of

**RECIPIENT INFORMATION**

Organization Name: Spokane city of

Federal Tax ID: 91-6001280

DUNS Number: 115528189

Mailing Address: 808 W Spokane Falls Blvd  
Spokane, WA 99201

Physical Address: 808 W Spokane Falls Blvd  
Spokane, Washington 99201

Organization Email: mpapich@spokanecity.org

Organization Fax: (509) 343-5760

**Contacts**

Agreement No: SPPREG-2020-Spokane-00017  
 Project Title: City of Spokane Fire Department Spill Response Capacity Building  
 Recipient Name: Spokane city of

<p><b>Project Manager</b></p>	<p>Robert Mathews                  Lt                   44 W Riverside                  Spokane, Washington 99201-3343                  Email: rcmathews@spokanecity.org                  Phone: (509) 625-7000</p>
<p><b>Billing Contact</b></p>	<p>Kim Bustos                  Division Accountant                   44 W Riverside                  Spokane, Washington 99201-3343                  Email: kbustos@spokanecity.org                  Phone: (509) 625-7155</p>
<p><b>Authorized Signatory</b></p>	<p>Nadine Woodward                  Mayor                   808 W Spokane Falls Blvd                  Spokane, Washington 99201                  Email: mayor@spokanecity.org                  Phone: (509) 625-6310</p>

Agreement No: SPPREG-2020-Spokane-00017  
 Project Title: City of Spokane Fire Department Spill Response Capacity Building  
 Recipient Name: Spokane city of

**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
 Spills  
 PO BOX 47600  
 Olympia, WA 98504-7600

Physical Address: Spills  
 300 Desmond Drive SE  
 Lacey, WA 98503

**Contacts**

<p><b>Project Manager</b></p>	<p>Laura Hayes</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: lhay461@ecy.wa.gov                  Phone: (425) 495-2632</p>
<p><b>Financial Manager</b></p>	<p>Jenna Schroer</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: schj461@ecy.wa.gov                  Phone: (360) 407-7661</p>
<p><b>Technical Advisor</b></p>	<p>David Byers</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: dbye461@ecy.wa.gov                  Phone: (360) 790-6899</p>

Agreement No: SPPREG-2020-Spokane-00017  
Project Title: City of Spokane Fire Department Spill Response Capacity Building  
Recipient Name: Spokane city of

**AUTHORIZING SIGNATURES**

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

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

Washington State  
Department of Ecology

Spokane city of

By: \_\_\_\_\_

By: \_\_\_\_\_

Date

Nadine Woodward

Date

Spills

Mayor

Template Approved to Form by  
Attorney General's Office

Agreement No: SPPREG-2020-Spokane-00017

Project Title: City of Spokane Fire Department Spill Response Capacity Building

Recipient Name: Spokane city of

Brian Schaeffer

---

Fire Chief

Date

Agreement No: SPPREG-2020-Spokane-00017  
 Project Title: City of Spokane Fire Department Spill Response Capacity Building  
 Recipient Name: Spokane city of

## SCOPE OF WORK

Task Number: 1 **Task Cost: \$0.00**

Task Title: Project Administration

### Task Description:

A. The RECIPIENT will administer the project. Responsibilities will include, but are not limited to: maintenance of project records, submittal of requests for reimbursement and corresponding backup documentation, progress reports and recipient closeout report (including photos), compliance with applicable procurement, contracting, and interlocal agreement requirements, application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project, and submittal of required performance items.

B. The RECIPIENT must manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY, all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT must carry out this project in accordance with any completion dates outlined in this agreement.

### Task Goal Statement:

Properly managed project that meets agreement and Ecology administrative requirements.

### Task Expected Outcome:

1. Timely and complete submittal of requests for reimbursement, quarterly progress reports and recipient closeout report.
2. Properly maintained project documentation

Recipient Task Coordinator: Rob Mathews

### **Project Administration**

#### **Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
1.1	Progress Reports	
1.2	Recipient Closeout Report	
1.3	Project Outcome Summary Report	



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## SCOPE OF WORK

Task Number: 2 **Task Cost:** \$85,000.00

Task Title: New Response Equipment Purchase

### Task Description:

A. The RECIPIENT will purchase only approved, eligible response equipment, tools, and supplies in accordance with ECOLOGY's requirement outlined in the Administrative Requirements for Recipients of Ecology Grants and Loans Managed In EAGL guidebook.

B. The RECIPIENT will purchase and take possession of approved, eligible oil spill and hazardous materials response and firefighting equipment, tools, and supplies that support the described project for oil spill and hazardous materials response and firefighting capacity building as described in the funding guidelines and that has been approved by ECOLOGY.

### Task Goal Statement:

Build and support spill and hazardous materials response and firefighting capacity through the purchase of approved, eligible response equipment, tools, and supplies as described in the project.

### Task Expected Outcome:

1. Timely and complete implementation of the task, including the purchase and acquisition of approved, eligible response equipment, tools, and supplies.
2. Properly store and maintain response equipment, tools, and supplies.

Recipient Task Coordinator: Rob Mathews

## **New Response Equipment Purchase**

### **Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
2.1	Purchase approved, eligible equipment	06/30/2021
2.2	Schedule equipment inspection with Ecology	06/20/2021

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**BUDGET**

**Funding Distribution EG210004**

**NOTE:** *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: City of Spokane Fire Department Spill Respon Funding Type: Grant  
 Funding Effective Date: 04/01/2020 Funding Expiration Date: 06/30/2021

Funding Source:

Title: State Toxics Control Account

Type: State

Funding Source %: 100%

Description:

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

City of Spokane Fire Department Spill Response Cap	Task Total
Project Administration	\$ 0.00
New Response Equipment Purchase	\$ 85,000.00

**Total: \$ 85,000.00**

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Recipient Name: Spokane city of

**Funding Distribution Summary****Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
City of Spokane Fire Department Spill Response Cap	0.00 %	\$ 0.00	\$ 85,000.00	\$ 85,000.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 85,000.00</b>	<b>\$ 85,000.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS****GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

**A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY****EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

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7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

## B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING

### REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov>.

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## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

##### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.

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- Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff and contractors working at the project site.
  - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
- Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

## 5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

## 6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

## 7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email [PayeeRegistration@ofm.wa.gov](mailto:PayeeRegistration@ofm.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

## 8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of

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Washington which affect wages and job safety.

b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.

c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.

d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

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

## 9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

## 10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

## 11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in

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accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

## 12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)



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RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

#### 18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

#### 19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

#### 20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through

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September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

a) Be kept in a manner which provides an audit trail for all expenditures.

b) Be kept in a common file to facilitate audits and inspections.

c) Clearly indicate total receipts and expenditures related to this Agreement.

Agreement No: SPPREG-2020-Spokane-00017  
Project Title: City of Spokane Fire Department Spill Response Capacity Building  
Recipient Name: Spokane city of

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

### 23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

### 24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

### 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

### 26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

### 27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and

Agreement No: SPPREG-2020-Spokane-00017  
Project Title: City of Spokane Fire Department Spill Response Capacity Building  
Recipient Name: Spokane city of

imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,  
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 28. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

### b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

### c) By Mutual Agreement

Agreement No: SPPREG-2020-Spokane-00017  
Project Title: City of Spokane Fire Department Spill Response Capacity Building  
Recipient Name: Spokane city of

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.



**Agenda Sheet for City Council Meeting of:**  
10/12/2020

<b>Date Rec'd</b>	9/30/2020
<b>Clerk's File #</b>	CPR 2000-0031
<b>Renews #</b>	

<b>Submitting Dept</b>	MAYOR	<b>Cross Ref #</b>	
<b>Contact Name/Phone</b>	BRANDY COTE 5096995759	<b>Project #</b>	
<b>Contact E-Mail</b>	BCOTE@SPOKANECITY.ORG	<b>Bid #</b>	
<b>Agenda Item Type</b>	Boards and Commissions	<b>Requisition #</b>	
<b>Agenda Item Name</b>	0520 APPOINTMENT TO THE LODGING TAX ADVISORY COMMITTEE		

**Agenda Wording**

Appointment of Rowena Pineda to a three year term on the Lodging Tax Advisory Committee, from 10/1/20 - 9/30/23.

**Summary (Background)**

Appointment of Rowena Pineda to a three year term on the Lodging Tax Advisory Committee, from 10/1/20 - 9/30/23.

<b>Fiscal Impact</b>	Grant related? NO	<b>Budget Account</b>
	Public Works? NO	
Select	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	COTE, BRANDY	<b>Study Session\Other</b>	
<b>Division Director</b>		<b>Council Sponsor</b>	
<b>Finance</b>		<b>Distribution List</b>	
<b>Legal</b>		bcote@spokanecity.org	
<b>For the Mayor</b>	ORMSBY, MICHAEL	mcarlos@spokanecity.org	
<b>Additional Approvals</b>			
<b>Purchasing</b>			



# Expenditure Control Form

1. All requests being made must be accompanied by this form.
2. Route **ALL** requests to the Finance Department for signature.
3. If request is greater than \$100,000 it requires signatures by Finance and the City Administrator. Finance Dept. will route to City Administrator.

**Today's Date:** 9/30/20

**Type of expenditure:** Goods  Services

**Department:** 0520 Mayor's Office

**Approving Supervisor:** Brandy Cote

**Amount of Proposed Expenditure:** 0.00

**Funding Source:** N/A

**Please verify correct funding sources. Please indicate breakdown if more than one funding source.**

**Why is this expenditure necessary now?**

No expense related to volunteer board and commission appointment.

**What are the impacts if expenses are deferred?**

N/A

**What alternative resources have been considered?**

N/A

**Description of the goods or service and any additional information?**

Board and commission appointments.

**Person Submitting Form/Contact:** Brandy Cote 625-6774

**FINANCE SIGNATURE:**

\_\_\_\_\_

**CITY ADMINISTRATOR SIGNATURE:**

\_\_\_\_\_



**Agenda Sheet for City Council Meeting of:**  
10/12/2020

<b>Date Rec'd</b>	9/30/2020
<b>Clerk's File #</b>	CPR 1985-0131
<b>Renews #</b>	

<b>Submitting Dept</b>	MAYOR	<b>Cross Ref #</b>	
<b>Contact Name/Phone</b>	BRANDY COTE 625-6774	<b>Project #</b>	
<b>Contact E-Mail</b>	BCOTE@SPOKANECITY.ORG	<b>Bid #</b>	
<b>Agenda Item Type</b>	Boards and Commissions	<b>Requisition #</b>	
<b>Agenda Item Name</b>	0520 APPOINTMENTS TO THE CHASE YOUTH COMMISSION		

**Agenda Wording**

Appointment of Jada Richardson, Ivy Pete, Rosie Zhou, Jared Reisnouer, and Julia Picanco to a one year term on the Chase Youth Commission. The term shall expire on 6/30/21.

**Summary (Background)**

Appointment of Jada Richardson, Ivy Pete, Rosie Zhou, Jared Reisnouer, and Julia Picanco to a one year term on the Chase Youth Commission. The term shall expire on 6/30/21.

<b><u>Fiscal Impact</u></b>	Grant related? NO	<b><u>Budget Account</u></b>
	Public Works? NO	
Select	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

<b><u>Approvals</u></b>		<b><u>Council Notifications</u></b>	
<b><u>Dept Head</u></b>	COTE, BRANDY	<b><u>Study Session\Other</u></b>	
<b><u>Division Director</u></b>		<b><u>Council Sponsor</u></b>	
<b><u>Finance</u></b>		<b><u>Distribution List</u></b>	
<b><u>Legal</u></b>		bcote@spokanecity.org	
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL	Chase Youth <chaseyouthspokane@gmail.com>	
<b><u>Additional Approvals</u></b>			
<b><u>Purchasing</u></b>			





# Expenditure Control Form

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3. If request is greater than \$100,000 it requires signatures by Finance and the City Administrator. Finance Dept. will route to City Administrator.

**Today's Date:** 9/30/20

**Type of expenditure:** Goods  Services

**Department:** 0520 Mayor's Office

**Approving Supervisor:** Brandy Cote

**Amount of Proposed Expenditure:** 0.00

**Funding Source:** N/A

**Please verify correct funding sources. Please indicate breakdown if more than one funding source.**

**Why is this expenditure necessary now?**

No expense related to volunteer board and commission appointment.

**What are the impacts if expenses are deferred?**

N/A

**What alternative resources have been considered?**

N/A

**Description of the goods or service and any additional information?**

Board and commission appointments.

**Person Submitting Form/Contact:** Brandy Cote 625-6774

**FINANCE SIGNATURE:**

\_\_\_\_\_

**CITY ADMINISTRATOR SIGNATURE:**

\_\_\_\_\_

**Agenda Sheet for City Council Meeting of:**

10/12/2020

**Date Rec'd**

9/23/2020

**Clerk's File #**

ORD C35950

**Renews #****Submitting Dept**

FIRE

**Cross Ref #****Contact Name/Phone**

BRIAN SCHAEFFER X7001

**Project #****Contact E-Mail**

BSCHAEFFER@SPOKANECITY.ORG

**Bid #****Agenda Item Type**

Special Budget Ordinance

**Requisition #****Agenda Item Name**

1970 SBO FOR DEPARTMENT OF ECOLOGY GRANT FOR HAZMAT VEHICLE

**Agenda Wording**

State grant with the Department of Ecology for \$85,000 to purchase a dedicated Haz Mat equipment truck capable of storing SFD's hazmat response equipment.

**Summary (Background)**

The Fire Department was awarded an \$85,000 grant to purchase a dedicated Haz Mat equipment truck capable of storing SFD's hazmat response equipment. Currently, SFD stores hazmat equipment in a variety of locations, a practice solely based on the availability of space. With a dedicated hazmat equipment truck, SFD will be able to more rapidly respond to hazardous materials releases. The estimated cost of this vehicle is approx. \$142,000, the balance of which will be paid for with SIP loan funds.

**Fiscal Impact**

Grant related? YES

Public Works? NO

**Budget Account**

Expense \$ 85,000

# 1970-93542-94000-56404

Revenue \$ 85,000

# 1970-93542-99999-33431

Select \$

#

Select \$

#

**Approvals****Council Notifications****Dept Head**

SCHAEFFER, BRIAN

**Study Session\Other**10/05/2020 and  
03/04/2019 PSCHC**Division Director**

SCHAEFFER, BRIAN

**Council Sponsor**

Lori Kinnear

**Finance**

HUGHES, MICHELLE

**Distribution List****Legal**

PICCOLO, MIKE

fireaccounting@spokanecity.org

**For the Mayor**

ORMSBY, MICHAEL

kbustos@spokanecity.org

**Additional Approvals**

joberg@spokanecity.org

**Purchasing**

tmwilliams@spokanecity.org

**GRANTS &  
CONTRACT MGMT**

BROWN, SKYLER

**BUDGET**

INGIOSI, PAUL

## Briefing Paper

### Public Safety and Community Health

<b>Division &amp; Department:</b>	Fire
<b>Subject:</b>	SBO/Grant Acceptance for Department of Ecology Grant
<b>Date:</b>	09/23/2020
<b>Contact (email &amp; phone):</b>	Tom Williams (X7002), tmwilliams@spokanecity.org Kim Bustos (X7155), kbustos@spokanecity.org
<b>City Council Sponsor:</b>	Lori Kinnear
<b>Executive Sponsor:</b>	Brian Schaeffer
<b>Committee(s) Impacted:</b>	Public Safety and Community Health Committee
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Budget
<b>Strategic Initiative:</b>	Safe and Healthy
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	SBO to purchase Haz Mat vehicle in accordance w/grant agreement and obtain reimbursement from DOE.
<p><u>Background/History:</u></p> <p>In 2018, the Fire Department was awarded a Department of Ecology Equipment Grant for \$94,000 to purchase a foam trailer for the purpose of mitigating oil spills. In 2020, the Fire Department was awarded an \$85,000 grant to purchase a dedicated Haz Mat equipment truck capable of storing SFD's hazmat response equipment. Currently, SFD stores hazmat equipment in a variety of locations, a practice solely based on the availability of space. With a dedicated hazmat equipment truck, SFD will be able to more rapidly respond to hazardous materials releases.</p> <p>This grant application was originally briefed on 03/04/2019 but the grant acceptance has been delayed. Also, the amount of the grant was significantly reduced from over \$300,000 to \$85,000.</p> <p>An SBO is needed to provide the budget authority for this purchase. The estimated cost of this vehicle is approximately \$142,000, the balance of which will be paid for with our SIP loan.</p>	
<p><u>Executive Summary:</u></p> <p>State grant with the Department of Ecology for \$85,000 to purchase a dedicated Haz Mat equipment truck capable of storing SFD's hazmat response equipment.</p>	
<p><u>Budget Impact:</u></p> <p>Approved in current year budget?    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure?    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.) No match required. Will need to budget in the future for on-going maintenance and support.</p>	
<p><u>Operations Impact:</u></p> <p>Consistent with current operations/policy?    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Requires change in current operations/policy?    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p>	



# Expenditure Control Form

1. All requests being made must be accompanied by this form.
2. Route **ALL** requests to the Finance Department for signature.
3. If request is greater than \$100,000 it requires signatures by Finance and the City Administrator. Finance Dept. will route to City Administrator.

<b>Today's Date:</b>	<b>Type of expenditure:</b>	Goods	Services
<b>Department:</b>			
<b>Approving Supervisor:</b>			
<b>Amount of Proposed Expenditure:</b>			
<b>Funding Source:</b>			
<b>Please verify correct funding sources. Please indicate breakdown if more than one funding source.</b>			
<b>Why is this expenditure necessary now?</b>			
<b>What are the impacts if expenses are deferred?</b>			
<b>What alternative resources have been considered?</b>			
<b>Description of the goods or service and any additional information?</b>			
<b>Person Submitting Form/Contact:</b>			
<b>FINANCE SIGNATURE:</b>		<b>CITY ADMINISTRATOR SIGNATURE:</b>	
_____		_____	

ORDINANCE NO. C35950

An ordinance amending Ordinance No. C-35857, passed by the City Council December 16, 2019, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2020, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2020, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2020 budget Ordinance No. C-35857, as above entitled, and which passed the City Council December 16, 2019, it is necessary to make changes in the appropriations of the Fire/EMS Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

WHEREAS, this ordinance has been on file in the City Clerk's Office for five days; - Now, Therefore,

The City of Spokane does ordain:

Section 1. That in the budget of the Fire/EMS Fund, and the budget annexed thereto with reference to the Fire/EMS Fund, the following changes be made:

REVENUE:

FUND:	FUND NAME:	BUDGET CODE:	DESCRIPTION:	AMOUNT:
1970	Fire/EMS Fund	1970-93542-99999-33431	Dept of Ecology	85,000

EXPENSE:

FUND:	FUND NAME:	BUDGET CODE:	DESCRIPTION:	AMOUNT:
1970	Fire/EMS Fund	1970-93542-94000-56404	Vehicles	85,000

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the acceptance of a new Department of Ecology Grant (DOE) to purchase a Haz Mat equipment truck, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed the City Council \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest: \_\_\_\_\_  
City Clerk

Approved as to form: \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date



OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

July 13, 2020

City Clerk File Nos.:

ORD C35860 ✓

ORD C35861

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35860 ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE and EMERGENCY ORDINANCE C35861 REQUIRING SPECIFIC CAUSE FOR MOST RESIDENTIAL EVICTIONS (Deferred from May 4, 2020, Advance Agenda)

During its 3:30 p.m. Briefing Session held Monday, July 13, 2020, upon review of Emergency Ordinances C35860 and C35861 on the July 13, 2020, Current Agenda, the following action was taken:

**Motion** by Council Member Stratton, seconded by Council Member Mumm, **to defer** for 90 days, to October 12, 2020, Agenda, Final Reading Ordinance C35860 (establishing a local residential tenancy code) and Final Reading Ordinance C35861 (requiring specific cause for most residential evictions); **carried unanimously.**

A handwritten signature in blue ink, appearing to read "Terri Pfister", written over a horizontal line.

Terri Pfister, MMC  
Spokane City Clerk



OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

April 27, 2020

City Clerk File Nos.:

ORD C35860 ✓

ORD C35861

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35860 ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE and EMERGENCY ORDINANCE C35861 REQUIRING SPECIFIC CAUSE FOR MOST RESIDENTIAL EVICTIONS (Deferred from March 2, 2020, Advance Agenda)

During its 3:30 p.m. Briefing Session held Monday, April 27, 2020, upon review of Emergency Ordinances C35860 and C35861 on the May 4, 2020, Advance Agenda, the following action was taken:

**Motion** by Council Member Burke, seconded by Council Members Kinnear and Cathcart, **to defer** Emergency Ordinance C35860 (establishing a local residential tenancy code) and Emergency Ordinance C35861 (requiring specific cause for most residential evictions) to July 13, 2020; **carried unanimously.**

---

Terri Pfister, MMC  
Spokane City Clerk



OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

February 24, 2020

City Clerk File Nos.:  
ORD C35860 ✓  
ORD C35861

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35860 ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE and EMERGENCY ORDINANCE C35861 REQUIRING SPECIFIC CAUSE FOR MOST RESIDENTIAL EVICTIONS (Deferred from December 9, 2019, Agenda)

During its 3:30 p.m. Briefing Session held Monday, February 24, 2020, upon review of Emergency Ordinances C35860 and C35861 on the March 2, 2020, Advance Agenda, the following actions were taken:

**Motion** by Council Member Stratton, seconded by Council Member Cathcart, **to defer** Emergency Ordinance C35860—establishing a local residential tenancy code—to May 4, 2020; **carried unanimously.**

**Motion** by Council Member Stratton, seconded by Council Member Cathcart, **to defer** Emergency Ordinance C35861—requiring specific cause for most residential evictions—to May 4, 2020; **carried unanimously.**

Council Member Cathcart noted there are plans in place for some public forums on these matters (Ordinance C35860 and C35861). Council President Beggs stated that discussion has started, and he's heard various proposals how to do that, and noted there are plenty of people who want to be heard.

---

Terri Pfister, MMC  
Spokane City Clerk





OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

December 2, 2019

City Clerk File Nos.:  
ORD C35860 ✓  
ORD C35861

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35860 ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE and EMERGENCY ORDINANCE C35861 REQUIRING SPECIFIC CAUSE FOR MOST RESIDENTIAL EVICTIONS

During its 3:30 p.m. Briefing Session held Monday, December 2, 2019, upon review of Emergency Ordinances C35860 and C35861 on the December 9, 2019, Advance Agenda, the following action was taken:

**Motion** by Council Member Beggs, seconded by Council Member Stratton, **to defer** Emergency Ordinance C35860 (establishing a local residential tenancy code) and Emergency Ordinance C35861 (requiring specific cause for most residential evictions) until March 2, 2020; **carried 6-1 (Council Member Burke absent)**. (Clerical Note: The motion made was to defer the ordinances to March 1, 2020; however, March 1 falls on a Sunday and so the City Clerk corrected the record to March 2, 2020, which is a Monday.)

A handwritten signature in blue ink, appearing to read "Terri Pfister", written over a horizontal line.

Terri Pfister, MMC  
Spokane City Clerk



**Agenda Sheet for City Council Meeting of:**  
12/09/2019

<u>Date Rec'd</u>	11/19/2019
<u>Clerk's File #</u>	ORD C35860
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	CITY COUNCIL
<u>Contact Name/Phone</u>	BREEAN BEGGS 625-6714
<u>Contact E-Mail</u>	BBEGGS@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Emergency Ordinance
<u>Agenda Item Name</u>	0320 AN ORDINANCE ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE

Agenda Wording  
An ordinance establishing a local residential tenancy code; recodifying and amending sections of the Spokane Municipal Code; and declaring an emergency

Summary (Background)  
See attached white paper for summary.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Neutral	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<b><u>Dept Head</u></b>	MCDANIEL, ADAM	<b><u>Study Session</u></b>	December 5
<b><u>Division Director</u></b>		<b><u>Other</u></b>	
<b><u>Finance</u></b>	BUSTOS, KIM	<u>Distribution List</u>	
<b><u>Legal</u></b>	PICCOLO, MIKE	kateburke@spokanecity.org	
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL		
<u>Additional Approvals</u>			
<b><u>Purchasing</u></b>			

## ORDINANCE NO. C35860

An ordinance establishing a local residential tenancy code; recodifying Division I of Title 10 as Title 10A; recodifying Division II of Title 10 as Title 10B; enacting a new Title 10C; enacting new sections 07.08.153 and 18.03.030; and amending sections 08.01.090, 08.01.120, 08.01.180, 08.01.200, 08.02.0206, and 18.01.030 of the Spokane Municipal Code; and declaring an emergency.

**WHEREAS**, the rate of vacancies for rental properties in Spokane is currently at 3.3%, its lowest level in a decade and below 5%, which is normally considered a sign of a healthy rental market and which the Spokane market has not attained since 2015; and

**WHEREAS**, the average rent for is now over \$1,000 per month, the highest level in at least a decade, having risen by 74% since 2010; and

**WHEREAS**, nearly 50% of renters in Spokane are cost-burdened, meaning they spend 30% or more of their income on housing each month

**WHEREAS**, almost a quarter of renters in Spokane are severely cost-burdened, meaning they spend half or more of their income on housing each month; and

**WHEREAS**, the median household income is climbing, but the median income for renter households remains below the median – for example, in 2017, the median household income in Spokane was \$46,543, but the median income for renting households was \$33,812 – and while the average rent in Spokane has increased by 74% since 2010, the median renting household's income over that same period only increased by 51%; and

**WHEREAS**, lower-income people who are cost-burdened or severely cost-burdened are at a much higher risk of eviction and therefore, of homelessness, particularly if they report substandard conditions or unfair housing practices; and

**WHEREAS**, research from the Washington State Department of Commerce and data from our own CHHS Department's point-in-time count reveal that lack of affordable housing and eviction from housing are two significant drivers of homelessness; and

**WHEREAS**, the number of unsheltered people experiencing homelessness in Spokane is now at a decade high, confirming the observations from around the state that as rents increase, homelessness does as well; and

**WHEREAS**, one way to lower the rate of homelessness in our community is to keep housed people housed if at all possible, and one way to do this is to reduce the number of evictions in Spokane, which currently stands at 4 households each and every week, according to data compiled by the Eviction Lab at Princeton University; and

**WHEREAS**, the Spokane City Council, in view of these facts, sees that a housing emergency is underway in Spokane, and likely has been for the past few years, and that this emergency poses a danger to the health, welfare, and safety of many people of lower incomes throughout Spokane and necessitates the enactment of this ordinance.

**NOW THEREFORE**, the City of Spokane does ordain:

**Section 1.** That Division I of Title 10 of the Spokane Municipal Code is renumbered as Title 10A Penal Code.

**Section 2.** That Division II of Title 10 of the Spokane Municipal Code, comprising chapter 10.23 through 10.56, inclusive, are renumbered as Title 10B License Code.

**Section 3.** That chapter 10.52 of the Spokane Municipal Code is renumbered as chapter 10C.03 of the Spokane Municipal Code.

**Section 4.** That there is enacted a new Title 10C of the Spokane Municipal Code to read as follows:

**Title 10C Residential Tenancy Code**  
**Chapter 10C.01 General Provisions**  
**Section 10C.01.010 Purpose and Intent**

- A. The City Council finds that the enactment of local residential tenancy code is necessary to protect the health, safety, and welfare of the public.
- B. It is the intent of this Title 10C to protect and preserve the health, safety, and welfare of the public by instituting regulations on the rental of most dwelling units in Spokane.

**Section 10C.01.020 Definitions**

For purposes of this Title 10C, the following terms are defined as follows:

- A. "Accessory dwelling unit" has the same meaning as set forth in SMC 17A.020.010(D).
- B. "Common areas" means areas on a property that are accessible by all tenants of the property including but not limited to: hallways; lobbies; laundry rooms; and common kitchens, parking areas, or recreation areas.
- C. "Department" means the City of Spokane's code enforcement department.
- D. "Deposit" means any payment, charge, or deposit of money paid to the landlord by the tenant at the beginning of the tenancy as a deposit and security for the purpose of:

1. Repairing damage to the premises, exclusive of ordinary wear and tear, caused by the tenant, or a guest or licensee of the tenant, or a pet of the tenant;
  2. Compensating the landlord for the tenant's breach of the tenant's duties prescribed in the rental agreement to restore, replace, or return personal property or appurtenances; or
  3. Compensating the landlord for the tenant's failure to return keys to the premises, except that a landlord shall not retain any portion of the deposit for keys for lock mechanisms that must be changed upon a change of tenancy.
- E. "Dwelling unit" has the same meaning as set forth in RCW 59.18.030(9).
- F. "Fee" means a one-time, non-refundable payment made by the tenant to the landlord to reimburse the landlord for a specific expense, including, without limitation, screening reports, background checks, credit reports, or to pay for the cleaning of the dwelling unit upon termination of the tenancy.
- G. "Landlord" has the same meaning as set forth in RCW 59.18.030(14).
- H. "Last month's rent" means money that is paid at the inception of the tenancy as rent for the last month of a residential tenancy.
- I. "Manufactured Home" has the same meaning as set forth in RCW 59.20.030(6).
- J. "Mobile Home" has the same meaning as set forth in RCW 59.20.030(8).
- K. "Month-to-month tenancy" means a residential tenancy of an indefinite period with monthly or other periodic rent reserved.
- L. "Owner" has the same meaning as set forth in RCW 59.18.030(16).
- M. "Person" has the same meaning as set forth in RCW 59.18.030(17).
- N. "Rent" means any payment or charge payable from the tenant to the landlord, usually periodically, for the residential use of any property, buildings, land, and equipment, including the basic rent charge, charge for parking facilities (whether called a fee or rent), and any other periodic charges by the landlord for other services connected with the residential use of property, but does not include utility charges that are based on usage and to which the tenant has agreed in a written rental agreement to pay.

- O. "Rental agreement" means an agreement which establishes or modifies the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit for compensation in the city of Spokane.
- P. "Rental Housing Registration" means a registration issued under chapter 10C.02, SMC.
- Q. "Shelter" means a facility with overnight sleeping accommodations, owned, operated, or managed by a nonprofit organization, religious organization or governmental entity, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.
- R. "Single-room occupancy housing" (S.R.O.) has the meaning set forth in SMC 17A.020.190(AU).
- S. "Substantial rehabilitation" means the renovation, alteration, or remodeling of a residential unit of 30 or more years of age which (i) has been condemned, (ii) does not qualify for a certificate of occupancy, or (iii) requires substantial renovation in order to be in compliance with contemporary standards for decent, safe and sanitary housing. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to extensive improvements that cure substantial deferred maintenance. Cosmetic improvements alone such as painting, decorating and minor repairs, or other work which can be performed safely without having the unit vacated do not qualify as substantial rehabilitation.
- T. "Tenant" means any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement in the city of Spokane.
- U. "Transitional housing" means housing units owned, operated or managed by a nonprofit organization, religious organization or governmental entity in which supportive services are provided to individuals and families that were formerly homeless, with the intent to stabilize them and move them to permanent housing.
- V. "Unit unavailable for rent" means a housing unit that is not offered or available for rent as a rental unit, and where prior to offering or making the unit available as a rental housing unit, the owner is required to obtain a rental housing registration for the property where the rental housing unit is located and comply with all rules adopted under this chapter.

**Section 10C.01.030                      Relationship with State Law; Construction; Severability.**

- A. The provisions of this Title 10C are supplementary and in addition to any rights, obligations, protections, remedies, and requirements of the Washington Residential Landlord-Tenant Act, chapter 59.18, RCW.

- B. This Title 10C shall be construed liberally and enforced for the benefit of the health, safety, and welfare of the general public, and not for the benefit of any particular person or class of persons.
- C. No provision of or term used in this Title 10C is intended to impose any duty upon the City or any of its officers or employees that would subject them to damages in a civil action.
- D. Should any provision of this Title 10C be determined by a court of competent jurisdiction to be void or unenforceable, such provision shall be severed from this Title 10C, and the remainder of this Title 10C shall continue in effect.

**Chapter 10C.02 Residential Rental Agreements**  
**Section 10C.02.010 Rental Agreement Requirements**

- A. A landlord shall not require the payment of last month's rent by a tenant unless such payment is required by a written rental agreement that specifies the amount of the last month's rent to be paid.
- B. Any rental agreement entered into after the effective date of this chapter shall describe the terms and conditions of any monthly or periodic payments required as a condition of tenancy, including but not limited to: rent, deposits, non-refundable fees, last month's rent, utility payments, late fees authorized by the rental agreement, or other monthly or periodic payments required to be made by the tenant to the landlord. When any monthly or periodic payment is made pursuant to the rental agreement, the landlord shall first apply the payment to the rent due before applying it to other payments due by the tenant to the landlord, except that if the payment is made in response to a notice issued pursuant to RCW 59.12.030 during the period of that notice, the landlord shall first apply the payment to the amount specified in that notice, before applying it to the rent due or to other payments due by the tenant to the landlord.
- C. A landlord shall not require the payment of a pet damage deposit unless the same is required by a written rental agreement, or an addendum to the written rental agreement, that specifies the amount of the pet damage deposit, and subject to the limits on the amount of such deposit stated in SMC 10C.02.040.

**Section 10C.02.020 Distribution of Information Packets to Tenants Required**

- A. The Department shall compile an information packet that includes:
  - 1. Summaries of the respective rights, obligations, and remedies of landlords and tenants thereunder as established in this chapter and in the Washington Residential Landlord Tenant Act; and



2. Information describing how to register to vote and how to update voter registration, including a voter registration form and a change of address form.
- B. The Department shall make the information packet required by this section available on the city's website and in hard copy at no cost to the public.
  - C. The information packet shall include informational documents only, and shall clearly state that nothing in the information packet shall be construed as binding on or affecting any judicial determination of the rights and responsibilities of landlords and tenants, nor is the Department liable for any misstatement or misinterpretation of the applicable laws.
  - D. A copy of the information packet described in this section shall be provided to each tenant or prospective tenant by or on behalf of a landlord when such rental agreement is offered, whether or not such agreement is for a new or renewal rental agreement. The landlord may provide the copy of the information packet to the tenant electronically, including by providing a link to the Department's web page that contains the information packet.
  - E. If there is an oral rental agreement, the landlord shall provide the tenant a copy of the information packet described in this section either before entering into the oral agreement or as soon as reasonably possible after entering into the oral agreement.
  - F. Landlords shall, within thirty (30) days after the Department makes the information packet available, distribute the information packet to existing tenants, including by electronic means set out in subsection D. The Department shall update the information packet periodically and shall notify landlords whenever it is updated.

**Section 10C.02.030                      Notification Requirements for Rent Increases**

Any rental agreement or renewal of a rental agreement for a dwelling unit in the city of Spokane entered into after January 1, 2020 shall include or be deemed to include a provision requiring a minimum of ninety (90) days' prior written notice whenever the periodic or monthly housing costs to be charged a tenant are to increase.

**Section 10C.02.040                      Pet Damage Deposits**

- A. A landlord shall not require payment of a pet damage deposit which exceeds twenty-five percent (25%) of the first full month's rent or \$150, whichever is higher. If rent is not paid or otherwise apportioned on a monthly basis then for the sole purpose of applying this limit the total rent shall be pro-rated on an equal, monthly basis and the total charge to a tenant for the pet damage deposit may not exceed twenty-five percent (25%) of the pro-rated, monthly rental amount or \$150, whichever is higher.



- B. The landlord may not require a pet damage deposit if the pet serves as an individually trained service animal for the tenant. Nothing in this section prohibits a landlord from bringing an action for damages resulting from damage to the landlord's property caused by the tenant's service animal.
- C. The landlord cannot keep any portion of the pet damage deposit for damage that was not caused by a pet or service animal for which the tenant is responsible.
- D. Other than the pet damage deposit authorized by SMC 10C.02.050(A), the landlord may not charge the tenant any fee for keeping a pet.

**Section 10C.02.050            Deposits and Fees; Limitation**

- A. For rental agreements executed on or after the effective date of this chapter, the total amount of all deposits (including pet damage deposits) may not exceed the amount of a full month's rent for the dwelling unit. If rent is not paid or otherwise apportioned on a monthly basis, then for the sole purpose of applying this limit the total rent shall be pro-rated on an equal, monthly basis and the total charge to a tenant for the cost of a security deposit and nonrefundable move-in fees may not exceed the pro-rated, monthly rental amount.
- B. Restrictions on fees
  - 1. Except for the fees, deposits, and last month's rent defined in this Title 10C, landlords may not impose fees or charges upon tenants at the beginning of the tenancy.
  - 2. Pursuant to RCW 59.18.257, any fees charged to a prospective tenant by the landlord for the cost of obtaining a tenant screening report cannot exceed the actual cost of obtaining the report, which may not exceed the customary costs charged to the landlord by a tenant screening service in the city of Spokane. The landlord shall provide, personally or by mail, the prospective tenant with a receipt for any fees charged to the landlord for the cost of obtaining the screening report. The landlord shall provide the tenant with the name and address of the reporting agency and the prospective tenant's rights to obtain a free copy of the consumer report, pursuant to RCW 59.18.257.
  - 3. If the tenant has paid a cleaning fee at the inception of the tenancy, the landlord may not deduct additional cleaning fees from the tenant's security deposit at the conclusion of the tenancy, except for cleaning to remedy conditions beyond ordinary wear and tear.
  - 4. The total amount of fees may not exceed twenty-five percent (25%) of the first full month's rent or \$150, whichever is higher, except that if the cost of a tenant screening report exceeds ten percent (10%) of the first full month's rent, the amount in excess of ten percent (10%) may be included

in the non-refundable fee but may not exceed the customary costs charged by a screening service in the city of Spokane.

- C. No deposit may be collected or retained by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be completed, signed, and dated by the landlord and the tenant, and the landlord shall provide to the tenant a copy of the signed checklist or statement.
- D. Nothing in this chapter prohibits a landlord from bringing an action against a tenant to recover sums exceeding the amount of the tenant's security deposit for damage to the dwelling unit for which the tenant is responsible.
- E. This section does not apply to a tenant who rents a housing unit in a single-family residence that is the principal residence of the owner of the residence.

**Section 10C.02.060            Rental Agreement Waiving Tenant’s Remedies Prohibited—Exception.**

- A. No rental agreement, whether oral or written, may provide that the tenant waives or foregoes rights or remedies under this chapter, except as provided by subsection B.
- B. A landlord and tenant may agree, in writing, to waive specific requirements of this chapter if all of the following conditions have been met:
  - 1. The waiver of specific provisions is in writing and identifies the specific provisions to be waived;
  - 2. The waiver appears in a stand-alone document, does not appear in a standard form written lease or rental agreement, and is clearly titled “Waiver of Tenant’s Remedies”; and
  - 3. There is no substantial inequality in the bargaining positions of the parties.

**Section 10C.02.070            Provisions in Violation of this Chapter Void**

Any provisions in a rental agreement that violate SMC 10C.02.010 – 10C.02.060 are null and void and of no lawful force and effect.

**Section 10C.02.080            Tenant Organizing Activity**

It is a violation of this chapter to interfere with, retaliate against, or prohibit the activities of tenants to organize themselves or take concerted action to address rental housing conditions or advocate for tenants.

## **Section 10C.02.090            Retaliation Prohibited**

- A. It is a violation of this chapter for any person to retaliate against a tenant or prospective tenant because the tenant or prospective tenant exercised or attempted to exercise rights conferred by this chapter or made a complaint or a report to any governmental entity concerning any landlord's or property manager's alleged noncompliance with any provision of a code, statute, ordinance, rule, or regulation which governs the maintenance or operation of rental housing. In addition to all the actions stated in RCW 59.18.240(2), for purpose of this section, "retaliation" includes:
1. Refusing to provide, accept, or approve a rental application or a rental agreement;
  2. Termination of tenancy, giving notice of termination of tenancy, or threatening to terminate the tenancy;
  3. Applying more onerous terms, conditions, or privileges, including increased rent, to a tenant or prospective tenant who exercises his or her rights under this chapter than to a tenant or prospective tenant who does not assert those rights;
  4. Misrepresenting any material fact when providing a rental reference about a tenant;
  5. Threatening to allege to a government agency that a tenant or prospective tenant, or a family member of a tenant or prospective tenant, is not lawfully in the United States; and
  6. During the period from the date that the City first notifies the property owner of conditions that violate applicable codes, statutes, ordinances, or regulations to the time that either (i) relocation assistance payments under SMC 10C.02.200 are paid to eligible tenants, or (ii) the conditions leading to the notification are corrected:
    - a. Evicting, harassing, or intimidating tenants into vacating their units for the purpose of avoiding or diminishing application of SMC 10C.02.200 (relocation assistance payments);
    - b. Reducing services to any tenant; or
    - c. Materially increasing or changing the obligations of any tenant, including but not limited to any rent increase.
- B. Any retaliatory action identified in SMC 10C.02.090(A) and occurring within ninety (90) days of the date a tenant or prospective tenant first exercises rights conferred by this chapter is presumed to be retaliatory, and the presumption of retaliation may be rebutted by the production of clear and convincing evidence that the action was taken for a non-retaliatory purpose. Retaliatory actions alleged ninety (90) days or more after the date a tenant or prospective tenant first exercises rights conferred by this chapter may be established by a preponderance of evidence.

## **Section 10C.02.100            Administration and Enforcement**

- A. The department shall administer the provisions of this Title 10C and is authorized to adopt administrative rules and regulations consistent with this chapter. In the event of any conflict between such rules and this chapter, this chapter shall control.
- B. Enforcement of this chapter shall be by department action, as provided in SMC 10C.02.110 (notices of violation; review; appeal), or by an aggrieved person, as provided in SMC 10C.02.120 (private right of action).
- C. The department may seek legal or equitable relief at any time to enjoin any acts or practices that violate the provisions of this chapter.

**Section 10C.02.110                      Notices of Violation; Review; Appeal**

Except as provided in SMC 10C.02.120 (private right of action; choice of remedies), notices of violation, review, and appeals concerning violations of this chapter shall be conducted pursuant to chapter 01.05, SMC (civil infraction system).

**Section 10C.02.120                      Private Right of Action; Choice of Remedies**

- A. Any person or class of persons injured as a result of a violation of this Title 10C may bring a civil action in the Spokane County Superior Court against the landlord, property owner, property manager, or other person violating this Title 10C and, upon prevailing, may be awarded reasonable attorneys' fees and costs and such legal or equitable relief as may be appropriate to remedy the violation and secure the compliance therewith, including, without limitation, rent refund or credit, reinstatement to tenancy, actual damages, damages for loss of the right to be free from discrimination in real estate transactions, injunctive or equitable relief, any other appropriate remedy set forth in the federal Fair Housing Amendments Act of 1988 (42 U.S.C. §3601 et seq.), and assessment of civil penalties as set forth in SMC 10C.02.130. An order may include the requirement for a report on the matter of compliance.
- B. Any person who is the subject of retaliation as defined in SMC 10C.02.090 or SMC 10C.03.040 may be awarded damages of up to ten thousand dollars (\$10,000) in any action filed in the Spokane County Superior Court to remedy such violation, in addition to all other remedies described in this section.
- C. No person may secure relief from more than one governmental entity, agency, or tribunal for the same harm or injury arising from the same facts, circumstances, transaction, or incident.

**Section 10C.02.130                      Civil Penalty**

- A. In cases either decided by the department or brought by the City Attorney alleging unfair practices filed under this chapter, in addition to any other award of damages or grant of injunctive relief, a civil penalty may be assessed against the respondent to vindicate the public interest, which penalty shall be payable

to the City of Spokane and deposited into the rental assistance fund established by SMC 07.08.153. Payment of a civil penalty may be ordered by the Spokane Superior Court in a proceeding filed under SMC 10C.02.120.

B. The civil penalty assessed under this section shall not exceed:

1. Five thousand dollars (\$5,000) if the respondent has not been determined to have committed any prior unfair housing practice;
2. Seven thousand five hundred dollars (\$7,500) if the respondent has been determined to have committed one (1) other unfair housing practice during the five (5) year period ending on the date of the filing of the complaint; or
3. Ten thousand dollars (\$10,000) if the respondent has been determined to have committed two (2) or more unfair housing practices during the five (5) year period ending on the date of the filing of the complaint.

**Section 10C.02.140                    Defense in Commencing Action – Award of Fees and Costs**

In any legal action commenced for unlawful detainer or to enforce a rental agreement, to impose penalties, or to forfeit a deposit contrary to rental agreement provisions of this Title 10C, or pursuant to rental agreement provisions prohibited by this Title 10C, it is a defense to such action that such provisions are in violation of this Title 10C, and a tenant who prevails on such defense shall be awarded reasonable attorney fees and costs.

**Section 10C.02.200                    Relocation Assistance**

- A. Within seven (7) calendar days of the occurrence of either of the following, the landlord shall pay relocation assistance in the amount of two thousand dollars (\$2,000) for each tenant household directly impacted:
1. the landlord's receipt of notice that a dwelling unit for which the landlord is responsible is unlawful to occupy due to the existence of a condition(s) that violate applicable codes, statutes, ordinances, or regulations, and the landlord knew or should have known of the existence of the condition(s) before receiving such notice; or
  2. the landlord's receipt of notice from a tenant occupying a rental dwelling unit for which the landlord has notified the tenant that the rental amount to charged is to increase by more than 5% in any calendar year and the tenant provides written notice that they are rent burdened as defined in SMC 10C.01.010 and must vacate due to the increased rental amount. A landlord so notified is entitled to obtain all household income information from the tenant and file a written appeal to the Hearing Examiner if the Landlord believes that the tenant does not meet the definition of rent burdened.

- B. In addition to relocation assistance, the property owner shall pay to the displaced tenants the entire amount of any deposit prepaid by the tenant and all prepaid rent.
- C. The property owner shall make relocation assistance payments and any prepaid deposit and prepaid rent as required by this section either by certified check to the displaced tenant(s) or to the City of Spokane for distribution to the displaced tenant(s).
- D. A property owner shall not be required to pay the relocation assistance required by this section if the dwelling unit is or will be unlawful to occupy, and this condition:
  - 1. was directly caused by a tenant's or a third party's conduct; or
  - 2. resulted from conditions arising from a natural disaster.
- E. If the landlord fails to pay relocation assistance as required by SMC 10C.02.200(A), the City may make the relocation assistance payments to the displaced tenants from the Rental Assistance Fund established by SMC 07.08.153 and seek reimbursement from the landlord pursuant to subsection (G) of this section.
- F. If, starting sixty (60) days from the date that the City first made a relocation assistance payment to a displaced tenant, a property owner has failed to reimburse the City in the amount of relocation assistance advanced to such tenant, the City may assess civil penalties in the amount of fifty dollars (\$50.00) per tenant per day such payment remains unreimbursed. In addition to this penalty, the City may impose interest on the amount of relocation assistance paid by the City for which the property owner has not reimbursed the City, at the maximum legal rate of interest permitted under RCW 19.52.020, starting sixty (60) days after the date that the City first advanced relocation assistance funds to the displaced tenant(s).
- G. If the City must initiate legal action in order to recover the amount of relocation assistance payments that it has advanced to a displaced tenant(s), including any interest and penalties under SMC 10C.02.200(F), the City shall be entitled to reasonable attorneys' fees and costs arising from its legal action, pursuant to RCW 59.18.085(3)(h).

## **Chapter 10C.03     Housing Quality**

### **Section 10C.03.010     Purpose; Intent**

- A. The purpose of this code is to protect the health, welfare, and safety of tenants in rental housing in the city of Spokane.
- B. This chapter is intended to secure the rights of tenants in Spokane to have safe, secure, affordable, and well-maintained housing.

- C. The City of Spokane enacts this chapter to implement the recommendations of the Mayor's Housing Quality Task Force, as stated in its November 22, 2016 report, that the City of Spokane "should define and establish a minimum housing quality standard."

**Section 10C.03.020            Applicability and exclusions**

This chapter is inapplicable to the following types of dwelling units:

- A. Dwelling units owned by an individual natural person or family and which are the sole dwelling unit such individual or family makes available for rent in the city of Spokane;
- B. Housing units lawfully used as vacation rentals for periods not to exceed three (3) consecutive months and not consecutively used by the same individual or individuals for more than three (3) months in any twelve-month period;
- C. Housing units rented for not more than twelve (12) consecutive months as a result of the property owner, who previously occupied the unit as a primary residence, taking a work-related leave of absence or assignment such as an academic sabbatical or temporary transfer;
- D. Housing units that are not available for rent;
- E. Housing units in hotels, motels, inns, bed and breakfasts, or in similar accommodations that provide lodging for transient guests;
- F. Housing units in facilities licensed or required to be licensed under RCW 18.20, RCW 70.128, or RCW 72.36, or subject to another exemption under this Chapter;
- G. Housing units in any state licensed hospital, hospice, community-care facility, intermediate-care facility, or nursing home;
- H. Housing units in any convent, monastery, or other facility occupied exclusively by members of a religious order or congregation;
- I. Emergency or temporary-shelter or transitional housing accommodations;
- J. Housing units owned, operated, or managed by a major educational or medical institution or by a third party for the institution; and
- K. Housing units that a government entity or housing authority owns, operates or manages; or units exempted from municipal regulation by federal, state, or local law.



### **Section 10C.03.030            Complaints**

A tenant who observes an item or condition which the tenant believes is in violation of the City of Spokane's building and conservation code standards, as specified in Chapter 17F.070, SMC, may file a written complaint to the City's code enforcement department (the "Department"). Upon receipt of such a complaint, the department shall provide notice of the complaint and the substance thereof to the landlord and proceed under the process described in SMC 17F.070.420 – 17F.070.490.

### **Section 10C.03.040            Retaliation Prohibited**

- A. It shall be a violation of this chapter for any landlord to retaliate in any way against any tenant or any member of the tenant's family or a guest of the tenant who is on the premises lawfully and in compliance with the terms of a valid lease or rental agreement, in response to a complaint filed under SMC 10C.03.030.
- B. Actions to change the terms or conditions of the tenancy, termination of the tenancy, or threats to terminate the tenancy shall be deemed per se retaliation under this section if done within ninety (90) days of the filing of a complaint under SMC 10C.03.030.

### **Section 10C.03.050            Compliance Focus**

- A. The Department shall, in administering and enforcing the requirements of this chapter, endeavor first to assist property owners in efforts to come into compliance with this chapter.
- B. Only when all reasonable efforts to achieve compliance with this chapter have failed will the Department and code official proceed to enforcement actions.

### **Section 10C.03.060            Penalties for Non-Compliance; Escalation**

- A. Violation of this chapter is a class 1 civil infraction.
- B. Failure to repair defective items or conditions as provided in SMC 17F.075.030 within ninety (90) days of the notice provided by the Department or other time period mutually agreed upon between the property owner and the Department is a class 1 civil infraction. For purposes of this section, each defective condition which the landlord fails to repair shall be considered a separate infraction.
- C. Failure to keep all required records of inspections under SMC 17F.075.020 is a class 1 civil infraction.
- D. Knowingly submitting or assisting in the submission falsified information regarding the inspections required by SMC 10C.03.020 is a Class 1 civil infraction and may subject the person submitting or assisting in the submission of such false information to criminal liability under RCW 59.18.125(10).



### **Section 10C.03.070 Incentive Programs Authorized**

Beginning on January 1, 2021, the Department is authorized to create and administer a set of incentives for landlords who have had zero code violations from the effective date of this section to that date.

### **Section 10C.03.080 Microloan program authorized**

The Department is authorized to create and administer a program for microloans to assist tenants with rental and security deposits.

### **Section 10C.03.090 Inspections**

Before it can be offered for rent in Spokane, each dwelling unit offered for rent in Spokane after January 1, 2020 must either (i) have been inspected by a home inspector licensed in the state of Washington under RCW 18.280.020, or (ii) have received a certificate of occupancy in the five (5) years prior to being offered for rent. For purposes of this section, “first offered for rent” means that the unit has not previously been offered for rent within the immediately preceding two years.

**Section 5.** That there is enacted a new section 07.08.153 of the Spokane Municipal Code to read as follows:

#### **Section 07.08.153 Rental Assistance Fund**

- A. There is established as a special revenue fund a rental assistance fund, the proceeds of which shall be used (i) to reimburse tenants who must relocate due to the termination of their tenancy through no fault of their own, and (ii) for landlord and tenant education and materials publication costs.
- B. The annual business registration fees received from those who rent real property in Spokane, any fines or penalties associated with violations of the rental housing code, and any attorneys’ fees recovered by the City pursuant to SMC 10C.02.200(G), shall be deposited in the rental assistance fund.

**Section 6.** That section 08.01.090 of the Spokane Municipal Code is amended to read as follows:

#### **Section 08.01.090 Exemptions**

Unless otherwise provided, the following exemptions apply to the requirement to obtain a general business registration under this chapter:

- A. Presenters of a show, such as a trade show, that is directly associated with or ancillary to a convention or a major national meeting, when entry is limited to

those attending the convention or meeting and the immediate family or associates of the conventioners.

B. Consumer Show Exhibitors.

Consumer show organizers remain responsible to purchase a regular business registration unless otherwise exempted.

C. Persons or entities otherwise subject to the requirement to obtain a business registration, but only to the extent such requirement arises from operating at locations operated or managed by an airport board pursuant to interlocal agreement arising under the authority of chapter 14.08 RCW, where such locations have been annexed to the city, said annexation taking effect on or after January 1, 2012; and

D. Where preempted by the federal or state constitution or laws.

E. Operators of market gardens under chapter 17C.380 SMC.

F. Owners of the following types of residential dwelling units:

1. Dwelling units owned by an individual natural person or family and which are the sole dwelling unit such individual or family makes available for rent in the city of Spokane;
2. Housing units lawfully used as vacation rentals for periods not to exceed three (3) consecutive months and not consecutively used by the same individual or individuals for more than three (3) months in any twelve-month period;
3. Housing units rented for not more than twelve (12) consecutive months as a result of the property owner, who previously occupied the unit as a primary residence, taking a work-related leave of absence or assignment such as an academic sabbatical or temporary transfer;
4. Housing units that are not available for rent;
5. Housing units in hotels, motels, inns, bed and breakfasts, or in similar accommodations that provide lodging for transient guests;
6. Housing units in facilities licensed or required to be licensed under RCW 18.20, RCW 70.128, or RCW 72.36, or subject to another exemption under this Chapter;
7. Housing units in any state licensed hospital, hospice, community-care facility, intermediate-care facility, or nursing home;

8. Housing units in any convent, monastery, or other facility occupied exclusively by members of a religious order or congregation;
9. Emergency or temporary-shelter or transitional housing accommodations;
10. Housing units owned, operated, or managed by a major educational or medical institution or by a third party for the institution; and
11. Housing units that a government entity or housing authority owns, operates or manages; or units exempted from municipal regulation by federal, state, or local law.

**Section 7.** That section 08.01.120 of the Spokane Municipal Code is amended to read as follows:

#### **Section 08.01.120 Registration – Application**

- A. The application for a registration shall be made on forms which set forth the:
  1. name of the applicant,
  2. applicant's residence,
  3. place of business,
  4. nature of the business,
  5. number of personnel, and
  6. amount of the registration fee.
- B. Applicants whose circumstances fall under the definition of SMC 10.40.010 must further disclose information as required in SMC 10.40.030.
- C. For purposes of the registration of businesses which rent residential dwelling units, persons or entities owning multiple dwelling units shall file a single registration for each person or entity which lists the number of units owned by that person or entity. By way of illustration only, a person who owns one single-family rental property in Spokane would file one business registration listing one property, while a LLC which owns a 20-unit apartment building would file one registration which lists 20 units.

**Section 8.** That section 08.01.180 of the Spokane Municipal Code is amended to read as follows:

#### **Section 08.01.180 Computation of Business Registration Fee**

- A. As fixed in SMC 8.02.0206, in addition to the basic registration fee, the total business registration fee due includes a per person fee amount applied to the total number of personnel of the business and, for owners of residential real property offered for rent in Spokane, a per-dwelling unit amount is applied to the

total number of dwelling units offered for rent.

- B. All persons employed at each business location as of the time of a business registration renewal are to be counted in the number of personnel for registration fee purposes. As appropriate, such as in the case of a business with seasonal fluctuations in the work force, the number of personnel by which the fee is measured is the number shown upon the business payroll for each of the payroll periods during that year, added together and divided by the number of payroll periods.
- C. In the case of a new business, the fee for the initial business registration is based upon the registrant's estimated number of personnel.
- D. For the per-dwelling unit fee, any dwelling unit offered for rent or actually rented for at least thirty (30) days in any calendar year is included within the number of dwelling units owned by the registrant.

**Section 9.** That section 08.01.200 of the Spokane Municipal Code is amended to read as follows:

#### **Section 08.01.200 Businesses Within City**

Businesses with a permanent location within the City must obtain a business registration. The measure of the fee is determined in part based upon the number of personnel who perform any part of their duties within the City and, for lessors of residential dwelling units, the number of such dwelling units owned by the registrant within Spokane.

**Section 10.** That section 08.02.0206 of the Spokane Municipal Code is amended to read as follows:

#### **Section 08.02.0206 Business Registration**

- A. A regular business registration basic fee is one hundred twenty dollars (\$120) per twelve-month period.
- B. The basic fee for a nonresident business registration is one hundred twenty dollars (\$120) per twelve-month period.
- C. In addition to the basic registration fee, each business must pay ~~((an))~~ additional ~~((fee for each personnel,))~~ fees per license year, as follows (all personnel of a business are charged the same amount corresponding to the respective category of the total number of personnel defined below):
  - 1. Businesses with fewer than six personnel in total: Ten dollars per person.
  - 2. Businesses with six to ten personnel in total: Fifteen dollars per person.

3. Businesses with more than ten personnel in total: Twenty dollars per person.
  4. Businesses offering dwelling units for rent in the city of Spokane: ten dollars (\$10.00) per dwelling unit.
- D. Whenever there is a change of ownership, the holder of the registration must notify the Washington State business licensing service within thirty (30) days of such event. The new owner must file an application with the Washington State business licensing service to acquire a new registration, as provided in chapter 8.01 SMC.
- E. For businesses qualifying under SMC 08.01.190(A) (low gross income businesses) for a reduced registration fee, the reduced business registration fee is one-half the basic registration fee, but all applicable personnel, inspection, per-dwelling unit, or other applicable fees or charges apply in full.
- F. For businesses qualifying under SMC 08.01.190(B) (nonprofit organizations) for a reduced registration fee, the reduced business registration fee is one-half the basic registration fee. Nonprofit businesses are exempt from personnel fees and per-dwelling unit fees.
- G. For businesses qualifying under SMC 08.01.190(C) (social purpose corporations) for a reduced registration fee, the reduced business registration fee is one-half the basic registration fee.
- H. For businesses qualifying under SMC 08.01.190(D) (Certified B Corporations) for a reduced registration fee, the reduced business registration fee is one-half the basic registration fee.
- I. Any Certified B Corporation certified by B Lab is exempt from personnel fees and per residential unit fees.

#### Annual Fee Adjustment.

Effective January 1, 2011, and the first of January of each year thereafter, the business registration fees set forth in this section shall be adjusted by the Chief Financial Officer by an amount equal to the consumer price index adjustment of the previous July – July U.S. All City Average (CPI-U and CPI-W). The newly determined amount shall be rounded up to the nearest dollar. In addition, the adjusted fees shall be presented to the City Council for approval and a copy of the approved fees filed with the Chief Financial Officer before becoming effective. The annual fee adjustment provided for in this section shall not apply to the personnel fee stated in SMC 08.02.0206(C).

**Section 11.** That section 18.01.030 of the Spokane Municipal Code is amended to read as follows:

## Section 18.01.030 Definitions

- A. "Commission" means the Spokane Human Rights Commission.
- B. "Data management protocols" means the procedures governing how data collected by surveillance equipment will be retained, stored, indexed and accessed. Information comprising data management protocols includes, at a minimum, the information required in SMC 18.04.020.
- C. "Disability" means the presence of a sensory, mental, or physical impairment that, whether temporary or permanent, common or uncommon, mitigated or unmitigated, a limitation or not on the ability to work generally or work at a particular job, or a limitation or not on the ability to engage in any other activity within the scope of this Title 18:
  - 1. is medically cognizable or diagnosable; or
  - 2. exists as a record or history; or
  - 3. is perceived to exist whether or not it exists in fact.
  - 4. For the purposes of reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:
    - a. The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or
    - b. The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.
  - 5. For purposes of this definition, a limitation is not substantial if it has only a trivial effect.
  - 6. For purposes of housing, a "reasonable accommodation" is an adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces, where there is an identifiable relationship or nexus between the requested accommodation and the person's disability.
- D. "Discrimination" means different or unequal treatment because of race, religion, creed, color, sex, national origin, marital status, familial status, domestic violence victim status, age, sexual orientation, gender identity, honorably discharged veteran or military status, refugee status, disability, the use of a guide dog or service animal, or the use or eligibility for the use of housing choice or other subsidy program or alternative source of income. "Discriminate" means to treat differently or unequally because of race, religion, creed, color, sex, national origin, marital status, familial status, domestic violence victim status, age, sexual orientation, gender identity, honorably discharged veteran or military status, refugee status, the presence of any sensory, mental or physical disability as defined by the Americans with Disabilities Act and/or the Washington State Law

Against Discrimination, or the use or eligibility for the use of housing choice or other subsidy program or alternative source of income. For purposes of this definition, it is discriminatory to fail to offer reasonable accommodation in housing or employment to an otherwise qualified applicant or employee with a disability, absent a showing that the accommodation would impose an undue hardship.

- E. "Dog guide" means a dog that is specifically trained for the purpose of guiding persons who are blind or a dog trained for the purpose of assisting persons with disabilities.
- F. "Domestic Violence Victim Status" means a family or household member, as defined in RCW 10.99.020 (3), who has been subjected to domestic violence as defined in RCW 10.99.020 (5) or who is a victim of sexual assault as defined in RCW 70.125.030.
- G. "Employee" means an individual who works for wages, salary or commission, or a combination thereof, in the service of an employer, but does not include a person employed by a parent, grandparent, brother, sister, spouse or child. The term includes an individual who is seeking or applying for employment. This definition does not include independent contractors.
- H. "Employer" means any person acting in the interest of an employer, directly or indirectly, who employs employees within the City, or who solicits individuals within the City to apply for employment within the City, including the City of Spokane and all its boards, commissions and authorities.
- I. "Entities under common ownership" means two or more legal entities, such as corporations, limited liability companies, partnerships, and the like which are: owned by the same person(s); in which the same person(s) serve as officers and/or directors; or the majority of one of which is owned by one or more of the others. For example, if a single person owns controlling interests in several limited liability companies, all of those limited liability companies are entities under common ownership.
- J. "Family with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.
- K. "Federally-recognized tribe" means an entity listed on the Department of the Interior's list under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary currently acknowledges as an Indian tribe and with which the United States maintains a government-to-government relationship.
- L. "Gender Identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.
- M. "Housing choice or other subsidy program(( or alternative source of income))" means, without limitation: (i) any short or long term federal, state or local government, private nonprofit, or other assistance program in which a tenant's



rent is paid either partially by the program (through a direct arrangement between the program and the owner or lessor of the real property), and partially by the tenant or completely by the program; or (ii) HUD-Veteran Affairs Supportive Housing (VASH) vouchers, Housing and Essential Needs (HEN) funds, and short-term rental assistance provided by Rapid Rehousing subsidies.

- N. "Impairment" includes, without limitation, any:
1. physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin and endocrine; or
  2. mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- O. "Income" means lawful, verifiable income derived from all sources, including without limitation wages, salaries or other compensation for employment; Social Security benefits; supplemental security income; unemployment benefits; retirement programs; child support; payments from the Aged, Blind or Disabled Cash Assistance Program; Refugee Cash Assistance; any federal, state, local government, private, or nonprofit-administered benefit program, including without limitation payments from any housing choice or other subsidy program as defined in this chapter; financial aid for college students; and per capita payments or distributions received from a federally-recognized tribe.
- P. "Labor organization" means an organization which is constituted for the purpose, in whole or in part, of collective bargaining or for dealing with an employer concerning grievances, terms or conditions of employment, or for other mutual aid or protection in connection with an employer.
- Q. "Marital status" means the status of being married, single, separated, divorced or widowed.
- R. "National origin" includes ancestry.
- S. "Operational protocols" means the procedures governing how and when surveillance equipment may be used and by whom and includes, at a minimum, the information required in SMC 18.04.010.
- T. "Person" includes:
1. A natural individual, partnership, association, organization, corporation, cooperative, legal representative, trustee and receiver, and any group of persons acting in concert;
  2. an owner, lessee, proprietor, manager, agent or employee, of a person, whether consisting of one or more natural persons;
  3. entities under common ownership; and
  4. any political or civil subdivisions of the City and any agency or instrumentality of the City or of any political or civil subdivision thereof.

This definition does not include the federal government or any federally-recognized tribe.



- U. "Place of public resort, accommodation, assemblage or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps, provided that nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this section; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.
- V. "Profiling" means actions of the Spokane Police Department, its members, or officers commissioned by the Spokane Police Department to rely on actual or perceived race, religion, national origin, color, creed, age, citizenship status, immigration status, refugee status, gender, sexual orientation, gender identity, disability, socio-economic status, housing status, or membership in any protected class under federal, state or local law as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity.
- W. "Real estate transaction" means the sale, purchase, conveyance, exchange, rental, lease, sublease, assignment, transfer, or other disposition of real property.
- X. "Real estate-related transaction" means any of the following:
1. The making or purchasing of loans or providing other financial assistance:
    - a. For purchasing, constructing, improving, repairing, or maintaining real property, or
    - b. Secured by real property; or
  2. The selling, brokering, or appraising of real property; or

3. The insuring of real property, mortgages, or the issuance of insurance related to any real estate transaction.

~~((W.))~~Y. "Refugee status" means the status of a person who, under the provisions of 8 USC 1101(a)(42), is outside a country of that person's nationality or, in the case of a person having no nationality, is outside any country in which that person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

~~((X.))~~Z. "Service animal" means an animal that is trained for the purposes of assisting or accommodating a person with a disability.

~~((Y.))~~AA. "Sex" means gender.

~~((Z.))~~AB. "Sexual orientation" means heterosexuality, homosexuality, bisexuality and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

~~((AA.))~~AC. "Surveillance equipment" means equipment capable of capturing or recording data, including images, videos, photographs or audio operated by or at the direction of a City department that may deliberately or inadvertently capture activities of individuals on public or private property, regardless of whether "masking" or other technology might be used to obscure or prevent the equipment from capturing certain views. "Surveillance equipment" includes drones or unmanned aircraft and any attached equipment used to collect data. "Surveillance equipment" does not include the following equipment which are in use by the City of Spokane as of March 1, 2017:

1. handheld or body-worn devices (e.g., "bodycams") used by law enforcement;
2. cameras installed in or on a police vehicle (e.g., "dashcams");
3. cameras installed in or on any City-owned vehicle, including without limitation fire trucks, emergency vehicles, utility vehicles and street maintenance vehicles, which are intended to ensure the safe operation of the vehicle;
4. cameras installed along a public right-of-way to record traffic patterns and/or traffic violations;
5. cameras intended to record activity inside or at the entrances to City buildings for security purposes; or

6. cameras installed to monitor and protect the physical integrity of City infrastructure, including without limitation fire stations and utility service facilities.

**Section 12.** That section 18.01.060 of the Spokane Municipal Code is amended to read as follows:

**Section 18.01.060 Penalty for Violation**

- A. The commission of an act of discrimination as defined in this Title 18 is punishable as a Class 1 civil infraction pursuant to chapter 01.05, SMC.
- B. Notwithstanding the foregoing, the commission of an act of discrimination based on source of income in the rental of a housing unit shall subject the person in violation to liability in a civil action of up to four and one-half (4.5) times the monthly rent of the housing unit at issue, in addition to court costs and reasonable attorneys' fees.

**Section 13.** That there is enacted a new section 18.01.090 of the Spokane Municipal Code to read as follows:

**Section 18.01.090 Private right of action; choice of remedies**

- A. Any person or class of persons that suffers injury as a result of a violation of SMC 18.03.010 may bring a civil action in the Spokane Municipal Court against the property owner, property manager, or other person violating such section and, upon prevailing, may be awarded reasonable attorneys' fees and costs and such legal or equitable relief as may be appropriate to remedy the violation and secure the compliance therewith, including, without limitation, rent refund or credit, reinstatement to tenancy, actual damages, damages for loss of the right to be free from discrimination in real estate transactions, injunctive or equitable relief, any other appropriate remedy set forth in the federal Fair Housing Amendments Act of 1988 (42 U.S.C. §3601 et seq.), and assessment of civil penalties as set forth in SMC 10C.02.130. An order may include the requirement for a report on the matter of compliance.
- B. Any person who is the subject of retaliation as defined in SMC 18.01.040 may be awarded damages of up to ten thousand dollars (\$10,000) in any action filed in the Spokane County Superior Court to remedy such violation, in addition to all other remedies described in this section.
- C. No person may secure relief from more than one governmental entity, agency, or tribunal for the same harm or injury arising from the same facts, circumstances, transaction, or incident.

**Section 14.** That there is enacted a new section 18.03.030 of the Spokane Municipal Code to read as follows:

**Section 18.03.030 Prohibited Practices in Real Estate Related Transactions**

It is unlawful for any person whose business includes engaging in real estate related transactions, to:

- A. Discriminate against any person, owner, prospective occupant, or occupant of real property in the granting, withholding, extending, making available, modifying, or renewing, or in the rates, terms, conditions, or privileges of a real estate related transaction, or in the extension of services in connection therewith; or
- B. Discriminate by using any form of application for a real estate related transaction or making any record of inquiry in connection with applications for a real estate related transaction which expresses, directly or indirectly, an intent to discriminate unless required or authorized by local, state, or federal laws or agencies to prevent discrimination in real property; provided that, nothing in this provision shall prohibit any party to a credit transaction from requesting designation of marital status for the purpose of considering application of community property law to the individual case or from taking reasonable action thereon or from requesting information regarding age, parental status, or participation in a Section 8 or other subsidy program when such information is necessary to determine the applicant's ability to repay a loan.

**Section 15.** That an urgency and emergency exists such that the enactment of this ordinance is necessary for the protection of the public health, welfare, and safety, and that under Section 19(a) of the City Charter, this ordinance shall be effective immediately upon passage by the affirmative vote of one more than a majority of the City Council.

**PASSED** by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

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Mayor

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Date

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Effective Date



SPOKANE CITY COUNCIL  
**Policy Advisor Memorandum**

TO: Council Members  
FROM: Brian McClatchey, Policy Advisor  
DATE: April 24, 2020  
RE: Summary of proposed residential tenancies code

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This memorandum summarizes the proposed provisions of a local residential tenancies code. This proposal, and all the prior iterations of it, have been the subject of numerous meetings with landlords and tenants. As well, the housing quality provisions are intended to implement the recommendations of the 2016 report of the Mayor's Housing Quality Task Force.

**1. Rental agreement regulations.**

The proposed ordinance establishes some local regulations on rental agreements, for example, by prohibiting waivers of mandatory terms in rental agreements unless the waiver is clearly identified in a separate document as a waiver.

The proposed ordinance deals with deposits and pre-payment of last months' rent by requiring such payments or deposits to be authorized by a written rental agreement which identifies the amount of such required payment. Under the proposal, landlords can still impose cleaning fees, but they would be prohibited from taking an amount of money over the amount of the cleaning fee out of a deposit.

Pet deposits would be limited to 25% of one months' rent or \$150, whichever is higher, and landlords would not be able to charge a pet deposit for service animals, though they still would be able to recover for damage to a rental unit caused by a service animal. And overall, the proposal would cap the total deposits (defined as refundable payments) which can be required to an amount equal to one months' rent. Total fees (defined as one-time, non-refundable payments) would be capped at 25% of one months' rent, including a limitation on the amount a tenant can be charged for a screening report fee to 10% of one months' rent.

Beginning on January 1, 2020, landlords will be required to provide 90 days' written notice to tenants of any rent increase.

**2. Rental Relocation Assistance Program.**

The proposed ordinance creates and funds a rental relocation assistance program. If a tenant has to move due to a 'do not occupy' order caused by conditions caused by the

landlord, or due to rent increases which make the tenant unable to afford the rent, the landlord must pay \$2,000, and refund all deposits and pre-paid rent within 7 days of receiving notice from the City that the property is not to be occupied. This will help low-income tenants move to habitable and affordable housing. If the landlord does not make the payment to the tenant within 7 days, the City can advance those funds to the tenant. The City can then seek repayment from the landlord, including penalties and interest if the repayment does not occur within 60 days. Relocation assistance payments are not required if the uninhabitable condition is caused by a natural disaster or the tenant's conduct.

### **3. Enforcement, Prohibitions, and Fines.**

The proposed ordinance contains specific and fair enforcement provisions, among them being a private right of action for tenants to bring suit in the Superior Court. There is a limitation on this, which is that tenants are limited to the choice of recovery from one entity (*i.e.*, can sue under local code but not both state and local code).

The proposed ordinance prohibits retaliation and interfering with or prohibiting tenant organizing activities, and creates a rebuttable presumption of retaliation where any negative action is taken within 90 days of a complaint.

The proposed ordinance also establishes serious and fair monetary penalties, including for housing discrimination, such as \$10,000 fines for retaliation and housing discrimination, an escalating penalty schedule of up to \$10,000 in fines for repeat violators, and a penalty (to match that established in state law) of 4.5 times the monthly rental amount for violations of the prohibition on discrimination based on the source of income. The proposed ordinance also makes clear that compliance is the goal to be sought before enforcement actions can be taken. Other violations, such as failure to repair defective conditions, failure to keep adequate records (for example, inspection reports), and falsifying records are all Class 1 civil infractions.

### **4. Housing Quality Standards.**

The proposed ordinance establishes housing quality standards for all rental units in Spokane, with some exceptions, such as owner-occupied units which is the only unit rented by the owner, vacation rentals offered for rent no more than 3 months per year, hotels, motels, B&Bs, etc., health care facilities (like long-term care, group homes, hospitals, hospice, and nursing homes), religious facilities such as convents, monasteries or other facilities occupied exclusively by members of a religious order, emergency shelter or transitional housing, housing units for a major medical or educational institutions, and government or housing authority-owned units.

Housing units must have an inspection before being offered for rent in Spokane and a certificate of occupancy can suffice for that inspection for newer properties. The City does not inspect the property, so no additional city staffing is required, as the landlord is required to use a third-party inspector who is certified to the same level as under state law, and retain inspection reports or documents.

If a defective condition is apparent, the tenant can notify the City, which will then notify the landlord of the potential existence of a defective condition within 5 days. The landlord must fix any defective condition within 30 days of getting notice from the City (or longer period if city negotiates that longer period). When repairs are completed, the landlord notifies city of the completion of the repairs, and the City can then choose to inspect the work itself.

This proposal does not impose new substantive standards, but relies on the existing building and conservation code in the Spokane Municipal Code.

#### **5. Other Proposals.**

There are a number of other smaller changes in the proposals, such as a requirement that the City create and distribute an information packet including change of address forms, a landlord-tenant law summary, and voter registration forms. The proposal also authorizes an incentive program for landlords with zero code violations starting 1/1/2021 and a microloan program for all tenant rental and security deposits (not just displaced tenants). It also adds “real estate transactions” and “real estate related transactions” to the scope of the City’s existing anti-discrimination law.

#### **6. Business Registration Requirement.**

Business registration will now be required for owners of residential rental property which is offered for rent in Spokane. Each “place of business” must be registered, which means that each single-family rental home, and each apartment building or multiple-family unit building must have its own registration. Owners of residential real property offered for rent in Spokane will be required to pay the standard business license fee plus a \$10 fee for each housing unit offered for rent. That additional \$10 fee will be used to fund the rental relocation assistance program.





OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

July 13, 2020

City Clerk File Nos.:

ORD C35860 ✓

ORD C35861

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35860 ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE and EMERGENCY ORDINANCE C35861 REQUIRING SPECIFIC CAUSE FOR MOST RESIDENTIAL EVICTIONS (Deferred from May 4, 2020, Advance Agenda)

During its 3:30 p.m. Briefing Session held Monday, July 13, 2020, upon review of Emergency Ordinances C35860 and C35861 on the July 13, 2020, Current Agenda, the following action was taken:

**Motion** by Council Member Stratton, seconded by Council Member Mumm, **to defer** for 90 days, to October 12, 2020, Agenda, Final Reading Ordinance C35860 (establishing a local residential tenancy code) and Final Reading Ordinance C35861 (requiring specific cause for most residential evictions); **carried unanimously.**

Terri Pfister, MMC  
Spokane City Clerk



OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

April 27, 2020

City Clerk File Nos.:  
ORD C35860  
ORD C35861

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35860 ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE and EMERGENCY ORDINANCE C35861 REQUIRING SPECIFIC CAUSE FOR MOST RESIDENTIAL EVICTIONS (Deferred from March 2, 2020, Advance Agenda)

During its 3:30 p.m. Briefing Session held Monday, April 27, 2020, upon review of Emergency Ordinances C35860 and C35861 on the May 4, 2020, Advance Agenda, the following action was taken:

**Motion** by Council Member Burke, seconded by Council Members Kinnear and Cathcart, **to defer** Emergency Ordinance C35860 (establishing a local residential tenancy code) and Emergency Ordinance C35861 (requiring specific cause for most residential evictions) to July 13, 2020; **carried unanimously.**

A handwritten signature in blue ink, appearing to read "Terri Pfister", written over a horizontal line.

Terri Pfister, MMC  
Spokane City Clerk



OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

February 24, 2020

City Clerk File Nos.:  
ORD C35860  
ORD C35861

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35860 ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE and EMERGENCY ORDINANCE C35861 REQUIRING SPECIFIC CAUSE FOR MOST RESIDENTIAL EVICTIONS (Deferred from December 9, 2019, Agenda)

During its 3:30 p.m. Briefing Session held Monday, February 24, 2020, upon review of Emergency Ordinances C35860 and C35861 on the March 2, 2020, Advance Agenda, the following actions were taken:

**Motion** by Council Member Stratton, seconded by Council Member Cathcart, **to defer** Emergency Ordinance C35860—establishing a local residential tenancy code—to May 4, 2020; **carried unanimously.**

**Motion** by Council Member Stratton, seconded by Council Member Cathcart, **to defer** Emergency Ordinance C35861—requiring specific cause for most residential evictions—to May 4, 2020; **carried unanimously.**

Council Member Cathcart noted there are plans in place for some public forums on these matters (Ordinance C35860 and C35861). Council President Beggs stated that discussion has started, and he's heard various proposals how to do that, and noted there are plenty of people who want to be heard.

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Terri Pfister, MMC  
Spokane City Clerk



OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

December 2, 2019

City Clerk File Nos.:  
ORD C35860  
ORD C35861

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35860 ESTABLISHING A LOCAL RESIDENTIAL TENANCY CODE and EMERGENCY ORDINANCE C35861 REQUIRING SPECIFIC CAUSE FOR MOST RESIDENTIAL EVICTIONS

During its 3:30 p.m. Briefing Session held Monday, December 2, 2019, upon review of Emergency Ordinances C35860 and C35861 on the December 9, 2019, Advance Agenda, the following action was taken:

**Motion** by Council Member Beggs, seconded by Council Member Stratton, to **defer** Emergency Ordinance C35860 (establishing a local residential tenancy code) and Emergency Ordinance C35861 (requiring specific cause for most residential evictions) until March 2, 2020; **carried 6-1 (Council Member Burke absent)**. (Clerical Note: The motion made was to defer the ordinances to March 1, 2020; however, March 1 falls on a Sunday and so the City Clerk corrected the record to March 2, 2020, which is a Monday.)

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Terri Pfister, MMC  
Spokane City Clerk



**Agenda Sheet for City Council Meeting of:**  
12/09/2019

<u>Date Rec'd</u>	11/19/2019
<u>Clerk's File #</u>	ORD C35861
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	CITY COUNCIL
<u>Contact Name/Phone</u>	BEN STUCKART 625-6258
<u>Contact E-Mail</u>	BSTUCKART@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Emergency Ordinance
<u>Agenda Item Name</u>	0320 SPECIFIC CAUSE EVICTION ORDINANCE

Agenda Wording  
An ordinance requiring specific cause for most residential evictions; enacting new sections 18.03.005 and 18.03.030 of the Spokane Municipal Code; and declaring an emergency.

Summary (Background)  
This ordinance establishes specific causes for which landlords and/or property management companies offering ten or more dwelling units for rent in Spokane may terminate a rental agreement.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Neutral	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<b><u>Dept Head</u></b>	MCDANIEL, ADAM	<b><u>Study Session</u></b>	12/5 Study Session
<b><u>Division Director</u></b>		<b><u>Other</u></b>	
<b><u>Finance</u></b>	BUSTOS, KIM	<u>Distribution List</u>	
<b><u>Legal</u></b>	PICCOLO, MIKE	amcdaniel@spokanecity.org	
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL	kateburke@spokanecity.org	
<u>Additional Approvals</u>			
<b><u>Purchasing</u></b>			

## ORDINANCE NO. C35861

An ordinance requiring specific cause for most residential evictions; enacting new sections 18.03.005 and 18.03.030 of the Spokane Municipal Code; and declaring an emergency.

**WHEREAS**, the rate of vacancies for rental properties in Spokane is currently at 3.3%, its lowest level in a decade and below what 5%, which is normally considered a sign of a healthy rental market and which the Spokane market has not attained since 2015; and

**WHEREAS**, the average rent for is now over \$1,000 per month, the highest level in at least a decade, having risen by 74% since 2010; and

**WHEREAS**, nearly 50% of renters in Spokane are cost-burdened, meaning they spend 30% or more of their income on housing each month

**WHEREAS**, almost a quarter of renters in Spokane are severely cost-burdened, meaning they spend half or more of their income on housing each month; and

**WHEREAS**, the median household income is climbing, but the median income for renter households remains below the median – for example, in 2017, the median household income in Spokane was \$46,543, but the median income for renting households was \$33,812 – and while the average rent in Spokane has increased by 74% since 2010, the median renting household's income over that same period only increased by 51%; and

**WHEREAS**, lower-income people who are cost-burdened or severely cost-burdened are at a much higher risk of eviction and therefore, of homelessness; and

**WHEREAS**, research from the Washington State Department of Commerce and data from our own CHHS Department's point-in-time count reveal that lack of affordable housing and eviction from housing are two significant drivers of homelessness; and

**WHEREAS**, the number of unsheltered people experiencing homelessness in Spokane is now at a decade high, confirming the observed relationship between increasing rents and increasing homelessness; and

**WHEREAS**, one way to lower the rate of homelessness is to keep housed people housed, and one way to do that is to reduce the number of evictions in Spokane, the rate of which in Spokane is currently 4 households each and every week, according to data compiled by the Eviction Lab at Princeton University; and

**WHEREAS**, the Spokane City Council, in view of these facts, sees that a housing emergency exists in Spokane, that this emergency poses a danger to the health, welfare, and safety of many low-income people in Spokane, and that this emergency necessitates the enactment of this ordinance.

**NOW THEREFORE**, the City of Spokane does ordain:

**Section 1.** That there is enacted a new section 18.03.005 of the Spokane Municipal Code to read as follows:

**Section 18.03.005 Definitions**

- A. " Dwelling unit " has the same meaning as set forth in RCW 59.18.030(9).
- B. " Landlord " has the same meaning as set forth in RCW 59.18.030(14).
- C. " Rental agreement " means an agreement which establishes or modifies the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit for compensation in the city of Spokane.
- D. " Substantial rehabilitation " means the renovation, alteration, or remodeling of a residential unit of 30 or more years of age which (i) has been condemned, (ii) does not qualify for a certificate of occupancy, or (iii) requires substantial renovation in order to be in compliance with contemporary standards for decent, safe and sanitary housing. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to extensive improvements that cure substantial deferred maintenance. Cosmetic improvements alone such as painting, decorating and minor repairs, or other work which can be performed safely without having the unit vacated do not qualify as substantial rehabilitation.
- E. " Tenant " means any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement in Spokane.

**Section 2.** That there is enacted a new section 18.03.030 of the Spokane Municipal Code to read as follows:

**Section 18.03.030 Eviction Only for Specific Cause**

- A. Except where the tenant cures the violation(s) as provided in this section, landlords and/or property management companies which offer ten (10) or more dwelling units for rent in Spokane may terminate a rental agreement only by providing written notice to the tenant of the existence of one or more of the causes listed in this section.
- B. Causes which are sufficient for the termination of a residential tenancy under this section are:
  - 1. Failure by the tenant to pay rent as required by the rental agreement;

2. Material violation by the tenant of any provision of RCW 59.18.130 (duties of tenant);
  3. To allow the landlord or a member of the landlord's immediate family to occupy the dwelling unit;
  4. To perform capital improvements which will make the unit temporarily uninhabitable while the work is being done;
  5. to perform substantial rehabilitation work;
  6. To withdraw the dwelling rental units from the rental market; or
  7. To demolish or permanently remove a rental unit from housing use.
- C. The notice required by subsection (A) must:
1. Specify the cause(s) for eviction from among the items listed in subsection B;
  2. State that the tenancy will terminate due to such cause(s) no less than thirty (30) days after delivery of the notice, unless the cause(s) is/are cured by the tenant as described in this subsection; and
  3. State that the tenant may cure one or more of the violations described in subsection (B)(1) and (B)(2) within fourteen (14) days of the delivery of the notice.
  4. State that if a violation of subsection (B)(1) or (B)(2) which is described in the notice and is cured by the tenant within fourteen (14) days of the notice by a change in conduct, repairs, payment of money or otherwise, the rental agreement will not terminate.
- D. If the cause of a written notice delivered as required by this section is failure by the tenant to pay rent within five (5) days of the date it is due under the rental agreement and for which notice was given under this section on two separate occasions within the previous six (6) months, the tenant does not have a right to cure a subsequent violation.
- E. For week-to-week tenancies, the notice period in subsection (C)(2) changes from 30 days to seven days and the notice period in subsection (C)(4) of this section changes from 14 days to four days.

**Section 3.** That an urgency and emergency condition exists in the City of Spokane which poses a danger to the health, welfare, and safety of the people of Spokane and which necessitates that this ordinance be, under Section 19(a) of the City



Charter, effective immediately upon passage by the affirmative vote of one more than a majority of the City Council.

**PASSED** by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date

**Agenda Sheet for City Council Meeting of:**

08/17/2020

<b>Date Rec'd</b>	8/5/2020
<b>Clerk's File #</b>	ORD C35924
<b>Renews #</b>	

<b>Submitting Dept</b>	CITY ATTORNEY	<b>Cross Ref #</b>	
<b>Contact Name/Phone</b>	TIM 6225	<b>Project #</b>	
<b>Contact E-Mail</b>	TSZAMBELAN@SPOKANECITY.ORG	<b>Bid #</b>	
<b>Agenda Item Type</b>	First Reading Ordinance	<b>Requisition #</b>	
<b>Agenda Item Name</b>	0500 YELLOWSTONE PIPELINE FRANCHISE		

**Agenda Wording**

Ordinance granting Yellowstone Pipeline Company, a Delaware corp., the nonexclusive right, privilege, authority & franchise to construct, operate, maintain, remove, replace, and repair existing pipeline facilities, together w/ equipment

**Summary (Background)**

Summary/ Background: The City and Yellowstone Pipeline (YPL) have been involved in petroleum franchise renewal negotiations over the past 15 years. The excessive length of the negotiations was due to a Federal legal appeals, corporate reorganization and addressing safety compliance and environmental concerns. There was an independent safety compliance audit conducted by Southwest Research Institute on YPL's integrity management program. The report found YPL to be in compliance.

<b>Fiscal Impact</b>	Grant related? NO	<b>Budget Account</b>
	Public Works? NO	
Revenue	\$ 25,000 Annually	# 0020-88100-99999-32191-30028
Select	\$	#
Select	\$	#
Select	\$	#

<b><u>Approvals</u></b>		<b><u>Council Notifications</u></b>	
<b><u>Dept Head</u></b>	PICCOLO, MIKE	<b><u>Study Session\Other</u></b>	Finance - 10/21/19
<b><u>Division Director</u></b>		<b><u>Council Sponsor</u></b>	Michael Cathcart
<b><u>Finance</u></b>	BUSTOS, KIM	<b><u>Distribution List</u></b>	
<b><u>Legal</u></b>	PICCOLO, MIKE	jsakamoto@spokanecity.org	
<b><u>For the Mayor</u></b>	ORMSBY, MICHAEL	sburns@spokanecity.org	
<b><u>Additional Approvals</u></b>		Jimmy.R.Greene@p66.com	
<b><u>Purchasing</u></b>		richard.kuhling@painehamblen.com	
		kbustos@spokanecity.org	
		budget@spokanecity.org	



# Expenditure Control Form

1. All requests being made must be accompanied by this form.
2. Route **ALL** requests to the Finance Department for signature.
3. If request is greater than \$100,000 it requires signatures by Finance and the City Administrator. Finance Dept. will route to City Administrator.

Today's Date: 7/29/2020

Type of expenditure: Goods  Services

Department: Legal

Approving Supervisor:

Amount of Proposed Expenditure: N/A

Funding Source: N/A

**Please verify correct funding sources. Please indicate breakdown if more than one funding source.**

**Why is this expenditure necessary now?**

N/A

**What are the impacts if expenses are deferred?**

N/A

**What alternative resources have been considered?**

N/A

**Description of the goods or service and any additional information?**

N/A

Person Submitting Form/Contact: Tim Szambelan

FINANCE SIGNATURE:

\_\_\_\_\_

CITY ADMINISTRATOR SIGNATURE:

\_\_\_\_\_

## **Ordinance C35924**

AN ORDINANCE GRANTING YELLOWSTONE PIPE LINE COMPANY, A CORPORATION, CHARTERED IN THE STATE OF DELAWARE, THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE, AND REPAIR EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF PETROLEUM PRODUCTS AND BYPRODUCTS IN THE PUBLIC RIGHT-OF-WAY WITHIN AND THROUGH THE CITY OF SPOKANE, SPOKANE COUNTY, WA.

WHEREAS, Yellowstone Pipe Line Company (hereinafter "Grantee") has applied for a nonexclusive Franchise to operate and maintain a Petroleum pipeline and related Facilities within and through the City of Spokane (hereinafter the "City"), together referred to as the "Parties" and, each individually referred to as a "Party" and,

WHEREAS, the Spokane City charter and Washington State statutes authorize the City to grant nonexclusive Franchises by ordinance;

NOW, THEREFORE, THE CITY OF SPOKANE DOES ORDAIN AS FOLLOWS:

### **Section I. Definitions of Franchise Terms.**

For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not specifically defined in this section shall be given their common and ordinary meaning.

1.1 Aquifer shall mean the Spokane-Rathdrum aquifer, a federally designated “sole source” aquifer that serves as the City of Spokane’s sole source of drinking water.

1.2 Baseline Assessment shall mean a Facility assessment task required by Jurisdictional Agency pipeline safety regulations, as developed for the Grantee’s Facilities within the Franchise Area.

1.3 City’s Representative shall mean the person designated by the Mayor to administer this Franchise for the City. The City’s Representative interprets and applies all Franchise provisions on behalf of the City and issues Written enforcement orders pursuant thereto, but may not waive any Franchise term.

1.4 Construct or Construction shall mean the Grantee's actions removing, replacing, and repairing existing pipeline(s) and/or Facilities and may include, but is not limited to, digging and/or excavating for the purposes of removing, replacing, and repairing existing pipeline(s) and/or Facilities.

1.5 Control Center shall mean the headquarters of the Grantee's pipeline monitoring system that maintains twenty-four (24) hour surveillance of the Grantee's Facilities within the Franchise Area and responds to Emergency Incidents using electronic controls to activate pipeline shut-off valves to prevent the release of Petroleum Products.

1.6 Effective Date shall mean the date designated herein, after passage, approval and legal publication of this Ordinance, as required by City Charter, and acceptance by Grantee, upon which the rights, duties and obligations shall come into effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.

1.7 Emergency Incident shall mean a circumstance involving a release of Petroleum Products from the Grantee's Facilities within the Franchise Area that, at the time of discovery,

requires immediate response to protect persons or property from substantial injury or damage to the public health and safety, including damage to the environment or the Aquifer.

1.8 Environmental Laws shall include all federal and state statutes and regulations applicable to the Operation Maintenance and Construction of the Grantees facilities including but not limited to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. Seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et. Seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Hazardous Waste Management Act, Chapter 70A.300 RCW; and the Washington Model Toxics Control Act, Chapter 70A.305 RCW, and all other applicable federal, state or local statutes, codes, regulations, or ordinances.

1.9 Emergency Incident Response Plan shall mean a Written plan, as required by Jurisdictional Agencies, for an immediate response by the Grantee to an Emergency Incident to prevent damage to persons or property.

1.10 Facilities shall mean the Grantee's pipeline system, lines, valves, mains, and appurtenances used to transport or distribute Petroleum Product(s) within the Franchise Area. Facilities include any existing pipeline as of the date of this Agreement as well as any components which may be modified, constructed, or improved consistent with the terms of this Agreement.

1.11 Franchise shall mean this Franchise ordinance and any amendments, exhibits, or appendices to this Franchise.

1.12 Franchise Area shall mean that area within the Public Right-of-Way, and certain designated public property, within the jurisdictional boundaries of the City, including any areas annexed hereafter, during the terms of this Franchise, where Grantee has installed its existing Facilities or any new Facilities approved by the City under the provisions of this Franchise.

1.13 Hazardous Substance shall mean any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant as defined by federal or state Environmental Laws and the applicable regulations of Jurisdictional Agencies, specifically including Petroleum and Petroleum Products and their by-products, residue, and remainder.

1.14 High Consequence Area shall mean an area, as defined in the Code of Federal Regulations, over which Grantee's Facilities are located; and specifically including the area over the Aquifer within the Franchise Area.

1.15 Improvement or Improve shall mean change to the Facilities or installation of new Facilities.

1.16 Jurisdictional Agency or Agencies shall mean any federal, state or local agency with regulatory authority over the Facilities and Operations of the Grantee within the Franchise Area, acting now, or hereafter, to the extent of its lawful scope of authority.

1.17 Maintenance or Maintain shall mean examining, testing, inspecting, repairing, maintaining, and replacing the existing pipeline(s) and/or Facilities or any part thereof as required and necessary for safe Operation within the Franchise Area.

1.18 Operate or Operations shall mean the use by the Grantee of Facilities for the transportation, distribution, and handling of Petroleum Products or Petroleum by-products within and through the Franchise Area.

1.19 Pipeline Corridor shall mean the pipeline pathway through the Franchise Area which the Facilities of the Grantee are located, including any Public Rights-of-Way, designated public property, and/or other easement over and through private property, (as more specifically described in Exhibit "A" and in Section 2.1 (b)).

1.20 Petroleum or Petroleum Products shall include any and all types of liquid Petroleum, Petroleum by-products and liquid Petroleum Products including but not limited to gasoline, diesel fuel, and aviation jet fuel, all limited as consistent with the design specifications of Grantee's Facilities, as specified by the regulations of Jurisdictional Agencies.

1.21 Premises shall mean that portion of the Public Right-of-Way, or other Public Property, upon which Grantee's Facilities are now, or hereafter, Operated or Improved.

1.22 Procedures Manual shall mean an Operation, Maintenance, or Emergency Incident Response Procedures Manual prepared by the Grantee for the operation of Facilities as required by the regulations of Jurisdictional Agencies.

1.23 Public Project shall mean those City Improvement Projects required to be constructed in, near, under, or over the Public Right-of-Way, or on Public Property, in the Franchise Area by any City department or other local, state, or federal governmental agency, or for the benefit of the public. Public Projects do not include private development activities or projects primarily for the benefit of private persons or corporations.

1.24 Public Needs shall mean the City's need for use of the Public Right-of-Way including: public travel, emergency vehicle access, public utilities, traffic signalization, street lighting, street trees, shrubbery, and other similar public uses.



1.25 Public Property shall mean the present and/or future property owned or leased by the City within the present and/or future corporate limits, or jurisdictional boundaries of the City that the City has designated for the Grantee's Facilities.

1.26 Rights-of-Way shall mean the surface and the space above and below all streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks or utility easements, and similar areas as laid out, platted, dedicated, acquired or improved and maintained within the present jurisdictional boundaries of the City and as such corporate limits may be hereafter extended.

1.27 Third party Audit shall mean an audit of reports and plans filed by the Grantee with Jurisdictional Agencies as required by federal regulations and environmental laws, such audit shall be performed by a pipeline consultant that is independent of both the Grantee and the City and does not have any clients from either Party.

1.28 Wellhead Influence Zone shall mean any area in the vicinity of and up-gradient from any public water supply well which now exists and/or may be constructed in the future. The City's Wellhead Influence zones currently in the vicinity of Grantee's Facilities are outlined in Exhibit "B".

1.29 Writing or Written shall mean hard copy or where approved by the City Representative, any other suitable permanent electronic information transmission and storage media.

## **Section 2. Grant of Franchise Authority.**

### **2.1 Purpose of Franchise.**

(a) The City hereby grants to Grantee, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and which is authorized to transact business within the State of Washington, this non-exclusive Franchise to Construct, Operate, Maintain and Improve its existing Facilities as a liquid Petroleum Product transport system within the Franchise Area.

(b) The purpose of this Franchise is to establish the conditions relating to the Grantee's use of the Franchise Area.

(c) Within 14 days following acceptance of this Franchise, Grantee shall file with the City a Pipeline Corridor Map, in a format acceptable to the City's Representative, to be attached as Exhibit "A" to this Franchise. Exhibit "A" shall depict the Pipeline Corridor information, as specified in Section 1.19, and the location of all Facilities along the Pipeline Corridor within the Franchise Area. This Pipeline Corridor Map shall be maintained and updated at all times by Grantee to reflect any changes in Grantee's Facilities and such changes shall be filed with the City Clerk on a yearly basis. Any changes in the route of the Pipeline Corridor of Grantee's facilities shall be filed with the City within 14 days of the changes.

## 2.2 Scope of Franchise.

(a) Existing Facilities. This Franchise is granted subject to the police powers, land use authority, and franchise authority of the City and is conditioned upon the terms and conditions contained herein and the Grantee's compliance with all applicable Environmental Laws and the regulations of Jurisdictional Agencies.

(b) New Facilities. No new Facilities shall be installed by Grantee in the Public Right-of-Way, or across Public Property, within the Franchise Area without the express Written consent of the City. Any replacement of existing Facilities (other than routine replacement of minor components or appurtenances) or minor pipeline installations (less than 1000 feet within any 12-month period) in the Public Right-of-Way or Public property must be approved by the City's Representative in Writing, whose approval will not be unreasonably withheld, unless such changes are required in an emergency to protect the environmental or public safety. The City Representative or other Jurisdictional Agencies must approve all actions on Public Property. Major installations

(1000 feet or more) of new Facilities in the Franchise Area must be approved by Resolution of the City Council.

(c) Facilities located Outside Public Right-of-Way. This Franchise grants permission only for the use of the Public Right-of-Way; in any areas outside the Public Right-of-Way, Grantee is responsible to make separate arrangements with the City Representative for the use of Public Property as a right-of-way for Facilities; all such arrangements must be in Writing. The City Representative cannot grant interests in land or approve contract modifications.

(d) Facilities on Park Property. This Franchise does not in any way expand or diminish the rights of either the City or the Grantee with respect to any previous authorization granted by the Spokane City Park Board for any portions of Grantee's Facilities located on City Park property.

(e) This Franchise authorizes no new above ground installations in the Franchise Area except as expressly approved in Writing by the City Representative.

### 2.3 Franchise is Non-Exclusive.

(a) The City specifically reserves all rights to control the Public Right-of-Way and its other Public Property, including, without limitation, the right to grant additional Franchises, easements, licenses and permits to others. The City is not responsible to defend Grantee's franchise interests against any other right-of-way user(s) or adverse claimant(s) now or hereafter arising, but accepts and acknowledges its intent, as stated herein, to grant this Franchise to Grantee and not to revoke or impair such grant except as provided herein or otherwise as authorized by law. To this end, the City further agrees to avoid granting any other Franchise, license, easement, or permit that would violate the standards set for location of utilities in the Public Right-of-Way where the same would unreasonably interfere with Grantee's permitted use of the Public Right-of-Way or Public

Property for the Operation and Maintenance of its Facilities within the Franchise Area. This agreement does not create any right of action for damages or other relief on the part of the Grantee relating to this Franchise or the value thereof.

(b) This Franchise shall in no manner prohibit the City or limit its power to perform Public Projects or other work upon its Public Rights-of-Way, or on any Public Properties, or make any necessary changes, relocations, repairs, maintenance, or improvement thereto. Nor shall it prevent the City from using any of the Public Rights-of-Way or any Public Properties, or any part of them, as the City may deem necessary, from time to time, including the dedication, establishment, maintenance and improvement of new rights-of-way or other Public Properties of every type and description.

2.4 Franchise Conditioned on Grantee's Compliance. This Franchise is conditioned upon Grantee's full compliance with the terms and conditions contained herein and with all Environmental Laws and regulatory programs of Jurisdictional Agencies that currently exist or may hereafter be enacted applicable to the Operation, Maintenance, Construction or Improvement of Grantee's Facilities within the Franchise Area.

2.5 Franchise Does Not Create Liability for City. By granting this Franchise, the City is not assuming any risks or liabilities arising from Grantee's Operation, Maintenance, Construction or Improvement of Facilities within the Franchise Area under the authority of this Ordinance; any and all such risks or liabilities shall be solely and separately borne by Grantee. Grantee agrees and covenants to, at its sole cost and expense, take all necessary and prudent steps to protect, support, and keep safe from harm, its Facilities within the Franchise Area, or any part thereof, when necessary to protect the public health and safety. The Parties understand and agree that the City is not responsible for errors or omissions in information provided to the Grantee by the City.

2.6 Franchise is Not Warranty of Title. This Franchise is intended to convey only a limited right and interest in the use of the Premises within the Public Right-of-Way and on other Public Property. This Franchise is not a warranty of the City's title or interest in the Premises in the Public Rights-of-Way or any other Public Property; and therefore, none of the Franchise rights granted herein shall affect the City's jurisdiction over its property, streets or Public Rights-of-Way or any other Public Property.

2.7 Vacation of Public Right-of-Way; Retention of Easement.

(a) This Franchise grant remains subject to the City's power to vacate or release any City interest in the Public Right-of-Way, or other Public Property under the City's ownership or control, without such action creating any obligation of payment to Grantee of any consideration for loss of Franchise use.

(b) In the event of the vacation of a Public Right-of-Way, or any portion thereof, by the City under the provisions of RCW Chapter 35.79, Grantee may participate in the street vacation process to protect its interests and may request the City to reserve an easement for Grantee in the Premises within the Public Right-of-Way area which is proposed to be vacated.

(c) Grantee accepts full responsibility for all reasonable, documented City costs, including staff time, in dealing with Grantee's request to retain an easement for its Facilities in a vacated street including making payment for the value of any easements granted or reserved.

2.8 Franchise Grants No Rights in Other Public Property. This Franchise does not and shall not convey any right to Grantee to install its Facilities on, under, over, across, or to otherwise use City owned or leased Public Properties of any kind, either within or outside the Premises along the Pipeline Corridor, without the express separate Written authorization of the City.

2.9 Municipal Powers Not Affected by Franchise. Authority granted under the terms of this Franchise to Grantee to maintain its Facilities in the Public Right-of-Way within the Franchise Area remains at all times subject to the requirements of, and the exercise of, the City's tax and police powers.

**Section 3. Term and Renewal or Extension of Franchise.**

3.1 Term of Franchise. Each of the provisions of this Franchise shall become effective upon the Effective Date as set forth in Section 19.12, and shall remain in effect for twenty-five (25) years from the Effective Date.

3.2 Failure to Renew Franchise. If the Parties fail to formally, mutually renew this Franchise prior to the expiration of either the Franchise term, or any previously agreed extension; then this Franchise may be extended on a year-to-year basis (or such term as the Parties may mutually agree in Writing) until a renewed Franchise is executed, not to exceed two (2) years from the date of expiration. If the Parties are thereafter not able to agree on a new Franchise, this Franchise will terminate. Either Party may give written notice to the other Party at least one hundred eighty (180) days in advance of the expiration of the initial Franchise term (or the expiration of any previously-agreed extension) of its intent not to renew the Franchise.

3.3 At any time not more than three (3) years or less than one hundred eighty (180) days prior to the expiration of this Franchise, either Party may request an extension of the Franchise for an additional ten (10) year renewal period.

**Section 4. Assignment and Transfer of Franchise.**

4.1 No Transfer of Franchise without City Consent. Except in cases involving sales of equity or other beneficial interests in Grantee, this Franchise shall not be sold, assigned, transferred, leased or otherwise disposed of by the Grantee, either in whole or in part, either by voluntary or

involuntary sale, merger or consolidation; nor shall title to the Franchise, either legal or equitable, or any right, interest or property therein pass to, or vest in, any other person or entity, without the prior Written consent of the City Council as provided in Paragraph 4.2, acting by ordinance or resolution, which consent shall not be unreasonably withheld. Such consent shall not be deemed to waive any rights of the City to subsequently enforce non-compliance issues relating to this Franchise that existed at or before the time of the City's consent.

4.2 Requirements of City Approval of Transfer of Franchise.

(a) No transfer, including any assignment, sale or lease of the Franchise shall be approved by the City unless the assignee or transferee demonstrates to the satisfaction of the City that it has the legal, technical, financial, and industry experience and qualifications to carry on the activities of the Grantee under the requirements of this Franchise Ordinance.

(b) The City has the right to conduct an expeditious investigation to satisfy itself of the proposed assignee's qualifications to perform all requirements of the Franchise. All reasonable expenses incurred by the City in conducting such investigation shall be paid by Grantee.

(c) Prior to the City's consideration of a request by Grantee to consent to a Franchise assignment, the proposed assignee must file with the City a Written promise to unconditionally accept all terms of the Franchise, effective upon assignment of the Franchise.

(d) Any transfer or assignment, sale or lease of this Franchise without the prior Written Consent of the City shall be void and result in the termination or revocation of the Franchise.

(e) No assignment, including any sale or lease of this Franchise granted by the City shall be effective until the assignee or lessee shall have filed in the office of the City Clerk an instrument, duly executed, reciting the fact of the sale or lease, accepting the terms of this Franchise, and agreeing to perform all the conditions required of the Grantee. The assignee or lessee shall file a

bond in such amount and with such conditions as the City Council may require which bond shall run to the City as obligee, with sureties satisfactory to the City Council, and shall obligate said Party, to discharge all obligations and liabilities imposed upon the Grantee by the Franchise.

4.3 City Failure to Enforce Franchise No Bar to Future Enforcement. The City is under no obligation to undertake any investigation of the Grantee's state of compliance with Franchise obligations at the time of any assignment, and the failure of the City to insist on full compliance with any Franchise obligations prior to the transfer of the Franchise does not waive any right of the City to insist on full compliance by the assignee with all Franchise obligations thereafter.

**Section 5. Compliance with State and Federal Laws.**

5.1 Compliance with State and Federal Law a Material Term of Franchise.

(a) Grantee's compliance with the requirements of all valid and applicable Environmental Laws and the regulations or regulatory orders of any Jurisdictional Agency applicable to the Maintenance, Operation, Construction and Improvement of its Facilities within the Franchise Area is a material term of this Franchise. This obligation shall include compliance by the Grantee with all applicable laws, rules, and regulations existing at the Effective Date of this Franchise, including, but not limited to, Title 49 Code of Federal Regulation, Part 195 Transportation of Hazardous Liquids, and any laws or regulations that may subsequently be enacted by any governmental entity with jurisdiction over Grantee and/or the Facilities.

(b) Grantee stipulates that the Aquifer is a "High Consequence Area" and an "unusually sensitive area" as defined in applicable regulations of Jurisdictional Agencies. Grantee agrees to maintain full compliance with applicable Environmental Laws and the requirements of all applicable regulations of Jurisdictional Agencies regarding High Consequence Areas.

**Section 6. Construction and Maintenance of Facilities.**



6.1 Application. This Section 6 shall apply to Construction, Maintenance or Improvement of Facilities performed by Grantee in the Franchise Area.

6.2 Permits Required for Construction and Maintenance Work.

(a) Except in the event of an Emergency Incident, Grantee shall first obtain all required and applicable permits from the City to Construct, Maintain, or Improve Grantee's Facilities within the Franchise Area. Such work shall only commence upon the issuance of all required permits by the City, which permits shall not be unreasonably withheld or delayed after submission of a complete application in compliance with applicable City codes.

(b) In the event of an Emergency Incident, requiring immediate action by the Grantee for the protection of the pipeline(s) or Facilities, the City's property, or the property, life, health, or safety of any individual, the Grantee may take action immediately to correct the dangerous condition without first obtaining any required permit(s) so long as:

(1) Grantee informs the City Representative as soon as possible of the nature and extent of the Emergency Incident and the work to be performed prior to commencing the work if such notification is practical, or, where notification is not practical, the Grantee shall notify the City not later than the next business day, and

(2) Grantee shall, promptly thereafter, obtain any necessary permits for the Emergency work from the City or other Jurisdictional Agency as applicable and comply with any mitigation requirements or other conditions in the after-the-fact permit.

6.3 Construction and Maintenance Work to Comply with Plans. Except in the case of an emergency, prior to commencing any Construction and/or Maintenance work in the Franchise Area, the Grantee shall first file with the Grantor such detailed plans, specifications and profiles of the intended work as may be required by the Grantor. Grantor may require such additional information, plans and/or specifications as are in Grantor's opinion necessary to protect the public health and

safety during the Construction and/or Maintenance work and for the remaining term of this Franchise.

6.4 Conduct of Construction, Maintenance and/or Improvement of Facilities.

(a) Any work done by Grantee, in the Public Right-of-Way or on Public Property including work done at the Grantee's direction, or on its behalf, by contractors or subcontractors shall be conducted in such a manner as to avoid damage or interference with other utilities, drains, or other structures, and shall not unreasonably interfere with public travel, park uses, or other municipal uses and the free use of adjoining property, and so as to provide for the safety of persons and property. The Grantee's Construction, Maintenance, and/or Improvements shall be in compliance with all Environmental Laws and applicable regulations of Jurisdictional Agencies.

(b) Grantee agrees to avoid damage or interference with public utilities, drains or other structures in or near the Public Right-of-Way as well as unnecessary damage to the Public Right-of-Way or Public Properties, and to comply with the City's most current Pavement Cut Policy for Utility Trenches, in the performance of any Maintenance, Construction, and/or Improvement work on its Facilities in the Public Right-of-Way or on Public Property. Grantee is fully responsible to pay for any damage or interference with such structures, in accordance with the indemnification provision of Section 14.1.

(c) All asphalt patches in the Public Right-of-Way installed by Grantee over its Facilities shall be continuously maintained by Grantee until the affected Public Right-of-Way area is repaved.

(d) Grantee agrees that Public Needs or Public Projects have first priority in the use of the Public Right-of-Way or on other Public Property.

6.5 Components of Facilities to Meet Regulatory Standards. All pipe and any other fixtures or components used in the Construction, Maintenance and/or Improvement of Grantee's Facilities within the Franchise Area shall comply with all Environmental Laws and applicable regulations of Jurisdictional Agencies.

6.6 Notice to be Given Prior to Construction and Maintenance.

(a) Except in the event of an Emergency Incident, Grantee shall provide the City Representative Written notice at least ten (10) calendar days prior to any Construction, Maintenance and/or Improvement, or other substantial activity, other than routine inspections and Maintenance, by Grantee, its agents, employees or contractors on Grantee's Facilities in the Public Right-of-Way or on Public Properties within the Franchise Area. Grantee shall comply with City ordinances respecting obtaining Right-of-Way obstruction or access permits to comply with this provision.

(b) Grantee shall provide reasonable notice to those owners or other persons in control of property abutting the Premises in the Franchise Area when the Maintenance, Construction and/or Improvement of Grantee's Facilities will affect access to, or otherwise impact, the property of such other persons and shall coordinate this effort to notify with the City's Representative.

6.7 City's Right to Condition Permits. Unless such condition or requirement is in conflict with Environmental Laws or the applicable regulations of Jurisdictional Agencies, the City may condition the granting of any permit, or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the Public Right-of-Way and/or other Public Property including, but not limited to, requirements of bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any improvements on Rights-of-Way and/or other Public Property, private facilities and public safety.

6.8 Grantee to Restore Premises.

(a) Whenever necessary, after performing Construction, Maintenance or Improvement work on any of Grantee's Facilities within the Franchise Area, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the Premises within the Public Right-of-Way, and/or on other Public Property, to as good or better condition as it was before the Construction, Maintenance and/or Improvement work began, and in full compliance with the City's current Policies for construction work in the Public Right-of-Way or on Public Property.

(b) Grantee shall replace any property corner monuments, survey or reference hubs that were disturbed or destroyed during Grantee's Construction, Maintenance or Improvement work in the Premises covered by this Franchise. Such restoration shall be done in a manner consistent with Environmental Laws and the applicable regulations of Jurisdictional Agencies and under the supervision of the City Representative and to the City's reasonable satisfaction.

6.9 One Number Location Service. Grantee shall continuously be a member of the State of Washington "One-Call" Locator Service as provided under RCW Chapter 19.122, as now adopted or hereafter amended, and shall comply with all such applicable rules and regulations in performing Construction, Maintenance or Improvement work on its Facilities within the Franchise Area.

6.10 Markers to Locate Facilities. Grantee shall place and maintain line markers for all existing and new Facilities within the Franchise Area pursuant to the applicable regulations of Jurisdictional Agencies within and along the Pipeline Corridor. If other "industry best practices" for line marking are developed as a method of alerting excavators to the presence of the pipeline, Grantee agrees to employ such new practices. The Grantee agrees to perform all Construction, Maintenance and/or Improvement work in compliance with revised industry standards in effect at the time of such work. During Construction, Maintenance and/or Improvement work, markers demarcating the

location of Grantee's Facilities shall be placed on the surface of the Premises at least every one hundred (100) yards or as otherwise requested by the City so as to provide clear warning of the presence of the Grantee's Facilities but in a manner that does not interfere with public travel or other public uses of the Premises.

6.11 Grantee to Fix Pipeline Location. When the City or third Parties are engaged in Construction work in the Premises along the Pipeline Corridor as depicted in Exhibit "A" or within fifty (50) feet of the Premises, Grantee shall promptly respond to requests to locate the precise position of its Facilities. Grantee shall bear any costs associated with locating and marking its Facilities for a Public Project, and may recover costs for non-Public Projects as provided in Section 8.3.

6.12 As-Built Drawings of Facilities.

(a) Upon acceptance of this Franchise by Grantee, Grantee shall provide the City with detailed as-built design drawings showing the size, depth, and location of all pipes, valves, gauges, and all other components of its Facilities within the Franchise Area at no cost to the City. It is understood that the location of the Facilities shall be verified by excavating the Premises if exact alignment is required. The information shall be provided in hard copy or electronic format acceptable to the City's Representative.

(b) Within thirty (30) days of completing any Construction, Maintenance and/or Improvement work, installation of new Facilities, or any other substantial activity in the Public Right-of-Way or on Public Property within the Franchise Area, the Grantee shall provide the City with updated and corrected as-built drawings and a survey showing the location, depth and other characteristics of its new Facilities within the Franchise Area in like manner as with (a) above. Grantee shall confirm that as-builts previously provided to the City are still accurate.

(c) The City agrees to make its best efforts to honor any reasonable request by Grantee that information provided by Grantee, including but not limited to, Grantees drawings, maps, or any proprietary information be protected as confidential under the following conditions:

(1) Grantee must make all requests for confidentiality in Writing and identify in advance all information it desires to be protected and submit such information to the City separately and never commingled with public information. Each page of such information, in hard or soft copy, must be indelibly marked "PRIVATE/CONFIDENTIALITY RIGHTS RESERVED BY YELLOWSTONE PIPE LINE COMPANY".

(2) If the City receives a Public Records request under RCW Chapter 42.56, (State Public Records Act) for such information so marked, it shall make every reasonable effort to protect confidentiality by notifying Grantee of the request. If the City is aware of any potential exemptions or exceptions to its disclosure obligations under the State Public Records law, it shall assert them, but no liability shall accrue to the City for any failure or oversight in doing so, each Party's obligation being limited to representing its own legal interests. Grantee must thereafter take immediate steps if it so desires to initiate litigation in Spokane County Superior Court to protect any confidentiality it wishes, or the City shall have no further obligation to protect the confidentiality request.

(3) Grantee recognizes that, as provided by RCW 42.56.060, the City is immune from any suit if it releases any public records, as defined by law, in a good faith attempt to comply with its obligations under the State Public Records Act.

6.13 City Has No Obligation to Certify Sufficiency of Plans. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Grantee's plans and designs for its Facilities or to ascertain whether Grantee's proposed

or actual construction, testing, maintenance, repairs, replacement or removal work is adequate, or sufficient, or in conformance with the plans and specifications reviewed by the City, Environmental Laws or the applicable regulations of any Jurisdictional Agency.

6.14 Grantee Responsible for Construction Area.

(a) Grantee shall be solely and completely responsible for its workplace safety and safe working practices on its job sites within the Franchise Area, including safety of all persons and property during the performance of any Construction, Maintenance and/or Improvement work, as required by Environmental Laws or the applicable regulations of Jurisdictional Agencies.

(b) In the event of a claim brought against Grantee by any person arising from Grantee's Construction, Maintenance and/or Improvement work on its Facilities within the Franchise Area or Grantee's occupation or use of the Public Right-of-Way and/or other Public Property under the terms of this Franchise Ordinance, Grantee is responsible for the prompt and fair resolution thereof, and shall not avoid this duty on the basis that any Construction, Maintenance, and/or Improvement activities undertaken by Grantee were being performed by an independent contractor, reserving always Grantee's rights to fully pursue subrogation claims not otherwise inconsistent with the requirements of this Franchise Ordinance including its right to pursue indemnification from a contractor.

**Section 7. Operations, Maintenance, Inspection, Testing.**

7.1 Grantee shall Operate, Maintain, inspect and test its Facilities in the Franchise Area in full compliance with Environmental Laws and the applicable regulations of Jurisdictional Agencies as now enacted, or hereafter amended. Grantee represents that it has completed its Baseline Assessment, Integrity Management Plan, Encroachment Management Plan, Emergency Incident

Response Plan, and all other reports and plans for all of its Facilities over the Aquifer within the Franchise Area, as required by the applicable regulations of Jurisdictional Agencies.

Grantee agrees to maintain such items fully updated in strict compliance with the applicable requirements of all Jurisdictional Agencies.

## 7.2 Reports, Tests, Inspections.

(a) Grantee agrees to test and inspect its Facilities within the Franchise Area in full compliance with Environmental laws and the applicable requirements of Jurisdictional Agencies and best management practices and industry standards.

(b) Grantee further agrees to assist the City in obtaining from Jurisdictional Agencies copies of any test or inspection results, documents or reports required to be submitted to or reviewed by Jurisdictional Agencies or otherwise in accord with best management practices and industry standards. These documents may include a Baseline Assessment report, a Pipeline Integrity Management Plan, and Encroachment Management Plan, and an Emergency Incident Response Plan (see also Section 9.1), or any reports or studies submitted or required to be submitted to any Jurisdictional Agencies.

## 7.3 Grantee's Notice to City of Testing of Facilities.

(a) The Grantee shall notify the City Representative in writing of any in-ground pipeline hydro test or other internal inspection conducted on the Grantee's Facilities within the Franchise Area at least ten (10) business days prior to said testing, except in an Emergency Incident, in which case, the Grantee agrees to notify the City as soon as is practicable under the circumstances, but no later than one business day after completion of any in-ground pipeline hydro test or other internal inspection following any Emergency Incident or discovery of any anomaly in the Grantees Facilities.



(b) Federal regulations (*e.g.*, 49 C.F.R. sec. 195.56) require that Grantee file a written report of a safety-related condition in Grantee's pipelines within five working days of determining that such a condition exists. Within five working days of filing such a report, Grantee will notify the City that a report has been made. Upon request from the City, Grantee shall furnish a copy of the report made to the Jurisdictional Agencies if allowed by law and, if not, reasonably assist the City in attempting to obtain such information from the Jurisdictional Agencies. In addition, upon request from the City, Grantee will provide any inspection findings by Jurisdictional Agencies regarding Grantee's pipelines in the Franchise Area.

7.4 Technical Information Regarding Grantee's Facilities. The Grantee shall provide to the City, upon Written request by the City's Representative, such information as may be needed to administer this Franchise; including, but not limited to, standard pipeline alignment data, for Public Project planning and Emergency Incident Response requirements, as presented to the Jurisdictional Agencies, including as-built drawings showing the approximate location of all Grantee Facilities within the Franchise Area. Grantee conducts robust Jurisdictional Agency-required evaluation of the pipeline and appurtenances in the Franchise Area on a five-year cycle, in addition to all of the inspection, maintenance, and operational requirements Grantee implements under its own integrity management programs. In each year following the five-year cycle evaluation, Grantee will meet with City to discuss the results of the evaluation and corrective action, if any, arising from the evaluation.

7.5 Independent Consultant. Whereas, if the City retains an Independent Pipeline Consultant ("Consultant") agreeable to Grantee, whose agreement will not be unreasonably withheld, to perform an independent evaluation of the Pipeline and/or Facilities of Grantee or Third

Party Audit of the Baseline Assessment and Plans described in Paragraph 7.1, which would be performed at City's expense, and the Consultant recommends that Grantee make modifications or additions to Grantee's Pipeline and/or Facilities, or to its Baseline Assessment or Plans. Grantee agrees to consider such recommendations in good faith provided that the recommendations are reasonably consistent with industry best practices and applicable regulations of Jurisdictional Agencies. If Grantee declines to follow the Consultant's recommendations, Grantee shall provide a Written report to the City explaining its reasoning for not following the recommendations. Parties agree to comply with the Dispute Resolution provisions of Section 13 contained herein to resolve any dispute over whether to follow consultant's recommendations.

**Section 8. Encroachment Management.**

8.1 Requirements of Encroachment Management Plan. The Grantee's Encroachment Management Plan shall be developed in full compliance with all Environmental Laws and applicable regulations of Jurisdictional Agencies and all valid federal, state, and local requirements regarding encroachment management and damage prevention, including the State of Washington "one-call" locator service law (RCW 19.122).

Grantee shall maintain a Written program to prevent damage to its Facilities from excavation activities, as required by the Environmental Laws and applicable regulations of Jurisdictional Agencies.

8.2 Inspections of surface conditions. Grantee shall also conduct regular inspections of the surface conditions on or adjacent to the Pipeline Corridor, as required by the Environmental Laws and the applicable regulations of Jurisdictional Agencies.

8.3 Encroachment Response Procedure.

(a) Upon specific notification to Grantee of any planned construction activity which may involve excavation within twenty-five (25) feet of the Pipeline Corridor, or any other activity that may abnormally load its Facilities in the Franchise Area, by either the City or any third party, Grantee shall immediately mark the precise location of its Facilities before the construction or other activity commences.

(b) Grantee shall provide a representative at its expense for Public Projects to inspect the construction or other activity when it commences, and periodically inspect the Premises thereafter to ensure that Grantee's Facilities are not damaged by the construction or other activity. Grantee shall also do this where needed for non-Public Projects, and may charge a reasonable fee, to be collected by Grantee from the private party requesting the work

(c) Nothing herein shall affect the Grantee's obligation to comply with the requirements of Washington's Underground "one call" locate statute, RCW Chapter 19.122, as now adopted or hereafter amended.

#### 8.4 Verification of Pipeline Location.

(a) Upon the City's request, in connection with the design or construction of any Public Project, Grantee will verify the exact location (lateral and vertical) of its underground Facilities on the Premises within the Pipeline Corridor by excavating (pot holing) at no expense to the City. The request shall specify a reasonable response time in consideration of the nature of the request and difficulty to Grantee of providing such assistance. In the event Grantee performs such excavation, Grantee agrees to restore the disturbed Premises to the same or better condition as existed immediately prior to the excavation. Potholing may be required for non-Public Projects, at a reasonable cost of Grantee, to be collected by Grantee from the private party requesting the work.

(b) Because precise damages are difficult to ascertain, for failure to respond within a specified response time, Grantee agrees to pay liquidated damages as provided in Section 12.1, except no liquidated damages apply before a ten (10) day period has elapsed without a satisfactory response.

8.5 Inspection of Third Party Excavation. If the Grantee becomes aware that a third party has conducted any excavation or other significant work that may have affected its Facilities, the Grantee shall conduct such inspections and/or testing of Facilities as is necessary to determine that;

(a) No direct or indirect damage was done to the Grantee's Facilities by the excavation and,

(b) The construction work or other activity did not abnormally load the Grantee's Facilities and,

(c) The Construction work or other activity did not impair the effectiveness of the Grantee's cathodic protection system. Grantee is responsible to coordinate with other persons with facilities in the vicinity of its Facilities so as to avoid adverse impacts of cathodic protection.

**Section 9. Leaks, Spills, Ruptures, and Emergency Response.**

9.1 Grantee Shall Have Remote Monitoring System.

(a) Grantee shall maintain in place, at all times that Grantee's Facilities are located within the Franchise Area, a system for monitoring pressures and flows within its Pipeline and/or Facilities, from a Remote Control Center. The remote monitoring must be able to accurately detect pipeline leaks, spills or ruptures, as required by Environmental Laws and the applicable regulations of Jurisdictional Agencies.

(b) Grantee's Emergency Incident Response Plan shall designate Grantee's local emergency response officials and a direct 24-hour emergency telephone number for the Control

Center operator, who shall be capable of immediate shutdown of Grantee's Facilities in the Franchise Area by use of a satellite controlled switch or other similar remote technology. Grantee shall, after being notified of an Emergency Incident, cooperate with the City Representative and make every effort to respond as soon as possible to limit damage from the Emergency Incident and protect the public's health, safety, and welfare.

CURRENT CONTROL CENTER 24 HOUR PHONE NUMBER: 877-267-2290

Grantee shall keep the City Representative and City Fire Marshall updated in Writing of any changes to this contact information.

(c) The Grantee warrants that, throughout the term of this Franchise, it will make periodic updates to its Emergency Incident Response Plan in full compliance with Environmental Laws and the applicable requirements of Jurisdictional Agencies.

(d) The Parties agree to meet annually to review the Emergency Incident Response Plan and Incident Response procedures as required by Environmental Laws and the applicable regulations of Jurisdictional Agencies. Grantee shall coordinate this meeting with the City, other local public safety agencies and other interested parties.

(e) The Grantee will, at all times, have available or have access to, sufficient Emergency Incident Response equipment and materials within the Franchise Area to properly and completely respond to any spill, leak, rupture or other release of Petroleum Products or Hazardous Substances from the Grantee's Facilities, in accordance with Environmental Laws and applicable regulations of Jurisdictional Agencies or otherwise in accordance with best management practices and industry standards.

9.2 Grantee Responsible for Costs of Clean-Up. Except to the extent an Emergency Incident is shown to be proximately caused by the negligence of the City<sup>[GJR(1)]</sup>, <sup>[GJR(2)]</sup> Grantee shall

be solely responsible for all reasonable and necessary costs incurred by City, County, local or State agencies in responding to any spill, leak, rupture or other release of Petroleum Products from its facilities that are required by Environmental Laws, including, but not limited to, detection and removal of contaminants from surface or subsurface soil or water, including sources of vapor intrusion and actual remediation costs All such costs shall be considered extraordinary costs that shall not be born by the City and shall not be considered administrative expenses of the City. Nothing in this section shall limit Grantee's rights or causes of action against any third party who may be responsible for such leak, spill, rupture, or other release of Petroleum Products or hazardous substances from Grantees Facilities.

9.3 Notice of Leak, Spill or Rupture From Grantee's Facilities.

(a) In areas outside the City's Wellhead Influence Zone, Grantee shall notify the City in Writing within one (1) business day of its observation or detection of, any uncontained leak, spill, rupture or other release of Petroleum Products from its Facilities within the Franchise Area requiring notification to Jurisdictional Agencies.

(b) In areas inside the City's Wellhead Influence Zone, the City shall receive telephonic notification immediately after the Emergency Incident is discovered and/or reported to Jurisdictional Agencies.

(c) If requested by the City Representative in Writing, Grantee shall follow-up this notice within thirty (30) days with a Written report of the Emergency Incident, including, but not limited to, the date, time, amount, location, response, and remediation of the leak, spill, rupture or other release of Petroleum Products as submitted to Jurisdictional Agencies.

9.4 City May Investigate Any Leaks From Grantee's Facilities.

(a) In the event of a leak of Petroleum Products from Grantee's Facilities, if the City's Representative has a reasonable basis to be concerned about the safety or security of Grantee's Operations or Facilities in any location which might impact the Aquifer, or the Well Head Influence zone, or endanger its citizens, or its property, including public water supply facilities within the Franchise Area, the City's Representative may seek an investigation by Jurisdictional Agencies, or request assurances or additional information from Grantee regarding its Facilities or Operations in the Franchise Area, including a third party evaluation pursuant to Section 7.5, as deemed necessary by the City's Representative. Any costs incurred by the City in seeking such an investigation, following a leak event, including employment of an expert consultant shall be considered as a recoverable administrative cost.

(b) Supplementing other provisions, in the event of a leak, spill or rupture comprising an Emergency Incident in the Franchise Area where the cause is not reasonably apparent, Grantee shall take immediate steps to fully cooperate with all Jurisdictional Agency investigations, giving the City reasonable assurances and confirmation of these actions. All results of any non-privileged investigation shall be disclosed to the City Representative. The City may view all pertinent records and reports thereof. The City has the right to satisfy itself of the due diligence of such investigation. If the City reasonably deems the public water supply or the safety and security of its Wellhead Influence Zone area are in jeopardy, the City may demand that the occurrence be investigated by an independent pipeline consultant selected by City. Grantee shall be solely responsible for paying all of the reasonable costs and expenses incurred in investigating the occurrence and reporting any findings to Jurisdictional Agencies, up to a maximum amount of fifty thousand dollars (\$50,000) per incident for incidents up to ten barrels product loss and a maximum of \$100,000 for incidents over ten barrels involving a spill, leak, or rupture. Grantee shall meet and

confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to Grantee's Facilities may be warranted. In cases where Jurisdictional Agencies do perform an investigation, Grantee shall provide a copy of the results of any investigation within ten (10) days of receipt of such report.

(c) If the independent pipeline consultant recommends that Grantee make modifications or additions to Grantee's Facilities, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the consultant's recommendations, Grantee shall provide a Written report within 90 days to the City explaining its reasoning for not following said recommendations. The Parties agree to comply with the Dispute Resolution provisions of Section 13 contained herein to resolve any dispute over whether to follow the consultant's recommendations.

#### 9.5 Emergency Flow Restricting Devices in Facilities – Remote Control.

(a) Grantee has installed Emergency Flow Restricting Devices (EFRD) in its Facilities within the Franchise Area in the locations shown in Exhibit "C". All Emergency Flow Restricting Devices for Grantee's Facilities shall be remotely controlled from the Control Center and shall be capable of being instantly activated by Grantee.

(b) Emergency Flow Restriction Devices - Location. Grantee currently has EFRDs on either side of the Spokane River capable of manual and remote operation through its Control Center and in the vicinity of the City's Parkwater Well station near Felts Field municipal airport. These EFRDs shall continue to be maintained by Grantee during the term of the Franchise or so long as Grantee operates Facilities within the Franchise Area.



(c) Grantee shall maintain adequate 24-hour emergency staffing immediately accessible by the City Fire Chief or the City Representative to activate said EFRDs in the case of an Emergency Incident involving Grantee's Facilities.

9.6 Responsibility of Grantee to Take Precautions to Avoid Leak, Spill, or Rupture. It remains the sole and separate responsibility of the Grantee, under the authority of this Franchise, to take adequate precautions to avoid Leaks, Spills or Ruptures that might result in the release of Petroleum Products from its Facilities, as required by all Environmental Laws and applicable regulations of Jurisdictional Agencies, including, but not limited to, compliance with the requirements of RCW Chapter 19.122 (One Call System).

**Section 10. Required Relocation of Facilities for Public Project.**

10.1 Public Project.

(a) In the event that the City undertakes or approves the construction of any Public Project including by not limited to: changes to the grade or location of any water, sewer or storm drainage line, street or sidewalk, or undertakes any other Public Project and as a result, the City determines that the public health, safety, welfare, necessity, and/or convenience reasonably requires changes to, or the relocation of, the Grantee's Facilities in the Public Right-of-Way or on Public Property, then the Grantee shall make such changes or relocations as required herein at the Grantee's sole cost, expense and risk.

(b) The City shall provide written notice to Grantee at least 180 days prior to commencement of any Public Project which requires relocation of Grantee's pipeline and/or Facilities.

(c) In the event the Grantee relocates or otherwise modifies its facilities at the direction of the City to accommodate a City Public Project, and the City thereafter abandons and

does not complete the Public Project, the Grantee may invoke the Dispute Resolution Section Procedures and seek reimbursement for the reasonable and necessary costs incurred by the Grantee for the relocation or modification that it would not have otherwise incurred.

10.2 Relocation of Facilities by Grantee.

(a) Prior to commencing construction on a Public Project affecting Grantee's Facilities, the City shall provide Grantee with copies of pertinent portions of the plans and specifications for the Public Project; and, upon request, Grantee shall, at its sole cost and expense, determine and identify for the City Representative the exact location of its Facilities potentially affected by the Public Project. Grantee shall promptly relocate such Facilities at Grantee's sole cost and expense to accommodate a Public Project if reasonably requested to do so by City; and shall similarly relocate its Facilities for any other projects at the request of the City, but in such case, Grantee may recover its reasonable expenses from persons other than the City responsible for the relocation request.

(b) The City shall work cooperatively with the Grantee in determining a viable and practical route within which Grantee may relocate its Facilities, in order to minimize costs to the Grantee while meeting the requirements of the City's Public Project, and will, to the extent possible, provide an alternative Public Right-of-Way or Public Property for the relocation.

(c) Grantee shall complete relocation of its Facilities so as to accommodate the requirements of the Public Project at least ten (10) calendar days prior to commencement of such Project or at such other time as the Parties may agree in Writing.

(d) The Parties agree that the City's exact damages, because of delays by the Grantee, in compliance with this section are difficult to precisely quantify. If the City or its contractor is delayed at any time in the progress of the work on the Public Project by an act or neglect of the

Grantee, or those acting for, or on behalf of, the Grantee, then Grantee agrees to pay the City liquidated damages as provided in Section 12.1. The requirement for payment of Liquidated Damages does not apply if the delays were caused by the acts of the City.

10.3 Alternative Plan to Avoid Relocation of Facilities. Grantee may, after receipt of Written notice requesting a relocation of its Facilities, submit to the City Representative Written alternatives to the relocation of Grantee's Facilities within forty five (45) calendar days of receiving the plans and specifications for the Public Project. The City shall evaluate the alternatives and advise Grantee in Writing if one or more of the alternatives are suitable to accommodate the requirements of the Public Project. The City Representative shall give each alternative proposed by Grantee full and fair consideration but retains full discretion and final authority to decide whether to utilize its original plan or an alternative proposed by Grantee.

10.4 Requested Relocation within 5 Years. If any portion of the Grantee's pipeline and/or Facilities that has been required by the City to be relocated under the provisions of this section is subsequently required to be relocated again within five (5) years of the original relocation, the City will bear the actual and reasonable cost of the subsequent relocation during the five (5) year period.

**Section 11. Removal of Grantee's Facilities - Abandonment in Place.**

11.1 Permanent Cessation of Use of Facilities.

(a) In the event of Grantee's permanent cessation of use or abandonment of its Facilities, or any portion thereof, within the Franchised Area, the Grantee shall (except as may be permitted by Section 11.2), within one hundred and eighty days (180) after the abandonment or permanent cessation of use, remove its Pipelines and/or Facilities or any portion thereof, from the Public Right-of-Way or Public Property at Grantee's sole cost and expense.

(b) A presumption of Grantee's abandonment or permanent cessation of use of Facilities arises after twelve months substantial non-use by Grantee of its Facilities as to that part of the Franchise Area concerned.

(c) In the event of the removal of all or a portion of its Facilities, Grantee shall restore the Franchised Area as nearly as possible to as good or better condition as it was in before the installation of the Grantee's Pipelines and/or Facilities, in compliance with the City's current Pavement Cut Policies.

(d) Such property restoration shall be done at the Company's sole cost and expense and to the City's Representative's satisfaction. Grantee shall be responsible for the payment of any costs of any environmental review required by for the removal of any Pipelines and/or Facilities from the Premises within the Franchise area.

(e) If the Grantee fails to remove or secure the Pipelines and/or Facilities and fails to restore the Premises, or fails to take such other mutually agreed upon action, the City may, after reasonable notice to the Grantee, remove the Facilities, restore the Premises, or take such other action as is reasonably necessary at the Grantee's expense, and the City shall not be liable therefore. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the Facilities be removed.

#### 11.2 Alternatives to Grantee's Removal of Facilities from Public Right-of-Way.

(a) Upon abandonment or permanent cessation of Facilities, and with the Written consent of the City's Representative, as an alternative to Grantee's removal of the Facilities the Grantee may secure its underground Facilities within the Franchise Area or on other Public Property, rendering them safe and harmless, removing all Petroleum Products from the Facilities, purging vapors, displacing the contents of the pipeline with an appropriate inert material, and sealing Facility

ends with a suitable end closure, all in compliance with Environmental Laws and the applicable regulations of Jurisdictional Agencies.

(b) Provided that portions of the Grantee's Facilities which are above ground shall be removed at Grantee's sole expense, except where approved, in Writing, by the City's Representative.

(c) For permission for Grantee to abandon all, or substantially all, of the Grantee's Facilities within the Franchise Area, the City's consent must be expressed by a Resolution of the City Council, upon such additional conditions as may be prescribed therein.

11.3 Grantee's Abandonment of Facilities – Requirement of Bond. The City's permission for Grantee's partial or complete abandonment of Facilities in place on the Premises within the Franchise Area may be conditioned upon Grantee's posting of a bond, in a form and with a surety subject to the City's reasonable approval, or other security approved by the City to cover any estimated future risks and reasonable likely costs to the City in dealing with Grantee's Facilities as abandoned on the Premises in the Public Right-of-Way or on other Public Property, including prevention or remediation of any environmental damage.

11.4 Requirements of this Section Survives Franchise Termination. The Parties expressly agree that the requirements of Section 11 shall survive the expiration, revocation, or termination of this Franchise.

## **Section 12. Violations, Remedies and Termination.**

12.1 City's Remedies for Violations. The Grantee shall be in compliance with the terms of this Franchise at all times. In addition to any rights set forth elsewhere in this Franchise, or other rights it may possess at law or equity, the City reserves the right to apply any of the following

remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise.

(a) Liquidated Damages for Delay. The Parties agree that damages for delay in compliance with the requirements of this Franchise are difficult to ascertain and determine. If Grantee fails or refuses to comply with any condition of this Franchise, or any of its terms or provisions, the damages suffered by the City as a result may include, without limitation, increased costs of administration and other damages difficult to measure; therefore, City and the Grantee agree that liquidated damages of \$1,000 Dollars (One thousand dollars) per day, per incident or other measure of violation, may be assessed from the first day that the City notifies the Grantee of the occurrence of the violation or incident, so long as Grantee remains non-compliant. These liquidated damages represent both Parties' best estimate of the damages likely to result from such compliance delays and do not include compensation for municipal property damage, damage to the City facilities, water supply or other public resources or properties and other losses, nor for liability risks as typically protected by insurance. Grantee may invoke the Dispute Resolution provisions as provided in Section 13 of this Franchise in connection with imposition of damages by the City under this section, but this shall not stay the continued accrual of such damages.

(b) Termination of Franchise. The City may also terminate this Franchise if Grantee materially breaches or otherwise fails to perform, comply with, or otherwise observe any of the material terms and conditions of this Franchise, or fails to maintain all required licenses and approvals from Jurisdictional Agencies, and fails to cure any such breach or default within thirty (30) calendar days of City's Representative providing Grantee Written notice thereof.

(c) The above cited remedies are cumulative and not exclusive, and, the exercise of one remedy shall not prevent the exercise of another or any rights of the City at law or equity.

12.2 Termination of Franchise Requires Vote of City Council. This Franchise shall not be terminated except upon a majority vote of the full membership of the City Council, after reasonable notice to Grantee and an opportunity to be heard, provided that if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after notice to Grantee of the termination by the City Representative. The Council may refer any portion of a dispute involving a potential termination of the Franchise to the City Hearings Examiner for hearing and recommendation.

12.3 Grantee's Termination of Franchise.

Grantee may terminate this Franchise upon 30-days' written notice to City.

12.4 Grantee's Obligations Upon Termination of Franchise.

(a) In the event of termination of this Franchise, Grantee shall immediately discontinue Operation of its Facilities in the Franchise Area unless doing so creates an appreciable risk to human health, safety, or the environment, in which case Grantee shall discontinue Operations of its Facilities in the Franchise Area as quickly as it is able to do so without threatening human health, safety, or the environment, in accordance with a schedule approved by Jurisdictional Agencies.

(b) Once the Grantee's rights to Operate in the Franchise Area have terminated, Grantee shall comply with the Franchise provisions regarding removal and/or abandonment of Facilities.

(c) Either Party may invoke the Dispute Resolution provisions set forth in Section 13 of this Franchise, as it deems necessary with regard to termination. Alternatively, the City may elect to seek relief directly in Superior Court, in which case the Dispute Resolution requirements of Section 13 shall not be applicable.

12.5 Termination of this Franchise Shall Not Release Either Party From Liability.

(a) Termination of the Franchise shall not release either Party from any obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure Grantee's Facilities on the Premises within the Franchise Area and to restore the Premises within the Franchise Area, including, but not limited to, Grantee's compliance with the terms of this Franchise regarding removal and/or abandonment of its Facilities, in accordance with Environmental Laws and the applicable regulations of Jurisdictional Agencies.

(b) The City's failure to exercise a particular remedy at any time shall not waive the City's right to terminate, assess penalties, or assert any other remedy at law or equity for any future breach or default by Grantee.

12.6 Covenants in Franchise Enforceable in Court. The Parties acknowledge that the covenants set forth herein are essential to this Franchise, and, but for the mutual agreements of the Parties to comply with such covenants, the Parties would not have entered into this Franchise. The Parties further acknowledge that they may not have an adequate remedy at law if the other Party violates such covenant; therefore, the Parties shall have the right, in addition to any other rights they may have, to obtain injunctive relief in Spokane County Superior Court to restrain any breach or threatened breach of Franchise terms, or to specifically enforce any of the covenants contained herein should the other Party fail to perform them.

**Section 13. Dispute Resolution.**

13.1 Resolution of Disputes by Franchise Administrators. In the event of a dispute between City and Grantee arising by reason of this Franchise, or any obligation hereunder, the dispute shall first be referred to the operational officers or representatives designated by the City and the Grantee



to have oversight over the administration of this Franchise. Said officers or representatives shall meet within thirty (30) calendar days of either Party's request for a meeting, and the Parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

13.2 Resolution of Disputes by Mediation. In the event that the Parties are unable to resolve a dispute under the procedure set forth in Section 13.1, then the Parties hereby agree that the matter shall be referred to mediation. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. If the Parties are unable to agree upon a mediator, the Parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternately strike mediators from that list until one remains. Any expenses incidental to mediation shall be borne equally by the Parties. If the dispute involves a matter previously mediated, the mediation process need not be repeated.

13.3 Judicial Remedy. If the Parties fail to achieve a resolution of the dispute through mediation, either Party may then pursue any available judicial remedies by filing an action in Spokane County Superior Court; provided that, if the Party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other Party's reasonable legal fees and costs incurred in the judicial action.

13.4 Grantee may continue to Operate Facilities within the Franchise Area during the Dispute Resolution Process, but this shall not affect either Party's right to seek injunctive relief to protect their interests in a court of competent jurisdiction in Spokane County.

**Section 14. Indemnification.**

14.1 General Indemnification. Except for environmental matters, which are covered by a separate indemnification, the Grantee shall indemnify, defend, and hold harmless the City, its agents, officers, elected officials, or employees from any and all liability, loss, damage, cost, expense, and

claim of any kind whether at law or in equity, including reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising out of, or related to, directly or indirectly, the installation, Construction, Operation, use, location, testing, repair, Maintenance, Improvement, removal, or abandonment of Grantee's Facilities on the Premises within the Public Right-of-Way or on other Public Property within the Franchise Area under the authority of this Franchise, or from the existence of Grantee's Facilities in the Franchise Area, or from any leak, spill, rupture or other release of the Petroleum Products contained in, transferred through, or released from said Facilities, including the reasonable costs of assessing any such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties or other damages arising under any Environmental Laws or the applicable regulations of Jurisdictional Agencies. If any administrative or judicial action is brought against the City by reason of the rights granted to Grantee for the Construction, Maintenance, Operation or Improvement of its Facilities within the Franchise Area under the terms of this Franchise Ordinance, Grantee shall defend the City, its agents, officers, elected officials, or employees at the Grantee's sole cost and expense. This general indemnification does not apply to the extent that any matters are shown to be proximately caused by the City's negligence or willful misconduct.

#### 14.2 Environmental Indemnification.

(a) Grantee shall indemnify, defend and hold harmless the City, its agents, officers, elected officials or employees from and against any and all liability, loss, damage, expense, actions or claims, either at law or in equity, for environmental damages arising out of, or related to, directly or indirectly, the installation, Construction, Operation, use, location, testing, repair Maintenance, Improvement, removal, or abandonment of Grantee's Facilities in the Public Right-of-Way or on other Public Property within the Franchise Area under the authority of this Franchise,

including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by City in defense thereof, arising directly or indirectly from:

(1) Grantee's breach of any Environmental Laws or the regulations of Jurisdictional Agencies applicable to the Grantee's Facilities; or

(2) Any release of Petroleum Products or other Hazardous Substances from the Grantee's Facilities within the Franchise Area; or

(3) Any other incident arising from Grantee's activities related to the rights granted under this Franchise including actions by Grantee, or its agents, contractors or subcontractors.

(b) This indemnity includes but is not limited to:

(1) Liability for any Governmental Agency's costs of removal of, or remedial action for, a leak, spill, rupture or release of Petroleum Products or other Hazardous Substances from Grantee's Facilities;

(2) Damages to natural resources caused by a leak, spill, rupture or other release of Petroleum Products or other hazardous substances from Grantee's Facilities, including the reasonable costs of assessing such damages;

(3) Liability for any other person's costs, including the City's (except for those excluded because they were not proximately caused by the City's negligence or willful misconduct as set forth in subsection (c), below), of responding to any leak, spill, rupture or other release of Petroleum Products or other Hazardous Substances from Grantee's Facilities;

(4) Liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental Laws or the applicable regulations of Jurisdictional Agencies; and

(5) Liability for personal injury, property damage, or economic loss from the acts or omissions of the Grantee related to the City's grant of this Franchise or Grantee's Operation, Maintenance, Construction or Improvement of the Facilities arising under any statutory or common-law theory.

(c) This environmental indemnification does not apply to the extent that any matters are shown to be proximately caused by the City's negligence or willful misconduct.

14.3 Indemnity Obligations Survive Termination. The indemnity provisions contained herein shall survive the expiration, revocation, or termination of this Franchise and shall continue for as long as the Grantee's Facilities shall remain in, or on, the Premises within the Franchise Area or until the Parties execute a new Franchise which modifies or terminates these indemnity provisions.

## **Section 15. Insurance and Bond Requirements.**

### 15.1 Insurance Requirement.

(a) During this Franchise, Grantee shall procure and maintain, at its sole cost and expense, from carriers with an AM Best's Financial Strength Rating of at least A- commercial general liability insurance, including sudden and accidental pollution in the minimum amount of One Hundred Million Dollars (\$100,000,000) for each occurrence and in the annual aggregate, in a form reasonably acceptable to the City. Insurance coverage shall include, but is not limited to, all defense costs. Grantee and City agree that, every five years following the effective date of this Franchise, either party may request in writing that both parties meet to discuss the continuing appropriateness of the Insurance Requirement and whether new circumstances merit an adjustment of the Insurance Requirement. The parties agree to meet and discuss this matter in good faith, but neither party is obligated to agree to an adjustment of the Insurance Requirement.

(b) Grantee is permitted to self-insure a portion of the total amount of insurance

required in Section 15.1(a), above, in an amount up to and including Twenty-five Million Dollars (\$25,000,000). In lieu of a policy of insurance, a portion or the entire amount of coverage above Grantee's self-insured portion may, at Grantee's option, be met by one or more Guarantees from Grantee's ownership interests, substantially in the form as the template Guaranty attached as Exhibit B. The Grantee shall notify the City of change of ownership of any of the Guarantees or insolvency of any Guarantee.

15.2 Grantee to Provide Proof of Insurance. Upon request, Grantee shall provide evidence of the coverage required in Section 15.1 in a form reasonably acceptable to City. Further, any policies of insurance procured and maintained by Grantee to satisfy the requirements in Section 15.1 shall, to the extent of Grantee's indemnification obligations herein of Grantor, show Grantor as an additional insured, provide a waiver of subrogation in favor of Grantor, and respond as primary to any insurance carried by Grantor. Further, such policies shall contain a provision that the policy shall not be canceled without a minimum of thirty (30) days prior Written notice to the City or otherwise is allowed under the terms and conditions of the policy.

15.3 Grantee is permitted to procure insurance from more than one carrier to meet the insurance obligations specified in Section 15.1(a), above. Insurance carriers are not required to be "admitted" in the State of Washington.

15.4 Bond and Insurance Requirements Survive Termination. The insurance and bond provisions contained herein shall be negotiated at the expiration, revocation, or termination of this Franchise and shall continue for as long as the Grantee's Facilities shall remain in, or on, the Premises within the Franchise Area or until the Parties execute a new Franchise Agreement which modifies or terminates these indemnity, insurance, and bond provisions.

**Section 16. Receivership or Foreclosure of Grantee.**

16.1 Notice to City – Bankruptcy. Grantee shall immediately notify the City in Writing if Grantee:

(a) files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; or

(b) files an answer admitting the jurisdiction of the Bankruptcy Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or

(c) is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for, or consents to, the appointment of any receiver or trustee of all or any part of its property including all or any parts of its business operations or Facilities within or affecting the Franchise Area.

16.2 Notice to City -- Foreclosure. Upon the foreclosure or other judicial sale of all, or a substantial part of, Grantee's business operations or Facilities within or affecting the Franchise Area, or upon the termination of any lease covering all, or a substantial part of, the Facilities within or affecting the Franchise Area, Grantee shall notify the City Representative of such fact.

16.3 City's Right to Terminate Franchise Upon Appointment of Receiver. The City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise and remedied any existing violations and/or defaults; and

(b) Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise granted to the Grantee except where expressly prohibited by applicable provisions of State or Federal law.

16.4 City's Right to Seek Injunctive Relief. Nothing in this Section shall limit the ability of the City to seek emergency or injunctive relief against Grantee if it deems the City water supply, Wellhead or Aquifer to be in significant danger or jeopardy. Such action shall not be an election of remedies but shall preserve all other remedies in addition, at contract, law, or equity.

**Section 17. Annual Franchise Fee and Costs.**

17.1 Franchise Fee. In consideration for granting this Franchise to Grantee and for the use of the Premises within the Franchise Area, there is hereby established an annual Franchise Fee equal to Twenty- five Thousand Dollars/year (\$25,000).

The annual Franchise Fee shall remain constant for the first five (5) years of this Franchise and shall then subsequently be increased every year by the national Consumer Price Index for Urban Consumers (CPI-U) as published in January of that year, or at a rate of 1.5%, whichever is greater.

17.2 Fee Payment in Installments. The first installment shall be paid at the time Grantee accepts this Franchise and shall cover the next twelve (12) months. Each succeeding installment shall cover the next twelve (12) month period and shall be paid not later than the anniversary date of the Effective Date of this Franchise.

17.3 Interest on Late Payments. Interest shall accrue on any late payment of the Franchise Fee at the rate of twelve percent (12%) per annum. Such interest shall be in addition to any applicable and customary penalties for late payment. Any partial payment shall first be applied to any applicable and customary penalties, then interest, and then to principal.

17.4 The Franchise Fee set forth above, does not include standard and customary payments associated with the City's administrative expenses incurred in reviewing, licensing, permitting, or granting any other approvals necessary for the Grantee to Operate, Maintain, Construct or Improve its Facilities, or for any inspection or enforcement costs thereunder (i.e. customary permitting fees). Additionally, the foregoing annual fee does not include any generally applicable taxes that the City may legally levy.

**Section 18. Legal Relations; Charter Requirements.**

18.1 No Relationship Created by Grant of Franchise. Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture between the City and Grantee, or to impose a trust, partnership, or agency duty, obligation or liability on, or with regard to, either Party. Each Party shall be individually and severally liable for its own duties, obligations, and liabilities under this Franchise.

18.2 No Warranty by City. The Grantee accepts any privileges granted hereunder by the terms of this Franchise for the installation of its Facilities on the Premises within the Public Right-of-Way and on other Public Property within the Franchise Area in an "as is" condition. Grantee stipulates and agrees that the City has never made any representations, or any implied or express warranties or guarantees as to the suitability, security, or safety of the Premises for Grantee's location of its Facilities or any representations as to possible hazards or dangers arising from other uses of the Premises by the City, the general public, or other utilities. As between the City and the Grantee, the Grantee shall remain solely and separately liable for the operation, testing, Maintenance, Construction, Improvement, replacement, and/or repair of the Facilities or other activities permitted hereunder.



18.3 Workers' Compensation Immunity Waiver. Grantee waives immunity under Title 51 RCW in any cases involving the City and affirms that the City and Grantee have specifically negotiated this provision, to the extent it may apply.

18.4 Franchise Creates No Duty on City. This Franchise shall not create any duty of the City or any of its officials, elected officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, elected officials, employees or agents in the exercise of powers reserved to the City. Further, this ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose. Any duty that may nonetheless be deemed to be created in the City shall be deemed a duty to the general public and not to any specific party, group or entity.

18.5 Supplementing and not by way of limitation of other provisions, the City reserves all rights under its City Charter and as allowed by applicable provisions of Federal and State law, including expressly those conditions stated in Sections 106, 107 and 108, of the City Charter as applicable.

18.6 Grantee may not issue any capital stock on account of the Franchise or the value thereof and shall have no right to receive any return on account of the Franchise or its value.

18.7 As applicable, the Franchise and all things constructed thereunder shall be subject to common use by any other grantee or assignee of any other franchise, whenever there shall be necessity therefor, upon payment or tender of compensation for such use. The question of necessity, compensation and all other questions relating thereto, shall be judicial questions, but no judicial proceeding shall suspend or postpone such use if the person or corporation desiring such common use shall deposit in the court such sums as the court, in a preliminary hearing may determine.

**Section 19: Miscellaneous.**

19.1 Interpretation and Venue. This Franchise shall be governed by, and construed in accordance with the laws of the State of Washington and the Parties agree that in any action, except for actions based on Federal questions, that jurisdiction and venue shall lie exclusively in the Superior Court of Spokane County, Washington. For any Federal judicial action involving the rights granted under this Franchise, venue shall lie in the United States District Court for the Eastern District of Washington.

19.2 Amendment or Modification of Franchise. In the event that a court of competent jurisdiction declares a material provision of this Franchise to be invalid, illegal or unenforceable, the Parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to make such amendments or modifications to the Franchise as are appropriate actions so as to give effect to the intentions of the Parties as reflected herein. If severance from this Franchise of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise, either Party may bring an action in the Spokane County Superior Court to reform or reconstitute the Franchise so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

19.3 Time is of the Essence. Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of the requirement of this Franchise. Where no specific time is specified, performance shall be made in a reasonable time, and for such performance, time is also of the essence.

19.4 Effect of Force Majeure. In the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of Grantee, performance shall be excused during and to the extent of such Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is reasonably satisfactory to City. Grantee shall not be excused by mere economic hardship, or by the misfeasance or malfeasance of its directors, officers, or employees or any other conditions that might have been reasonably foreseen or avoided, with the exercise of reasonable care and diligence.

19.5 Section Headings.

(a) The Section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.

(b) This Franchise is expressly subject to the terms of the Spokane City Charter and Article XI thereof.

19.6 No Third Party Liability. By entering into this Franchise, the Parties expressly do not intend to create any obligation or liability, or promise any performance to any third Party, nor have the Parties created for any third Party any right to enforce this Franchise.

19.7 Successors and Assignees Bound by Franchise. This Franchise and all the provisions shall be binding upon and inure to the benefit of the respective successors and permitted assignees of the Parties.

19.8 Notice Requirements. Whenever this Franchise calls for notice to or notification by any Party, the same (unless otherwise specifically provided) shall be in Writing and directed to the recipient at

the address set forth in this Section, unless written notice of change of address is provided to the other Party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the Parties as follows:

To the City:

Representative  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

To the Grantee:

Real Estate Services  
PO Box 7500  
Bartlesville, OK

Copy to:

Office of the City Attorney  
5<sup>th</sup> Floor City Hall  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201-3326

19.9 Authority of Parties to Execute Franchise. The Parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a Jurisdictional Agency is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.

19.10 Franchise Supersedes All Previous Agreements. This Franchise and the attachments hereto represent the entire understanding and agreement between the Parties with respect to the subject matter and it supersedes all prior oral negotiations between the Parties. This Franchise can be amended, supplemented, modified, or changed only by an agreement in writing which makes specific reference to the Franchise or the appropriate attachment and which is signed by both Parties. No waiver of any provision of this Franchise shall be effective unless reduced to writing and signed by the Party granting the waiver. All previous franchise agreements between the Parties pertaining to

Grantee's Construction, Maintenance, Improvement or Operation of its Facilities within the Franchise Area are hereby superseded.

19.11 Purpose of Franchise; Acceptance of Franchise.

(a) The purpose of this Franchise is to grant Grantee the right to Operate, Maintain, Construct and Improve its Facilities in the Franchise Area and to assure the City protection against liability or loss in connection with Grantee's enjoyment of the Franchise, including loss or damage to the public water supply, City Wellhead area or Aquifer contamination. This Franchise shall be liberally construed to accomplish these purposes.

(b) Grantee shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk, its unconditional Written acceptance of all the terms and conditions of this Franchise. If Grantee shall fail to so file its Written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.

19.12 Effective Date. The Effective Date of this Franchise shall be the 1<sup>st</sup> day of \_\_\_\_\_, 2020, after passage, approval and legal publication of this Ordinance as provided by law, and provided it has been duly accepted by Grantee as herein above provided. On that date, the rights, duties and obligations shall come into effect and the date from which the time requirement for any notice, extension and/or renewal will be measured. The City has made no effort to verify that Grantee compliance, and waives no existing deficiencies at the time of Franchise approval.

**PASSED** by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Council President

Attest:

Approved as to Form

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date

**UNCONDITIONAL ACCEPTANCE BY GRANTEE**

I, the undersigned official of Yellowstone Pipe Line Company, am authorized to bind Yellowstone Pipe Line Company and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. C- \_\_\_\_\_), which are hereby accepted by Yellowstone Pipe Line Company this \_\_\_\_ day of \_\_\_\_\_, 2020.

Yellowstone Pipe Line Company

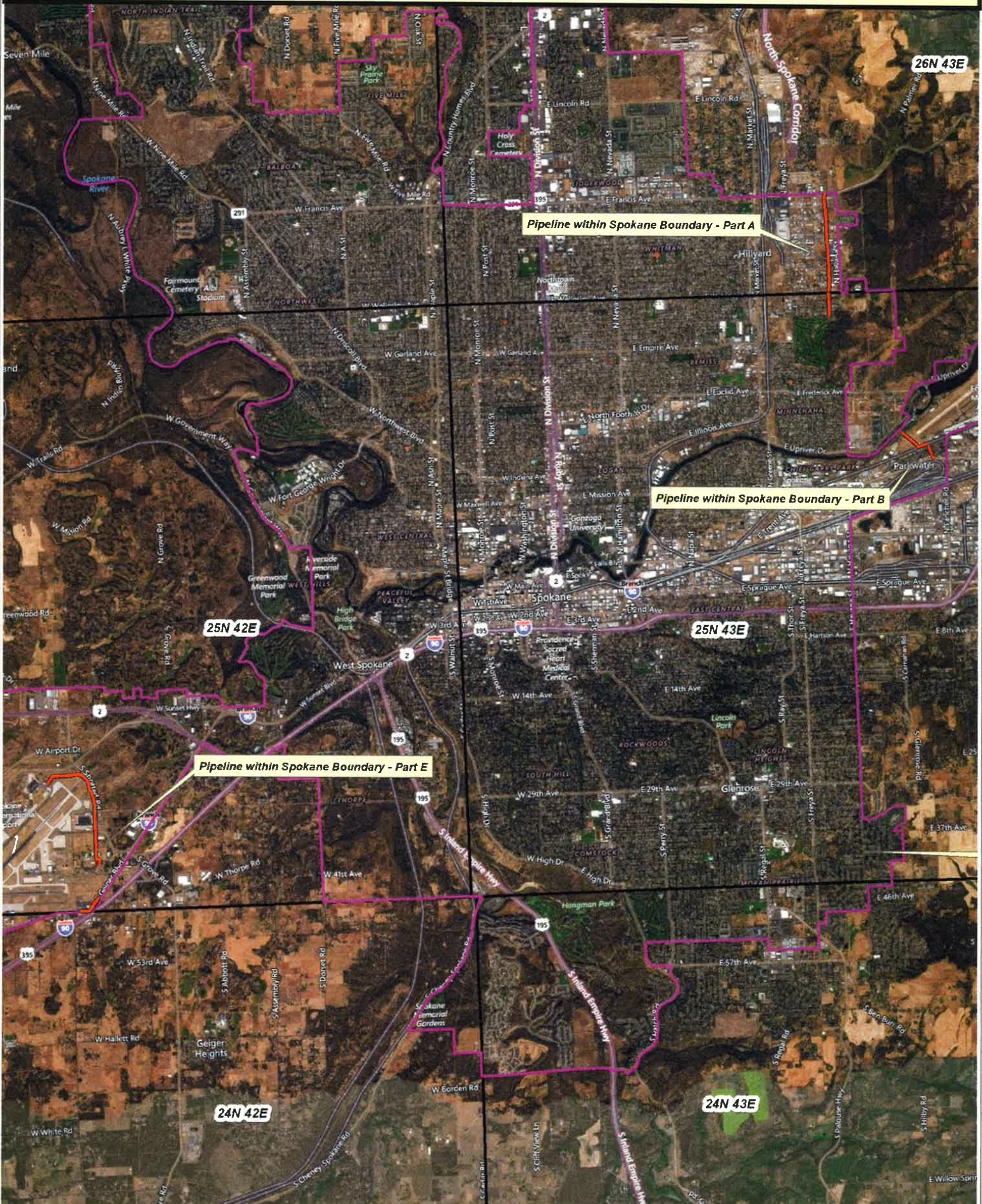
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Tract_Num	Property_T	Owner	Line_typ	Distance	Pipe_Lengt	Descr
A-3	Part A	City of Spokane	Pipeline to be covered by City Franchise	76.60 Rds	1263.92	Florida Ave. - 76.60 Rods
A-5	Part A	City of Spokane	Pipeline to be covered by City Franchise	319.69 Rds	5274.9	Florida Ave. - 319.69 Rods
B-03	Part B	City of Spokane	Pipeline to be covered by City Franchise	3.91 Rds	64.494	Trent Avenue - 3.91 Rods
B-04	Part B	City of Spokane	Pipeline to be covered by City Franchise	5.92 Rds	97.75	Koren St. & Parkwater Ave. - 5.92 Rods
B-05	Part B	City of Spokane	Pipeline to be covered by City Franchise	38.72 Rds	638.821	Koren Street - 38.72 Rods
B-07	Part B	City of Spokane	Pipeline to be covered by City Franchise	35.62 Rds	587.71	Rutter Avenue - 35.62 Rods
B-08	Part B	City of Spokane	Pipeline to be covered by City Franchise	54.98 Rds	907.17	Spokane Airport (Felts Field) - 54.98 Rods
B-09	Part B	City of Spokane	Pipeline to be covered by City Franchise	13.21 Rds	217.99	Waterw orks St to SE ROW Upriver Dr - 13.21 Rods
Ea-2	Part E	City of Spokane	Pipeline to be covered by City Franchise	68.69 Rds	1133.320807	6" Geiger Jct to Geiger St - 68.69 Rods
Eb-1	Part E	City of Spokane	Pipeline to be covered by City Franchise	82.48 Rds	1360.869644	3" Geiger St to Spokane Airport
Eb-3	Part E	City of Spokane	Pipeline to be covered by City Franchise	442.15 Rds	7295.444648	3" Geiger St to Spokane Airport - 442.15 Rods



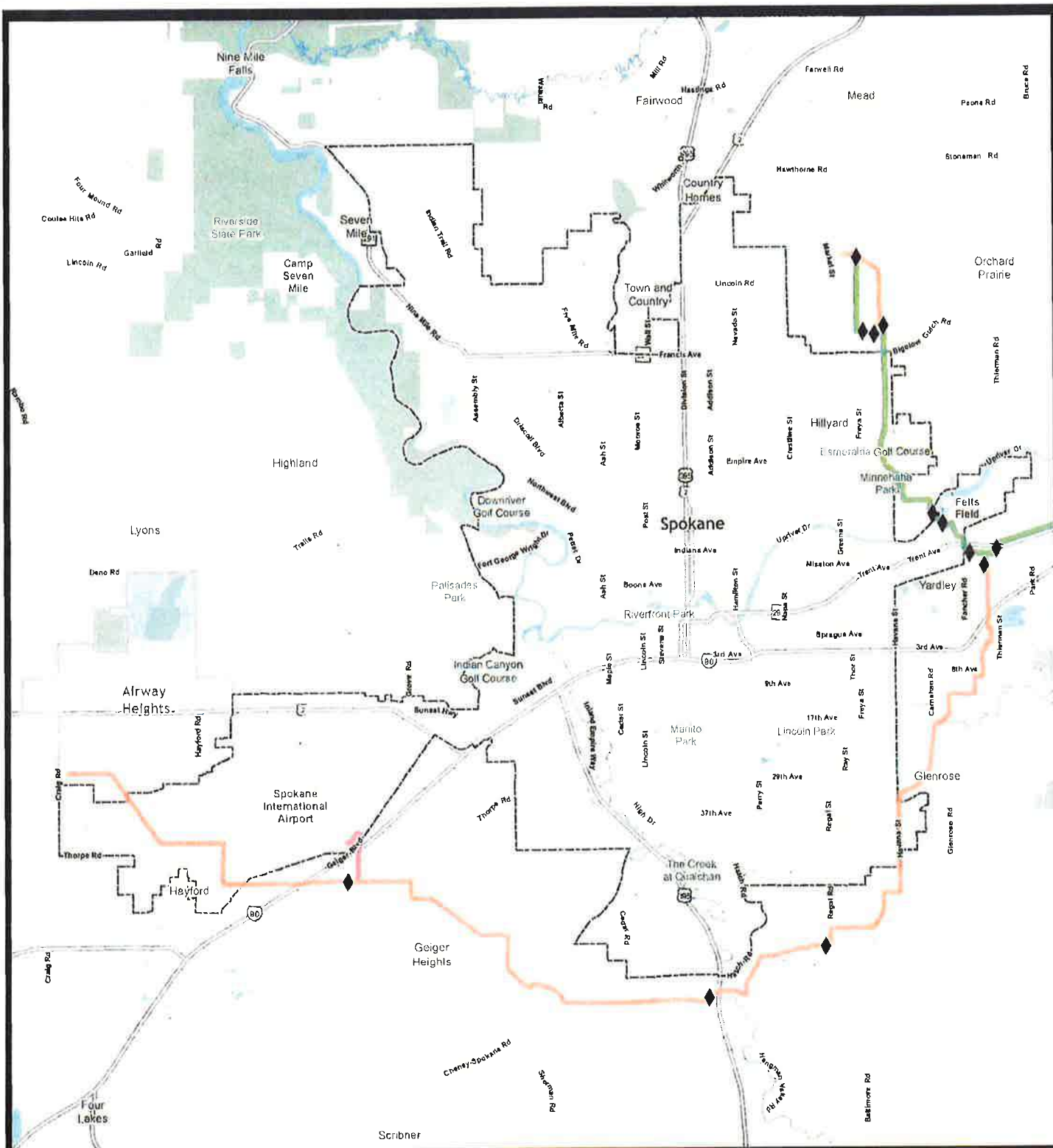
**Exhibit A to Ordinance C-35924**  
**Franchise Agreement for Yellowstone Pipe Line Company**

— YPL Segments Subject to City of Spokane Franchise Agreement  
 SpokaneMunicipalBndy



EXHIBIT B

GUARANTEE DOCUMENT



**Exhibit C**  
**Emergency**  
**Flow Reduction**  
**Valves**

**Legend**

- ◆ EMERGENCY FLOW REDUCTION VALVES
- YELLOWSTONE 10"
- YELLOWSTONE 8"
- YELLOWSTONE 6"



THIS IS NOT A LEGAL DESIGN  
 The information shown on this map is compiled from various sources and is subject to constant revision. Information shown on this map should not be used as a basis for any action or decision without the assistance of a professional engineer or other qualified person.

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